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Contracts-Consideration

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RECENT CASE NOTES

CONTRACTS — CONSIDERATION — Appellee and the Windswift Farms entered into a contract for the purchase and sale of foxes for which the appellee agreed to pay \$1,500 and the Windswift Farms agreed to ship the foxes at a certain date, furnish pens, feed, care and attend to the breeding of all foxes ranched from the appellee, etc. Appellee paid \$500 down and agreed to pay the balance of \$1,000 by two notes which he executed and enclosed with the order for the foxes. Appellant is the holder in due course of the notes and brings suit thereon. Appellee in his answer pleaded, among others things, no consideration and failure of consideration, but before the argument withdrew all of the answer except no consideration. *Held*, for appellant: that there was a valuable consideration, and appellee will be held to the theory of no consideration so adopted by him even if the evidence did show a failure of consideration. *Salt Springs Nat. Bank v. Schlosaer*, Appellate Court of Indiana, April 25, 1930.

The court said that consideration, that is a valuable consideration, in the sense of the law, may consist either in some right, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by another. Undoubtedly there is some authority for this statement. *Starr v. Earle et al.*, 43 Ind. 478; *People v. Commercial Life Ins. Co.*, 247 Ill. 92; *Ward v. Erie R. Co.*, 149 N. Y. S. 717. Evidently two theories of consideration were intended to be adopted, benefit to the promisor and detriment to the promisee. A right, profit or benefit accruing, seems to suggest the idea of benefit to the promisor, but there is authority to the extent that this is not sufficient consideration for a promise. *Keith v. Miles*, 39 Miss. 442; *Springstead v. Nees*, 125 App. Div. (N. Y.) 230; *DeCicco v. Schweiger*, 211 N. Y. 431; *Devecmon v. Shars*, 69 Md. 199. It is doubtful if at the present time there has been or can be formulated a definition of benefit to the promisor which would be generally accepted. While courts often speak of such there are few cases which hold that benefit to the promisor is sufficient consideration. Willis, "What is Consideration in the Anglo-American Law of Contracts," 72 U. of Pa. L. R. 245. Forbearance, detriment, loss, or responsibility given, suffered, or undertaken by another convey no legal meaning. Most of the cases hold that unless a person surrender or promise to surrender, a legal right, a legal power, a legal privilege, or a legal immunity, there is no consideration. Willis, "What is Consideration in the Anglo-American Law of Contracts," 72 U. of Pa. L. R. 376. The court also said that an agreement to do something, as well as mutual promises, affords sufficient consideration for commercial paper. An agreement is an expression of mutual assent by two or more persons. It has a wider meaning than contract, bargain or promise. The word contains no implication that legal consequences are or are not produced. *American Law Institute's Restatement of the Law of Contracts, official draft*, Chap. 1-7, p. 21. Mutual promises are considerations. *Oscar Lehlegal Mfg. Co. v. Peter*

Cooper's Glue Factory, 231 N. Y. 459; *Green v. Whaley*, 271 Md. 636; *Stearns v. Barnett*, 18 Mass. (1 Peisk) 443. But the court could have gone farther in its definition. Any act or promise will be sufficient consideration under the bargain theory, except (1) where there is an act or forbearance required by a legal duty that is neither doubtful nor the subject of honest and reasonable dispute if the duty is owed either to the promisor or to the public, or, if imposed by the law of torts or crimes, is owed to any person; (2) where there is the surrender of, or forbearance to assert an invalid claim or defense by one who has not an honest and reasonable belief in its possible validity. *American Law Institute Restatement of the Law of Contracts, Official Draft, Chaps. 1-7, Secs. 75, 76, 86, 87, 88, 89, and 90.* The result reached here is correct but the court could have safely adopted a definition of consideration substantially similar to that adopted by the American Law Institute in its Restatement of the Law of Contracts. The decision apparently is based upon contract law, but even though the court had in mind consideration in bills and notes, the result would not have been different. Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value. Value is any consideration sufficient to support a simple contract. *Negotiable Instruments Law, sections 24 and 25. Burns' Annotated Statutes, 1926, Vol. 3, sections 11383 and 11384.*

C. F. B.