UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 8 | Number 4 Article 16

6-1-1930

Contracts -- Consideration -- Family Settlement

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tion by a public carrier of passengers is unconstitutional.[13] It is submitted therefore that the portion of the 1929 statute above set out is contrary to the equal protection clause of the fourteenth amendment.[14]

The statute also provides "that nothing contained in this act or the law amended hereby shall be construed to declare operators of busses and/or taxicabs common carriers." This provision appears to be superfluous. Whether a carrier is private or public depends upon the service it renders and not on legislation.[15] Whether the service rendered is public or private depends on the facts, and the fourteenth amendment prevents the legislature from declaring a carrier private or public unless there is a reasonable basis of fact for so doing.[16]

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Contracts—Consideration—Family Settlement

The testator, in disposing of his property among his children, made special bequests to two of his daughters, in recognition of their love and attention to himself and their mother. From statements made by the eldest son, an executor under the will, the children drew the inference that the two daughters had, and would enforce, a valid claim for wages against the estate, unless they were paid. To avoid litigation an agreement was drawn up, and signed and sealed by the children, whereby the two daughters were to receive $1,500 each in addition to the special bequests provided in the will and the unsigned and undated codicil. The children now seek to have the agreement set aside on the ground of lack of consideration. *Held,* that a court of equity looks with favor upon family settlements, and if asserted in

of the carrier exists by common law." U. S. v. Dodge, Fed. Cas. No. 14,976 (W. D. Texas 1877).

[13] McCabe v. Atchison, Topeka & Santa Fe Ry. Co., 235 U. S. 151, 35 Sup. Ct. 69, 59 L. ed. 169 (1914).

[14] See (1929) 7 N. C. L. REV. 391-392.

[15] Waldum v. Lake Superior Terminal & Transfer Ry. Co., 169 Wis. 137, 170 N. W. 729 (1919); State v. Public Service Com., 117 Wash. 453, 201 Pac. 765 (1921); Pacific Spruce Corp. v. McCoy, 294 Fed. 711 (D. C. Ore. 1923); Terminal Taxicab Co. v. Dist. of Col., 241 U. S. 252, 36 Sup. Ct. 583, 60 L. ed. 984, Ann. Cas. 1916 D 765 (1916).

[16] Frost v. R. R. Com. of Cal., 271 U. S. 583, 46 Sup. Ct. 605, 70 L. ed. 1101 (1926); Michigan Public Utilities Com. v. Duke, 266 U. S. 570, 45 Sup. Ct. 191, 69 L. ed. 445, 36 A. L. R. 1105 (1925). The state may declare a corporation a common carrier upon the application of the corporation, Corporation Commission v. Atl. Coast Line R. R. Co., 187 N. C. 424, 121 S. E. 767 (1924).

good faith, even though in fact unfounded, will sustain them as based on valid consideration.[1]

This case is sustainable regardless of consideration on the ground that the contract was under seal.[2] Though equity requires a consideration, regardless of any seal, to enforce an agreement,[3] it will not set a sealed agreement aside because of lack of consideration. The case might also be sustained as a compromise of a doubtful claim[4] asserted in good faith.[5] But regardless of the seal and compromise, the court's language was broad enough to indicate that the case would have been sustained on the ground of family settlement, even though the court found no consideration.

By the great weight of authority a bona fide agreement by one interested in a testator's estate, to refrain from contesting a will is valid.[6] It is not void as against public policy, since it lessens litigation.[7] The giving up of such contest, begun in good faith or so intended, is sufficient consideration for a promise to pay money or convey property.[8]

Consideration is in effect the price bargained for and paid for as the exchange for the promise.[9] The necessity for consideration is the result of a historical development.[10] It is analogous to, but not identical with the *causa* requirement under the Civil Law.[11] Its

[1] Weade v. Weade, 150 S. E. 238 (Va. 1929), commented on in (1930) 16 VA. L. REV. 406.

[2] Harris v. McKay, 138 Va. 448, 122 S. E. 137, 32 A. L. R. 156 (1924).

[3] Lamprety v. Lamprety, 29 Minn. 151, 12 N. W. 514 (1882); Pound, *Consideration in Equity* (1919) 13 ILL. L. REV. 667.

[4] 1 WILLISTON, CONTRACTS (1924) §135 at 295.

[5] Cole v. Cole, 292 Ill. 154, 126 N. E. 752, 38 A. L. R. 719 (1920); Layer v. Layer, 184 Mich. 663, 151 N. W. 759 (1915). Mere good faith alone is not sufficient consideration, Hardin v. Hardin, 201 Ky. 310, 256 S. W. 417, 38 A. L. R. 756 (1923), and the claim compromised must not be frivolous or unreasonable, Stellers v. Jones, 164 Ky. 458, 175 S. W. 1002 (1915); 1 WILLISTON, *op. cit. supra* note 4, at 296.

[6] In re Cook's Will, 244 N. Y. 63, 154 N. E. 823 (1926), 55 A. L. R. 806 (1928); Collins v. Collins, 151 Wash. 201, 275 Pac. 571 (1929). To the effect that the contestant must have an interest in the property, see Conklin v. Conklin, 165 Mich. 571, 131 N. W. 154 (1911).

[7] In re Cook's Will, *supra* note 6.

[8] Hollowoa v. Buck, 174 Ark. 497, 296 S. W. 74 (1927); Blount v. Dillaway, 199 Mass. 330, 85 N. E. 477, 17 L. R. A. (N. S.) 1036 (1908); Note (1925) 38 A. L. R. 734, 740.

[9] CONTRACTS RESTATEMENT (Am. L. Inst. 1928) §75.

[10] 2 STREET, FOUNDATIONS OF LEGAL LIABILITY (1906) Ch. 3.

[11] *Causa* is, in its proper meaning, the "reason" or "situation" for doing something; it has. through use, finally reached the point where it is very intangible and hard to define or qualify, RADIN, ROMAN LAW (1927) 297-300.

present purpose seems to be to avoid litigation over trivial promises not based upon any substantial motive.

The law still requires consideration. In its technical sense, as it is generally thought of, it is something of value given in exchange; this was the common law idea. It is, in its widest sense, the reason, motive or inducement, by which a person is moved to bind himself by an agreement.[12] But the conception of consideration is gradually broadening and the courts are now enforcing promises, made without any value given for them, to pay debts which are barred by the Statute of Limitations[13] or discharged in bankruptcy,[14] as promises to perform voidable duties.[15] This same tendency is evidenced by various other kinds of cases.[16] And the Uniform Written Obligations Act is a further example. Section 1 of the Act provides that a written promise made and signed shall not be unenforceable for want of consideration, if it contains a statement to the effect that the signor intends to be legally bound.[17] This seems to aim to carry out the intention of the parties as evidenced by the instrument, even in the absence of consideration.

The inflection, in the instant case, of the language of previous cases[18] clearly shows the broadening of the requirement of consideration in the law of contracts. This trend seems to lead to the logical conclusion that future cases will support family settlements despite want of consideration in the usual sense of legal detriment to the promisee or benefit to the promisor.

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Corporations—Negligence of Directors—Right of Corporate Creditor to Sue

The Supreme Court of North Carolina recently held that plaintiffs, corporation creditors, stated a good cause of action in a complaint which charged the defendants, directors of a now insolvent corpor-

[12] SALMOND, JURISPRUDENCE (7th ed. 1924) 374.
[13] CONTRACTS RESTATEMENT, *supra* note 9, §86.
[14] CONTRACTS RESTATEMENT, *supra* note 9, §87.
[15] CONTRACTS RESTATEMENT, *supra* note 9, §89.
[16] CONTRACTS RESTATEMENT, *supra* note 9, §§85-94.
[17] HANDBOOK OF THE NATIONAL CONFERENCE COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS (1925) 584.
[18] It is well settled that courts will go further to sustain family settlements than they will under ordinary circumstances, Baas v. Zinke, 218 Mich. 502, 188 N. W. 512 (1922); Trigg v. Read, 5 Humph. 528, 42 Am. Dec. 447 (Tenn. 1845); Price v. Winston, 4 Munf. 63 (Va. 1813); 1 PAGE, CONTRACTS (1920) §623; Note (1925) 38 A. L. R. 734.