NO. 8569 Equity.

that in their judgment $2.00 per day was a fair and reasonable valuation for the services thus rendered. They both stated that the physical and mental strain to which Mrs. Hedges was subjected by her constant and exacting attention to her mother was quite detrimental to her own health. Mrs Hedges and Mrs. Worden testified that the services rendered by Mrs. Hedges to her mother were worth $1.00 a day. As the attending physicians testified more particularly with reference to occasions when Mrs. Duell was so ill as to require medical attention and as the claim is only $1.00 a day. it will be proper to conclude that the lower amount is a sufficient allowance.

Objection is made to the claim upon the ground that the services having been rendered by a daughter to a mother are presumed to have been gratuitous. This is undoubtedly the ordinary presumption arising from such a relationship as that which existed in this case but this presumption is rebutted by evidence showing that the services were "rendered under such circumstances as to imply an understanding of payment and a promise to pay." Bixler vs Delleman. 74 Md. 494; Gill vs Taylor. 98 Md. 453. In this case the evidence as here indicated. clearly overcomes the presumption arising from the relationship of the parties.

Another ground of objection is that there is no evidence to show an election upon the part of Mrs Hedges to render the services in question for herself and independently of her husband. It is. of course, necessary that this be shown to entitle the wife to recover individually in a case like the present. Poffenberger (vs) Poffenberger, 72 Md. 321; Neale vs Hermans. 65 Md. 474. Baker (vs) Nuttle 86 Md. 651. unless her rights have been enlarged in this respect by the Act. of 1898. as to which I do not find it necessary to express an opinion in this case. There is no doubt however that where. as here the testimony shows in effect an understanding an agreement to which the husband was a party. that compensation should be made to the wife. she is entitled to recover on her behalf for the services. Mr. Hedges testified explicitly that the promise made by the defendant was to compensate his wife. that he protested against some of the services she performed upon the ground that she had not sufficient strength, but that she continued regardless of his protest. and that his wife "charged for the services she rendered her mother." In view of this testimony the objection now being considered does not seem to be tenable.