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." 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 put-
ting creditors on notice of provisions in the trust instrument.

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.

WILLIAM J. ADAMS, JR.

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 sub-
sequent promise, and it was error to grant a nonsuit.

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. Canever,
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 applicabil-
ity of the section to fiduciaries seem to do so on the ground that such a con-
struction gives effect to the intention of the parties and is expedient from a
business standpoint.

2 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.
2 Roberts v. Aberdeen-Southern Pines Syndicate et al., 198 N. C. 381, 151
S. E. 865 (1930); Note (1928) 37 YALE L. J. 1103.
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 or informally
adopted.\footnote{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. Butler, 31 N. J. L. 224, 228 (1865); Winfield v. Dodge, 45 Mich. 355, 7 N. W. 906, 906 (1881).} Consideration for the defendant’s promise may be his
moral obligation to pay,\footnote{Miles v. Janvrin, 200 Mass. 514, 86 N. E. 785 (1909); see Obrien v. Shea, 208 Mass. 526, 95 N. E. 99, 100 (1911).} work performed by the plaintiff under the
invalid agreement,\footnote{Tucker v. West, 29 Ark. 386 (1874); Gwinn v. Simes, 61 Mo. 335 (1875).} benefit or detriment emanating from the tainted
contract,\footnote{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).} or retention of the property by the defendant.\footnote{Williams v. Paul, 6 Bing. (Eng.) 653; Brewster v. Banta, 66 N. J. L. 367, 49 Atl. 718 (1901); see Reeves v. Butler, 31 N. J. L. 224, 228 (1865).} Another

\footnote{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. Butler, 31 N. J. L. 224, 228 (1865); Winfield v. Dodge, 45 Mich. 355, 7 N. W. 906, 906 (1881).} group speaks in terms of ratification of the original

\footnote{Miles v. Janvrin, 200 Mass. 514, 86 N. E. 785 (1909); see Obrien v. Shea, 208 Mass. 526, 95 N. E. 99, 100 (1911).} contract,\footnote{Tucker v. West, 29 Ark. 386 (1874); Gwinn v. Simes, 61 Mo. 335 (1875).} professing to find consideration in essentially the same manner.

Still another, considering the problem from a different angle, allows re-
covery on quantum meruit or valebant for the value of services per-
formed or goods delivered.\footnote{See Catlett v. Church, 62 Ind. 365, 366 (1878). But see Troewert v. Decker, 51 Wis. 46, 8 N. W. 26, 27 (1881).} Here, however, recovery is in assump-
sit on an account, requiring no consideration. And, finally, a few
courts invoke a doctrine of estoppel.\footnote{See Catlett v. Church, 62 Ind. 365, 366 (1878). But see Troewert v. Decker, 51 Wis. 46, 8 N. W. 26, 27 (1881).} The principal case would

\footnote{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. Butler, 31 N. J. L. 224, 228 (1865); Winfield v. Dodge, 45 Mich. 355, 7 N. W. 906, 906 (1881).} seem to fit into the first group.
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, and the position that any support is derived from the tainted original sale itself is untenable. 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, but it is often announced as the reason for denying it. The real reason for running roughshod over these factors has been best stated in a recent opinion in Arkansas: "A buyer cannot retain possession of property and use it, then repudiate the contract as being void by reason of its execution on Sunday."

JAMES M. LITTLE, JR.


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, 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.

It is the general rule that penal statutes are to be strictly construed. If the statute admits of two reasonable and contradictory meanings, the court must choose the one which the legislature intended to adopt. See Frey v. Fond du Lac, 24 Wis. 204, 207 (1869).

1 See Frey v. Fond du Lac, 24 Wis. 204, 207 (1869).
2 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).
5 See Frey v. Fond du Lac, 24 Wis. 204, 207 (1869).
6 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).