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Contracts -- Sufficiency of Consideration for Industrial Pension

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West Virginia have settled the questions concerning the joinder or non-joinder of parties to negotiable paper by amending the last part of this section so as to make all joint parties jointly and severally liable.²⁷ The statute as enacted by these two states has taken away the arbitrary distinction made between joint payees and joint indorsees on the one hand and joint makers, drawers, and acceptors on the other²⁸ and tends to make joint notes more readily negotiable by making them more easily collectible. It has also achieved a simplification of procedure.

It is submitted that the last sentence of Section 68 of the Uniform Negotiable Instruments Act be amended so as to read:

“All parties jointly liable on a negotiable instrument are deemed to be jointly and severally liable.”²⁹

ROBERT H. SCHNELL.

Contracts—Sufficiency of Consideration for Industrial Pension.

The president of a corporation wrote an old employee on the day of his retirement, commending him for his fine service and stating that he would receive \$100 per month as long as he maintained his “present attitude of loyalty to the company and its officers” and was “not engaged in any competitive occupation.” Payments were made from 1927 until 1931, when plaintiff was notified that the company no longer intended to continue them. Plaintiff did not enter any occupation. Suit is based on the letter as a contract. The lower court sustained, and the upper overruled a demurrer.¹

Four possible legal effects are inherent in such a letter: (1) It may be a conditional gratuity which is not binding.² (2) It may be

²⁷ ILL. STAT. ANN. (Callaghan, 1924) c. 98, par. 88; W. VA. CODE (1930) c. 46, art. 5, §9.

²⁸ See (1900) 14 HARV. L. REV. 241, 252, and (1901) 10 YALE L. J. 84, 94, as to the Ames-Brewster Controversy concerning the N. I. L. Specific amendments to the N. I. L. have been suggested by Ames in (1903) 16 HARV. L. REV. 255, by Britton in (1928) 22 ILL. L. REV. 815, and by Kent in (1928) 22 ILL. L. REV. 833, but apparently they have overlooked the desirability and necessity of amending §68.

²⁹ As in Illinois, *supra* note 27.

¹ Langer v. Superior Steel Corp., 161 Atl. 571 (Pa. Super. Ct. 1932).

² Kirsey v. Kirsey, 8 Ala. 131 (1845) (promise to support widowed sister-in-law and her children). *Contra*: Prince v. Alabama State Fair, 106 Ala. 340, 17 So. 449, 28 L. R. A. 716 (1895) (promise to send a picture for exhibition); Richards Ex'rs. v. Richards, 46 Pa. 78 (1863) (promise to furnish money to a friend to complete payments on land). I WILLISTON, CONTRACTS (1st ed. 1920) 330, §148.

an offer to pay plaintiff not to compete and not to disclose trade secrets. Such an offer would be binding if accepted by plaintiff, provided it did not unreasonably restrain trade, nor tend to make plaintiff a public charge.³ (3) It may be an offer in consideration of past performances. This would not be binding on defendant, for the consideration is past.⁴ (4) Such a letter, if the condition is fulfilled, provided this works a detriment to the promisee and a benefit to the promisor, and is induced by and is in reliance on, the promise, may estop the defendant to deny that it is binding on him.⁵

This contract is thus enforceable under either (2) or (4).

Thus the real difficulty is to determine whether the letter proposes (1) a conditional gratuity,⁶ or proposes, (2) compensation for forbearing to compete and to disclose trade secrets.⁷ This depends upon proof of a definite request and promise to forbear, followed by a forbearance which is the thing bargained for, the *quid pro quo*, and not an incidental benefit;⁸ or in the language of the *Restatement of the Law of Contracts*,⁹ section 90: "A promise which the promisor should reasonably expect to induce action or forbearance of a definite or substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."

This seems to be the first litigation of this sort of an industrial

³ *McCall Co. v. Wright*, 198 N. Y. 143, 91 N. E. 516 (1910), 31 L. R. A. (N. S.) 249 (1911) (ancillary to employment, contract not to disclose selling plans); *Magnolia Metal Co. v. Price*, 65 App. Div. 276, 72 N. Y. Supp. 792 (1901) (restraining divulgence of ingredients of metal, customers lists, and sales contracts).

⁴ *I WILLISTON, op. cit. supra* note 1, 323, §144, *Contra: Stult v. Sweesy*, 48 Neb. 767, 67 N. W. 748 (1896) (later promise to pay for constructing a community wall, enforced on doctrine of relation, *i. e.*, that consideration continued until the promise to pay).

⁵ *Mass. Bonding & Insurance Co. v. Vance*, 180 Pac. 693, 15 A. L. R. 981 (Okla. 1918) (estoppel to deny existence of insurance after accepting premiums); *Rickets v. Scothorn*, 57 Neb. 51, 77 N. W. 365, 42 L. R. A. 794, 73 Am. St. Rep. 491 (1898) (abandoned employment in reliance on gratuitous promissory note); *cf. Shaw v. Philbrick*, 129 Me. 259, 151 Atl. 423 (1930), 74 A. L. R. 290 (1931) (offer of money to prevent redemption of mortgage).

⁶ Which seems to be indicated by the language: "The directors have decided that you will receive a pension . . . commendation for your long and faithful service . . . evidences of esteem" . . . which the company will "bestow."

⁷ As seems to be indicated by the language: "As long as you live and preserve your present attitude of loyalty . . . and are not employed in any competitive occupation."

⁸ *Shaw v. Philbrick, supra* note 5; *Hamer v. Sidway*, 124 N. Y. 538, 27 N. E. 256, 12 L. R. A. 463, 21 Am. St. Rep. 693 (1891) (promise to pay if boy would abstain from attractive vices); *I WILLISTON, loc. cit. supra* note 1.

⁹ Am. L. Inst. 1928; cited in principal case.

pension.¹⁰ The problem is similar to that presented by the employees' bonus cases, for both concern employment policies.¹¹ The latter, however, are usually offered as "an inducement to continuous service and loyalty."¹² No criticism can be made of the result reached in the instant case, but the cases relied on are those involving gifts to friends,¹³ relatives,¹⁴ and charitable institutions.¹⁵ It would have been more accurate had the court recognized that it was dealing with an employment problem arising from a clash between the corporation's labor policy and the depression, so as to have founded its decision on the cases dealing with the relation between corporations and their employees, such as the workmen's bonus and benefit cases.

McB. FLEMING-JONES.

Evidence—Admissibility of Secondary Evidence of Collateral Writing.

In a recent North Carolina case, the defendant was tried for the murder of an employee of *A* corporation. There was evidence that the defendant had made threats against the employees of *B* corporation, and secondary evidence was offered to prove the contents of a writing merging the corporations. *Held*: Secondary evidence of the writing is admissible, since the matter is collateral.¹

A slight majority of the North Carolina cases admit secondary evidence of the contents of a writing where they are collateral to

¹⁰ *Cf.* cases collected Am. Dig. Sys., Master and Servant, Key nos. 72, 78; Note 28 A. L. R. 338.

¹¹ Promises to pay sums in addition to the stipulated or contract wage, when offered to induce employees to refrain from leaving employment, are binding on the employer. *Fuller Co. v. Brown*, 15 F. (2d) 672 (C. C. A. 4th, 1926) (shipyard laborers); *Roberts v. Mays Mills*, 184 N. C. 406, 114 S. E. 530, 28 A. L. R. 338 (1922) (cotton mill operatives induced to stay, wrongfully discharged). *Contra*: *Russell v. Johns-Manville Co.*, 53 Cal. App. 572, 200 Pac. 668 (1921) (laborer induced to stay and incur financial liability, discharged); *Cowles v. Morris & Co.*, 330 Ill. 11, 161 N. E. 150 (1928) (workers allowed to lose amount paid as premiums for pensions, etc., bonuses, when employer absorbed by other corporation). A bonus, however, must be determinate or determinable. *Donovan v. Bull Mountain Trading Co.*, 60 Mont. 87, 198 Pac. 436 (1921) (store manager to receive bonus "commensurate with earnings" of company).

¹² *Johnson v. Fuller & Johnson Mfg. Co.*, 183 Wis. 68, 197 N. W. 241 (1924) (promise to factory worker of bonus in lieu of raise in wage).

¹³ *Richards Ex'rs. v. Richards*, *supra* note 2.

¹⁴ *Kirsey v. Kirsey*, *supra* note 2.

¹⁵ *Presbyterian Board of Foreign Missions v. Smith*, 209 Pa. 361, 58 Atl. 689 (1904) (promise of contribution, on which missionary society has relied in assuming liabilities, is binding).

¹ *State v. Casey*, 204 N. C. 411, 168 S. E. 512 (1933).