

ACTION FOR SERVICES RENDERED A DECEDENT--EVIDENCE OF PROMISE TO COMPENSATE BY WILL.¹

The plaintiff has offered evidence tending to show that *(name decedent)* promised *(name plaintiff)* that he would *(describe alleged promise)* in return for services to be rendered by *(name plaintiff)* and that *(name plaintiff)* relied on such promise in rendering services.

A promise to [will real estate] [to compensate a person by leaving him something by will] is not legally enforceable unless it is in writing, and the plaintiff may not enforce such a promise and recover what was promised, but evidence of such promise is evidence which you may consider in determining whether *(name decedent)* intended to compensate *(name plaintiff)* for services rendered and whether *(name plaintiff)* rendered services in expectation that he would be compensated. You will consider this evidence with all the other evidence, in determining whether there was an agreement that *(name plaintiff)* was to be compensated for services.²

(You will also consider such evidence in determining the period of time for which plaintiff is to be compensated, as I will instruct you more fully on the _____ issue:)³

¹This instruction will be given in connection with N.C.P.I.--Civil 735.00, if there is evidence of an unenforceable promise to compensate by will. If the promise is to will only personal property it may be enforced, and this instruction should not be used. *Neal v. Wachovia Bank & Trust Co.*, 224 N.C. 106 (1944).

²*Gales v. Smith*, 249 N.C. 263 (1958).

³For instruction on effect of such a promise on the issue of recovery see N.C.P.I.--Civil 735.40.

