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# Constracts -- Liability of Father Under Later Promise for Son's Purchase on Sunday

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this privilege of exoneration, the creditor may subject the trust estate to his claim by a suit in equity; and "to give the creditor a right against the estate it is necessary only that the trustee acted properly in incurring the debt."[12] The so-called Massachusetts business trust accomplishes the immunization of the trustees and beneficiaries from personal liability, and gives direct access to the trust assets, by putting creditors on notice of provisions in the trust instrument.[13]

The general rule illustrated by the principal case might well yield today to a working presumption that when signatures of fiduciaries are thus affixed to bona fide contracts, the intent is the same as when the more amplified wording is inserted.

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**Contracts—Liability of Father Under Later Promise for Son's Purchase on Sunday.**

Automobile tires were furnished on Sunday to the minor son of the defendant. There was evidence that the father thereafter, on a secular day, promised to pay for the tires, and that he retained and used them. *Held,* even though the original contract be treated as illegal and void, continued use furnished consideration for the subsequent promise, and it was error to grant a nonsuit.[1]

On the question presented by this case there is practically an equal division of authority, a slight majority favoring the result of the decision.[2] The cases allowing recovery may be divided into four

1930) (note by trustees); First Nat. Bank of Salem v. Jacobs, 85 W. Va. 653, 102 S. E. 491 (1920) (note by executrix); see American Trust Co. v. Canevin, 184 Fed. 657, 661, 663 (C. C. A. 3d, 1911); 1 WILLISTON, CONTRACTS (1920) §§311, 312. But such a construction of the section does not seem to be quite logical in view of the fact that a fiduciary has no principal. And it is said in BRANNAN, NEGOTIABLE INSTRUMENTS LAW, ANNOTATED (4th ed. 1926) at 176: "Section 20 does not protect him (the trustee or executor) for the estate is not a principal and he is not its agent." The courts that uphold the applicability of the section to fiduciaries seem to do so on the ground that such a construction gives effect to the intention of the parties and is expedient from a business standpoint.

[12] Scott, *op. cit. supra* note 7, at 739, 740. As to the effect of authorization by the will on the power of executor to charge estate, see dicta in Harris v. Woodard, 133 Ga. 104, 65 S. E. 250, 252 (1909) and in Brown v. Fairhall, 213 Mass. 290, 100 N. E. 556, 557 (1913); NORTON, *op. cit. supra* note 3, 91, n. 78.

[13] Roberts v. Aberdeen-Southern Pines Syndicate *et al.*, 198 N. C. 381, 151 S. E. 865 (1930); Note (1928) 37 YALE L. J. 1103.

[1] Smith Motor Car Co. v. Goddard, 156 S. E. 724 (Ga. App. 1931).

[2] Rosenbloom v. Schachner, 84 N. J. L. 525, 87 Atl. 99 (1913); Banks v. Werts, 13 Ind. 203 (1859); Williamson v. Brandenberg, 6 Ind. App. 97, 32 N. E. 1022 (1893). *Contra:* Troewert v. Decker, 57 Wis. 46, 8 N. W. 26 (1881); Ladd v. Rogers, 93 Mass. 209 (1865); Note (1930) 68 A. L. R. 1487.

groups. One declares that a new contract, embodying the terms of the old one, may be proved to have been established[3] or informally adopted.[4] Consideration for the defendant's promise may be his moral obligation to pay,[5] work performed by the plaintiff under the invalid agreement,[6] benefit or detriment emanating from the tainted contract,[7] or retention of the property by the defendant.[8] Another group speaks in terms of ratification of the original contract,[9] professing to find consideration in essentially the same manner. Still another, considering the problem from a different angle, allows recovery on *quantum meruit* or *valebant* for the value of services performed or goods delivered.[10] Here, however, recovery is in assumpsit on an account, requiring no consideration. And, finally, a few courts invoke a doctrine of estoppel.[11] The principal case would seem to fit into the first group.

[3] Brewster v. Banta, 66 N. J. L. 367, 49 Atl. 718 (1901); Vinz v. Beatty, 61 Wis. 645, 21 N. W. 787 (1884); Helm v. Briley, 170 Okla. 314, 87 Pac. 595 (1906); Skinner Co. v. Burke, 231 Mass. 555, 121 N. E. 427 (1919); Harrison v. Colton, 31 Iowa 16 (1770); see Butler v. Lee, 11 Ala. 885, 889 (1847); Reeves v. Butcher, 31 N. J. L. 224, 228 (1865); Winfield v. Dodge, 45 Mich. 355, 7 N. W. 906, 906 (1881).

[4] Miles v. Janvrin, 200 Mass. 514, 86 N. E. 785 (1909); see Obrien v. Shea, 208 Mass. 528, 95 N. E. 99, 100 (1911).

[5] Tucker v. West, 29 Ark. 386 (1874); Gwinn v. Simes, 61 Mo. 335 (1875).

[6] Meriwether v. Smith, 44 Ga. 541 (1871); Hofgesang v. Silver, 232 Ky. 503, 23 S. W. (2d) 945 (1930); see Telfer v. Lambert, 79 N. J. L. 299, 75 Atl. 779, 780 (1910).

[7] Williams v. Paul, 6 Bing. (Eng.) 653; Brewster v. Banta, 66 N. J. L. 367, 49 Atl. 718 (1901); see Reeves v. Butcher, 31 N. J. L. 224, 228 (1865).

[8] See Catlett v. Church, 62 Ind. 365, 366 (1878). But see Troewert v. Decker, 51 Wis. 46, 8 N. W. 26, 27 (1881).

[9] Banks v. Werts, 13 Ind. 203 (1859); Williamson v. Brandenberg, 6 Ind. App. 97, 32 N. E. 1022 (1893); Hofgesang v. Silver, 232 Ky. 503, 23 S. W. (2d) 945 (1930). See Jones v. Belle Isle, 13 Ga. App. 437, 79 S. E. 357, 357 (1913). *Contra:* Ladd v. Rogers, 93 Mass. 209 (1865); Butler v. Lee, 11 Ala. 885 (1847); Winfield v. Dodge, 45 Mich. 355, 7 N. W. 906 (1881); Vinz v. Beatty, 61 Wis. 645, 21 N. W. 787 (1884); Tillock v. Webb, 56 Me. 100 (1868). See Brewster v. Banta, 66 N. J. L. 367, 49 Atl. 718, 718 (1901); King v. Graef, 136 Wis. 548, 117 N. W. 1058, 1058 (1908); Gist v. Johnson-Carey Co., 158 Wis. 188, 147 N. W. 1079, 1081 (1914); Spahn v. Willman, 1 Penn. (Del.) 125, 39 Atl. 787, 789 (1897); Miles v. Janvrin, 200 Mass. 514, 86 N. E. 785, 786 (1909).

[10] Thomas v. Hatch, 53 Wis. 296, 10 N. W. 399 (1881); Goletti v. Gray, 125 Miss. 646, 88 So. 175 (1921); Kesler v. Stults, 15 Ga. App. 735, 84 S. E. 201 (1915); Williams v Paul, 6 Bing. (Eng.) 653; Gist v. Johnson-Carey Co., 158 Wis. 188, 147 N. W. 1079 (1914); Spahn v. Willman, 1 Penn. (Del.) 125, 39 Atl. 787 (1897) see King v. Graef, 136 Wis. 548, 117 N. W. 1058, 1060 (1908); Bradley v. Rea, 96 Mass. 20 (1867). But see Jones v. Belle Isle, 13 Ga. App. 437, 79 S. E. 357, 358 (1913).

[11] Haacke v. Literary Club, 76 Md. 429, 25 Atl. 422 (1892); Traction Co. v. Burns, 257 Fed. 898 (C. C. A. 6th, 1919). But see Gist v. Johnson-Carey Co., 158 Wis. 188, 147 N. W. 1079, 1083 (1914).

Upon analysis it will be seen that practically an identical situation, and one wherein it is extremely difficult to discover any actual consideration, exists in all these cases. Moral obligation has, since the time of Lord Mansfield, been considered insufficient to support a promise; any benefit accruing from or because of the former agreement is obviously past consideration, hence insufficient,[12] and the position that any support is derived from the tainted original sale itself is untenable.[13] The conclusion is seemingly inevitable that there can be no contract, due to lack of consideration, or that ratification of a Sunday agreement needs none. This latter argument is recognized clearly in only one case allowing recovery,[14] but it is often announced as the reason for denying it.[15] The real reason for running roughshod over these factors has been best stated in a recent opinion in Arkansas:[16] "A buyer cannot retain possession of property and use it, then repudiate the contract as being void by reason of its execution on Sunday."

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**Criminal Law—Statutory Construction—Aeroplane as Motor Vehicle.**

The defendant was a principal in the theft of an aeroplane and its transportation from Canada to Oklahoma. He was indicted under the National Motor Vehicle Theft Act,[1] which forbids the interstate transportation of stolen motor vehicles. The term "motor vehicle" is defined in such Act to include "an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle not designed for running on rails." *Held,* the provisions of the Act do not include an aeroplane.[2]

It is the general rule that penal statutes are to be strictly construed.[3] If the statute admits of two reasonable and contradictory

[12] See Frey v. Fond du Lac, 24 Wis. 204, 207 (1869).
[13] Tillock v. Webb, 56 Me. 100 (1868); Jones v. Belle Isle, 13 Ga. App. 437, 79 S. E. 357 (1913); see Gwinn v. Simes, 61 Mo. 335 (1875).
[14] Gooch v. Gooch, 178 Iowa 902, 160 N. W. 333 (1916).
[15] Reeves v. Butcher, 31 N. J. L. 224 (1865); Ladd v. Rogers, 93 Mass. 209 (1865).
[16] McElhannon v. Coffman, 173 Ark. 60, 292 S. W. 393 (1927).
[1] 41 STAT. 324, c. 89, §2a (1919), 18 U. S. C. A. 408 (1927).
[2] McBoyle v. U. S., 51 Sup. Ct. 340 (March 1931), reversing 43 F. (2d) 273 (C. C. A. 10th, 1930), in which Cotteral, J., dissented.
[3] U. S. v. Wiltberger, 5 Wheat. 76, 5 L. ed. 37 (1870); Brace v. Gauger-Korsmo Const. Co., 36 F. (2d) 661 (C. C. A. 8th, 1929), *certiorari* denied, 281 U. S. 738 (1930); State v. Crawford, 198 N. C. 522, 152 S. E. 504 (1930); People v. Mooney, 87 Colo. 567, 290 Pac. 271 (1930).