

1935

## Bills and Notes: Adequacy of Consideration

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### Repository Citation

Oliver H. Bassuener, *Bills and Notes: Adequacy of Consideration*, 19 Marq. L. Rev. 135 (1935).  
Available at: <https://scholarship.law.marquette.edu/mulr/vol19/iss2/8>

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assigned the re-sale accounts, too, as security for the original price, or that the buyer, if he is an individual, has appropriated the proceeds so collected to his own personal use and not for any purpose incidental to the business enterprise. *Baker v. Bryant Fertilizer Co.*, 271 Fed. 473 (C.C.A. 4th, 1921). The court in the principal case has recognized that some such showing might affect the position of a creditor like the plaintiff herein, because the court pointed out that the record did not present any question with respect to the "wilful conversion" of the proceeds from the sale.

VERNON X. MILLER.

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**BILLS AND NOTES—ADEQUACY OF CONSIDERATION.**—An aged boarder executed two negotiable promissory notes for \$1,000 each; one was payable to the husband and the other to his wife, proprietors of the boarding house where the maker resided. The notes were given as payment for personal services rendered to the boarder, at his request, by the payees of the notes, beyond those included as board; *e.g.*, tending him while ill, taking him for outings, reading to him and writing his letters. The boarder was not related to the payees. In an action on the notes after the death of the maker, the defendant claimed lack of sufficient consideration for the notes. *Held*, for plaintiff. Sufficient consideration exists to establish the validity of the notes. *In Re McAskill's Estate*, (Wis. 1934) 257 N.W. 177.

The mere fact that the notes were of a negotiable character implies a consideration. Wis. Stats. (1933) § 116.29. This presumption, however, is not conclusive, but has a bearing on the burden of proof. See Wickhem, *Consideration and Value in Negotiable Instruments* (1926) 3 Wis. L. Rev. 321, 326. The effect of the seal on the instrument is also only presumptive evidence of consideration, which may be overcome. Wis. Stats. (1933) § 328.27. Absence or failure of consideration as a matter of defense against one not a holder in due course is incorporated in the negotiable instruments act in Wisconsin. Wis. Stats. (1933) § 116.33. In the instant case the payees performed the services at the maker's request and for which the maker acknowledged indebtedness beyond his board bill. Under the circumstances therefore the payees were not mere volunteers so that the services could be presumed gratuitous. The performance is consideration for the promises to pay for these services. *Messmer v. Block*, 100 Wis. 644, 76 N.W. 598 (1898). Since the payees and the maker were not related in any degree the presumption arises that payment for them is intended and that there is consideration for such payment. *McCurdy v. Boring*, 27 N.D. 1, 146 N.W. 730 (1914). Also under the circumstances the notes were not intended to be and were not mere promises to make a gift and as such unenforceable after the donor's death. *Tyler v. Stitt*, 127 Wis. 379, 106 N.W. 114 (1906). On the contrary, the notes constituted a present, definite, and absolute obligation to pay. See *Sheldon v. Blackman*, 188 Wis. 4, 205 N.W. 486 (1925). The determination of the value or sufficiency as decided by the parties to the instrument is usually prevailing. *Holz v. Hanson*, 115 Wis. 236, 91 N.W. 663 (1902). The court does not usually weigh the quantum of consideration, but allows the parties to be the sole judges of the benefits to be derived from their bargains. 3 R.C.L. 932 § 127 and cases cited. When payment is made for services the value of which is indefinite or indeterminate, or largely a matter of opinion, the courts will not substitute its judgment for that of the contracting parties. *Sheldon v. Blackman*, 188 Wis. 4, 205 N.W. 486 (1925). The value of the services is considered conclusively fixed by the

parties. *Price v. Jones*, 105 Ind. 543, 55 Am. Rep. 230 (1885). It is not necessary that the consideration for the note be equal in pecuniary value to the obligation incurred; if no part of the consideration was wanting at the time, and no part of it subsequently failed, even though inadequate in amount, the note is a valid obligation. *Earl v. Peck*, 64 N.Y. 596 (1876). Failure of consideration implies something more than mere inadequacy. Failure of consideration may mean either total worthlessness to all parties or subsequent destruction, either partial or complete. See *Cowell v. Cornell*, 75 N.Y. 91, 31 Am. Rep. 428 (1878). Mere inadequacy of consideration would not be enough to defeat recovery. See *Rust v. Fitzhugh*, 132 Wis. 549, 112 N.W. 508 (1907). Some things are sufficient to support a promise on negotiable paper which are not sufficient consideration for other promises. 1 WILLISTON, CONTRACTS (1920) § 108. When a party gets all the consideration he has honestly contracted for, he cannot say that he gets no consideration, or that it has failed. If this doctrine be not correct, then it is not true that parties are at liberty to make their own contracts. *Williamson v. Hintner*, 79 Ind. 233 (1881). There are two apparent exceptions to the proposition that a court will not interfere with the parties' judgment: first, where the sole consideration is money and the amount is greatly disproportionate to the promise; second, where fraud in the procurement is shown. *Wolford v. Powers*, 85 Ind. 294, 44 Am. Rep. 16 (1882). Even then fraud and not inadequacy is the true and only cause for granting relief. POMEROY, EQUITY (2nd Ed. 1882) § 927. It would seem therefore, that in cases of this kind where personal services are rendered, the courts will enforce the contracts regardless of seeming differences between the value of such services and the amount of the notes. It is to be expected that, where the maker is old and infirm the courts will scrutinize the facts of the transaction with care.

OLIVER H. BASSUENER.

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BILLS AND NOTES—CHECKS—PRESENTMENT FOR PAYMENT—REASONABLE TIME. —The plaintiff sued to recover the price of goods sold on account. The defendant pleaded payment by check and failure by plaintiff to make presentation within a reasonable time. The check was drawn on a Kenosha bank and was sent to the payee at Chicago. The payee sent the check for clearance through its depository bank in Minneapolis, and that bank forwarded the check to the Federal Reserve Bank at Chicago, which in turn forwarded it to the drawee bank, where it arrived one day after the latter bank was closed. The plaintiff showed that some twenty previous checks of the defendant had been sent to its depository bank in the same manner. The lower court found that this check had been cleared within a reasonable time. On appeal, *Held*, judgment reversed and remanded; the route used by the payee in forwarding the check to the drawee bank resulted in an unnecessary delay of one day. The drawer was discharged from liability to the extent of the loss caused by the delay. *Mars, Inc. v. Chubrito*, (Wis. 1934) 257 N.W. 157.

The general rule as provided in the Negotiable Instruments Law is that a check must be presented for payment within a reasonable time after it is issued. Wis. Stat. (1933) § 118.62. If it is not presented within a reasonable time, and the bank fails the drawer will be discharged from liability to the extent of the loss. This results from the nature of the instrument, which, though defined in the Negotiable Instruments Law as "a bill of exchange drawn on a bank payable on demand," is intended for immediate payment and not for circulation.