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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.

MILLS SCOTT BENTON.

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.

ation with such negligence in the performance of their duties to the corporation that a dishonest official was enabled to defraud plaintiffs and others of large sums of money, and finally wreck the corporation itself.[1]

Concerning the liability of corporate directors, the general American view is that they are agents of the corporation, and liable only to it for their wrongful acts except under such circumstances as would render them personally liable were they acting as agents of a private individual.[2] But some states have adopted the so-called "trust fund doctrine" under which directors are liable as trustees of the corporate assets for the benefit of stockholders and creditors.[3]

There is likewise a split of opinion as to what conduct will render directors liable either to the corporation or its creditors. Some jurisdictions hold that the director is liable only for gross negligence or fraud;[4] the majority that he is liable for failure to exercise ordinary care and diligence in the discharge of his duties;[5] and a few, that he

[1] Minnis v. Sharpe, 198 N. C. 364, 151 S. E. 735 (1930).

[2] Allen v. Cochran, 160 La. 425, 107 So. 292, 50 A. L. R. 459 (1926); Union National Bank v. Hill, 148 Mo. 380, 49 S. W. 1012 (1899); Killen v. State Bank, 106 Wis. 546, 82 N. W. 536 (1900); Penney v. Bryant, 7 Nebr. 127, 96 N. W. 1033 (1903); Hart v. Evanson, 14 N. D. 570, 105 N. W. 942 (1895); Young v. Haviland, 215 Mass. 120, 102 N. E. 338 (1913); THOMPSON on CORPORATIONS (3rd ed.), §1276; FLETCHER, CYCLOPEDIA OF CORPORATIONS, §2558; MECHEM on AGENCY, §§1467, 1474.

[3] Delano v. Case, 121 Ill. 247, 12 N. E. 676 (1887); United Society of Shakers v. Underwood, 9 Bush 609 (Ky. 1873); Nix v. Miller, 26 Colo. 203, 57 Pac. 1084 (1899); Hauser v. Tate, 85 N. C. 82 (1880); and Pender v. Speight, 159 N. C. 612, 75 S. E. 851 (1912) (holding that the directors are trustees for the creditors as well as for the corporation); McCollum v. Dollar, 213 S. W. 259 (Tex. Civ. App. 1919) (The directors of a corporation are liable to its creditors for losses resulting from their negligent acts); Cameron v. First National Bank, 194 S. W. 469 (Tex. Civ. App. 1917) (A creditor has an immediate right of action against the directors.)

[4] Cohen v. Maus, 297 Pa. 454, 147 Atl. 103 (1929); Hart v. Evanson, *supra* note 2; Peck v. Cooper, 8 Ill. App. 403 (1881); Utley v. Hill, 155 Mo. App. 232, 49 L. R. A. 323 (1900) (Directors not liable though they could have prevented the loss by exercise of reasonable care); Aubrey's Administrator v. Stimson, 160 Ky. 563, 169 S. W. 991 (1914); Spering's Appeal, 71 Pa. St. 11, 10 Am. Rep. 684 (1872) (In the absence of fraud or misappropriation of funds, or realization of a profit not common to all the stockholders directors are not liable); FLETCHER, CYCLOPEDIA OF CORPORATIONS, §2573.

[5] Houston v. Thornton, 122 N. C. 365, 29 S. E. 827 (1898); Anthony v. Jeffress 172 N. C. 378, 90 S. E. 414 (1916); Braswell v. Morrow, 195 N. C. 127, 141 S. E. 489 (1928); Besselieu v. Brown, 177 N. C. 65, 97 S. E. 743 (1919); Moore v. Mason, 73 Ohio St. 275, 76 N. E. 932, 4 L. R. A. (N. S.) 597 (1906) (Directors are liable for failure to exercise ordinary care and prudence); Cameron v. Kenyon-Connell Commercial Co., 22 Mont. 312, 56 Pac. 353, 44 L. R. A. 508 (1899) (Directors are charged with reasonable care in the performance of their duties); Conaty v. Torghen, 46 R. I. 350, 128 A. 338 (1925); General Rubber Co. v. Benedict, 149 N. Y. S. 882 (1914); Mc-

must use all he care and diligence that a prudent man would bring to the management of his own business.[6] None, however, seems to hold that he is liable for simple mismanagement or errors of judgment.[7]

North Carolina adheres to the "trust fund doctrine," and holds directors to the care and diligence of ordinary prudent men.[8] Therefore it would seem that the defendants, by their demurrer, have admitted facts which would render them liable under the North Carolina law. The remaining question is largely a matter of proper parties to the suit.

Even in states holding the "trust fund doctrine" it is usual to require that unless there has been a direct wrong to the complaining creditor the right of action against the directors vests in the corporation, or in the receiver, for the benefit of all creditors similarly situated.[9] In case the receiver refuses to sue he may be made a party defendant to the suit to the end that whatever is recovered by means of such suit may be fairly distributed to all those having an equally good cause of action.[10] Strong support for this position is found in North Carolina cases. And it is submitted that a more equitable re-

Ewen v. Kelly, 140 Ga. 720, 79 S. E. 777 (1913); Briggs v. Spaulding, 141 U. S. 132, 35 L. ed. 662, 11 Sup. Ct. 924 (1891) (Directors must exercise ordinary care in the discharge of their duties, and they will not be shielded from liability because of the ignorance which is the result of gross inattention); Note. (1919) 2 A. L. R. 867.

[6] Kavanaugh v. Commonwealth Trust Co., 118 N. Y. S. 758 (1909); Hun v. Cary, 82 N. Y. 65 (1880); (1910) 8 MICH. L. REV. 137.

[7] By "simple mismanagement" is apparently meant that which arises not from carelessness, but solely as a result of non-negligent errors of judgment. The consequences of such mismanagement have something of the element of accident in them since they could hardly have been avoided by the exercise of ordinary care and skill.

[8] Bane v. Powell, 192 N. C. 387, 135 S. E. 118 (1926); Solomon v. Bates, 118 N. C. 311, 24 S. E. 478 (1896); Caldwell v. Bates, 118 N. C. 323, 24 S. E. 481 (1896); Tate v. Bates, 118 N. C. 287, 24 S. E. 482 (1896); Braswell v. Morrow, *supra* note 5; Anthony v. Jeffress, *supra* note 5; Besselieu v. Brown, *supra* note 5.

[9] Douglass v. Dawson, 190 N. C. 458, 130 S. E. 195 (1925); Ham v. Norwood, 196 N. C. 763, 147 S. E. 291 (1929); Bailey v. Mosher, 63 Fed. 488 (C. C. A. 8th, 1894) (Any liability of the directors is an asset in the hands of the corporation, to be recovered by the receiver for the benefit of all the creditors.) Priest v. White, 89 Mo. App. 609, 1 S. W. 361 (1886) (A wrong done to the corporation which may affect its credit, and its creditors generally is not a wrong to them as individuals, and they cannot maintain an action as for tort); Kelly v. Dolan, 233 Fed. 635 (C. C. A. 3rd, 1916) (The right to recover of the directors is a legal right vested in the corporation); Almiral Co. v. M'Clement, 202 N. Y. S. 139 (1923); Lewis v. Council, 291 Fed. 148 (E. D., N. C. 1923); Allen v. Cochran, *supra* note 2; THOMPSON, CORPORATIONS (3rd ed.) §1375.

[10] Douglass v. Dawson, *supra* note 9; Ham v. Norwood, *supra* note 9; Kelly v. Dolan, *supra* note 9; THOMPSON, CORPORATIONS (3rd ed.) 889.

sult would have been reached in the present case by the application of some such principle.

The wrong complained of was not one peculiar to the plaintiffs; furthermore, there had been an intervention by a dishonest official, an independent third party, between the negligence of the directors and the injury complained of. If, as here, the individual creditor who has been injured as a remote result of the defendant's negligence is allowed to recover for an injury not peculiar to himself without joining the corporation, or its receiver, litigation will be increased with the probable result that in such cases the aggressive creditors, and those who are financially able to prosecute lawsuits will be enabled to attach the available assets of the tort-feasors leaving the others to such recovery as may be had from the corporate assets left in the hands of the receiver.

ALLEN LANGSTON.

Criminal Law—Prohibition—Purchase of Liquor

Officers found a quantity of liquor, something less than a gallon, in the defendant's room which the defendant admitted having purchased for his own use. The defendant was indicted for transporting, purchasing, possessing, and having in possession for the purpose of sale intoxicating liquor. Upon a verdict of "guilty of purchasing liquor," the defendant appealed, contending that since the Volstead Act does not prohibit the purchase of liquor and the Turlington Act[1] was adopted to make the state law conform to the national law, the State was limited in its power to legislate more stringently upon the subject than Congress had done. *Held,* The state law prohibiting the purchase of liquor for beverage purposes is not in conflict with the federal law which does not prohibit purchase thereof.[2]

The Eighteenth Amendment is not the source of power of states to adopt and enforce prohibitory measures, but the power of the states is that originally belonging to them and preserved to them under the first ten amendments.[3] The concurrent power clause of

[1] N. C. Pub. Laws, 1923, c. 1, §2. "No person shall manufacture, sell, barter, transport, import, export, deliver, furnish, *purchase,* or possess any intoxicating liquors except as authorized in this act; and all provisions of this act shall be liberally construed to the end that the use of intoxicating liquors as a beverage shall be prevented." (Italics ours.) (An Act to Make the State Law Conform to the National Law in Relation to Intoxicating Liquors.)

[2] State v. Lassiter, 198 N. C. 352, 151 S. E. 721 (1930).

[3] Vigliotti v. Pennsylvania, 258 U. S. 403, 42 Sup. Ct. 330, 66 L. ed. 686 (1921); U. S. v. Lanza, 260 U. S. 377, 43 Sup. Ct. 141, 67 L. ed. 314 (1922); Hebert v. Louisiana, 272 U. S. 312, 47 Sup. Ct. 103, 71 L. ed. 270 (1926).