1931

JAMES HUTCHISON (TRUSTEE IN BANKRUPTCY) ..... } APPELLANT; *May 13, 15. *Oct. 6.

AND

THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING (PETITIONER) ..... } RESPONDENT;

AND

J. K. L. ROSS (INSOLVENT).

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Promissory note—Agreement to subscribe for a university fund—Validity—Valuable consideration—Bills of Exchange Act, R.S.C., 1927, c. 16, ss. 10 and 53.

In March, 1914, R. offered to give to McGill University, namely the respondent, $150,000 for the erection and equipment of a gymnasium and the offer was accepted; but the building was deferred owing to the war. In 1920, the university authorities undertook a campaign for a "Centennial Endowment Fund" and R., by the terms of a "Subscription and Pledge Card," then promised to contribute $200,000 to that fund on the condition that the previous offer of $150,000 would be included in the subsequent offer, the university being at the same time released from the obligation of erecting the gymnasium. R. paid $100,000 up to 1924, when he asked for an extension of time for payment of the balance. The respondent acceded to R's request and agreed to accept a promissory note for $100,000 dated December 1, 1925, and payable three years after date. R. became insolvent and the trustee in bankruptcy disallowed the respondent's claim for the amount of the note and the interest accrued. The Superior Court reversed that decision, which judgment was affirmed by the appellate court.

Held that R's offers to suscribe for the erection of the gymnasium and later for the Endowment Fund, upon the terms agreed, involved him in liability for the stipulated payments, according to the law of Quebec where the contract was entered into, and also, per Newcombe, Rinfret, Lamont and Cannon JJ., according to the common law of England.

Held, also, that the forbearance or extension of time limited for the balance of those payments which R. subsequently obtained by the giving of the note was valuable consideration within the meaning of the common law of England or under s. 53 of the *Bills of Exchange Act,* R.S.C., 1927, c. 16.

Judgment of the Court of King's Bench (Q.R. 50 K.B. 107) aff.

*PRESENT:—Anglin C.J.C. and Newcombe, Rinfret, Lamont and Cannon JJ.

1931

HUTCHISON v. THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING.

APPEAL from the decision of the Court of King's Bench, appeal side, Province of Quebec (1), affirming the judgment of the Superior Court, Panneton J. (2), and allowing the respondent's claim for $118,862.19 to be collected as valid according to its rank.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgments now reported.

J. W. Cook K.C., and *G. G. Hyde K.C.*, for the appellant.

J. A. Ewing K.C., and *G. L. McFadden K.C.*, for the respondent.

The judgment of Anglin C.J.C. and Rinfret and Cannon JJ. (3) was delivered by

ANGLIN, C.J.C.—I concur in the disposition of this case suggested by my brother Newcombe and, speaking generally, in his reasons therefor.

Assuming that Mr. J. K. L. Ross incurred a legal obligation to pay to McGill University $200,000 towards its endowment fund, the proposition seems to me so clear that it can require no citation of authority to support it, that, whether the matter be dealt with under the law of England, or under R.S.C. 1927, c. 16, s. 53, the extension of time for payment of the $200,000, was a "valuable" consideration for the giving by Mr. Ross of the note in question.

The only question, therefore, requiring further discussion here seems to be whether or not Ross did incur a legally enforceable obligation to pay $200,000 towards the endowment fund of the university. That question, it seems to me, must be determined according to the law of the province of Quebec, where the contract to pay was entered into, and was intended to be carried out, and, if need be, enforced. According to that law there can be no question that there had been a real and lawful "cause" (Arts. 982, 984, 1131, C.C.) for Mr. Ross's promise to pay $150,000, to be used towards the cost of the erection of a gymnasium, to be

(1) Q.R. 50 K.B. 107. (2) Q.R. 68 S.C. 354.

(3) *Reporter's Note:* Rinfret and Cannon JJ. also concurred with Newcombe J.

known as the Ross Memorial Gymnasium. It follows that the release of that obligation afforded a like lawful "cause" for the promise to pay the $200,000.

This appeal, accordingly fails, the only grounds of appeal argued by the appellant having been that there was no "valuable" consideration for the giving of the note and an utter lack of consideration for the promise to pay the $200,000.

The judgment of Newcombe, Rinfret, Lamont and Cannon JJ. was delivered by

NEWCOMBE J.—It is admitted, for the purposes of the case, that the respondent institution, which is the petitioner, and McGill University are, in the words of the admission, "one and the same". The claim, filed 14th November, 1928, is against the bankrupt estate of John Kenneth Leveson Ross, upon a promissory note, dated 1st December, 1925, made by Mr. Ross, whereby the maker promised to pay to the order of the petitioner, three years after date, $100,000 at Montreal, value received, with interest at six per cent. per annum, semi-annually. The amount, as valued at the date of the claim, for principal and interest, was $118,862.19. The trustee, by notice in writing of 22nd March, 1929, notified the respondent that he had disallowed the claim, upon the ground, as expressed, that "the promissory note upon which your claim is made was given without consideration".

Upon appeal, Panneton J., of the Superior Court of the province of Quebec, sitting in bankruptcy, tried the case upon pleadings and evidence, reversed the decision of the trustee and ordered him

to admit the petitioner's claim as valid and to collocate it according to his rank.

The trustee appealed to the Court of King's Bench, where the appeal was heard by five judges, and the court, with one dissent, affirmed the judgment.

Upon appeal to this court, the trustee's contention is

that he was justified in rejecting the claim owing to absence of consideration, the note in question being a mere gift covering the balance of the subscription by Mr. Ross to the Centennial Endowment Fund for McGill University.

It is necessary to consider the facts; and they are not in dispute. There are the admissions and correspondence of the parties; and it is, perhaps, not immaterial to observe

1931

HUTCHISON v. THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING.

Newcombe J.

at the outset that "value received" is acknowledged upon the face of the note; and, moreover, there is the presumption of consideration until the contrary is shewn. Mr. Ross does not appear ever to have questioned his liability, and the respondent of course insists upon its claim.

The circumstances leading up to the making of the note are disclosed by the admissions signed by the solicitors; but the letters which passed between the parties were also produced as exhibits at the trial. By the first of these letters, dated 26th March, 1914, Mr. Ross, writing to Mr. Vaughan, the secretary of the university, says

> Following out the verbal promise I recently made Principal Peterson, I now confirm to you the offer I then made to him that I would give to McGill University a sum of one hundred and fifty thousand dollars for the erection and equipment of a gymnasium to be known as the Ross Memorial Gymnasium, on condition that the University apply a further sum of one hundred thousand dollars (being the amount of my late father's legacy to the University) for the completion of such gymnasium.
>
> As an additional safeguard in case of my decease before this undertaking is implemented, I have caused to be added a clause in a codicil to my will in terms of the enclosed copy.

The narrative of the first two enumerated paragraphs of the admissions is that

> 1. By the terms of a letter of date March 26, 1914, addressed by Mr. J. K. L. Ross, the bankrupt, to the secretary of McGill University, (The Royal Institution for the Advancement of Learning) the former agreed to give to McGill University the sum of $150,000 for the erection and equipment of a gymnasium to be known as The Ross Memorial Gymnasium on the condition that the University apply a further sum of $100,000 (being the amount of a legacy left by the father of the bankrupt) for the completion of such gymnasium.
>
> 2. By the terms of a letter of date March 28, 1914, addressed to Mr. J. K. L. Ross, the bankrupt, by the secretary of McGill University, the letter and offer of the 26th of March, 1914, were duly acknowledged and accepted.

These two paragraphs are apt to describe an arrangement whereby Mr. Ross and the university intended to be bound; it is in terms an accepted offer, and it is not denied that he incurred an obligation to pay $150,000 upon performance by the university of the stipulated conditions. It is suggested that the university had not earned the right to payment, because, as we are told, the building of the gymnasium was deferred owing to the war; but it is evident that neither of the parties considered the project to have been frustrated or abandoned; and, when, on 1st August, 1920, after the Peace, Sir Arthur Currie succeeded Dr. Peterson as principal of the university, and the governors, later in the year, under-

took the campaign for their Centennial Endowment Fund, which, in the result, produced upwards of $6,000,000, Mr. Ross, being a wealthy graduate and one of the governors, naturally had occasion to consider the amount and terms of a contribution to that fund. He appears then to have realized that his conditional promise for the gymnasium was still outstanding and to have desired that the amount of $150,000, so promised for that special object, should be released for the general purposes of the Endowment Fund, and, for this, he sought and obtained terms from the university, as stated by the third and fourth admissions.

3. By the terms of a Subscription and Pledge Card of date November 26, 1920, and an explanatory letter bearing the same date and attached to the same, Mr. J. K. L. Ross, the bankrupt, bound himself to contribute the sum of $200,000 towards the McGill Centennial Endowment Fund on the condition that the amount of $150,000 which the said Mr. J. K. L. Ross had agreed to pay towards a gymnasium for McGill University by the terms of his letter of the 26th of March, 1914, should be included in the said amount of $200,000, in consideration of which the said Mr. J. K. L. Ross withdrew the restriction on the destination of the said amount of $150,000, and on the condition also that an amount of $20,000 which had been promised by the said Mr. J. K. L. Ross to McGill University on a previous occasion should, if still remaining unpaid, be included in the said amount of $200,000; said amount of $200,000 was made payable in five equal consecutive yearly instalments, the first of which was to become due on the first day of January, 1922.

As regards the amount of $20,000 referred to by the bankrupt, as having been promised on a previous occasion, there was never any previous written agreement or subscription to pay an amount of that size.

4. By letter of date November 30, 1920, Mr. J. W. Ross, the honorary treasurer of McGill University, acknowledged and accepted the said subscription of $200,000 on behalf of McGill University and promised that the letter of Mr. J. K. L. Ross of the 26th of November, 1920, setting forth the conditions above referred to, would be kept attached to the subscription card in order that the wishes of Mr. J. K. L. Ross might be properly carried out.

Mr. Ross paid, on account of this consolidated subscription, the stipulated instalments of $40,000 in 1922 and in 1923, and $20,000 in 1924; or $100,000 in all. There have been no subsequent payments. It is shewn that unfortunately, even in 1924, liquid resources were becoming difficult and that Mr. Ross was seeking indulgence in the way of an extension of time for payment of the balance; and, at the end of the next succeeding year, the agreement evidenced by the following paragraphs of the admissions was concluded.

1931

HUTCHISON v. THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING.

Newcombe J.

10. By the terms of a letter of date November 19, 1925, written by Mr. J. K. L. Ross to Mr. John W. Ross, the honorary treasurer of McGill University, the former called attention to the balance of $100,000 then remaining due on his original subscription of $200,000 and requested the privilege of paying by giving his promissory note for the said amount of $100,000 for three years with interest at 6 per centum per annum.

11. By the terms of a letter of date December 3, 1925, written by Mr. A. P. S. Glassco, the secretary and bursar of McGill University, Mr. J. K. L. Ross was notified that his request for a further extension of time, as mentioned in his letter of the 19th of November, 1925, had been submitted to the Finance Committee of the Governors of the University and had been acceded to by them, the understanding being that Mr. J. K. L. Ross was to pay interest on the note semi-annually at the said rate of 6 per centum per annum.

12. In accordance with the said letters, a promissory note for $100,000, dated December 1, 1925, payable to the order of the Royal Institution for the Advancement of Learning, with interest at 6 per centum per annum, payable semi-annually, was duly signed and executed by the said Mr. J. K. L. Ross and delivered to the Royal Institution for the Advancement of Learning.

13. It is the said promissory note of $100,000, dated December 1, 1925, and payable three years after its date which is referred to in the proof of debt filed with the trustee on or about the 14th of November, 1928, by the Royal Institution for the Advancement of Learning, and the amount claimed to be due on the same at that time was $118,862.19, as appears from the said proof of debt.

When the note was made nobody doubted Mr. Ross's ability or willingness to fulfil his promise; he sought the forbearance for his own convenience, and because he did not care at that time " to disturb any investment ". The stipulation for interest was introduced at the suggestion of the university. It is not contended hat his liability is affected by any provision of the *Bankruptcy Act* impressing the transaction with invalidity; nor is it suggested that Mr. Ross was acting under any mistake, or that he did not intend the note to have the effect of an enforceable instrument.

The appellant quotes sections 10 and 53 of the *Bills of Exchange Act*, R.S.C. 1927, c. 16, by which it is enacted that

10. The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall apply to bills of exchange, promissory notes and cheques.

Consideration

53. Valuable consideration for a bill may be constituted by

(*a*) any consideration sufficient to support a simple contract;

(*b*) an antecedent debt or liability.

2. Such debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

And he urges, by his factum, "that the matter is one governed by the common law of England, and that, under that law, Ross's agreement is a nullity". He adds that, "under the law of Quebec the agreement is equally void". But I think he fails to shew that the agreement is void under either system, for in my opinion, the presumption is not overcome, and moreover the evidence affords proof of valuable consideration for the making of the note, and is incompatible with any other conclusion.

The appellant in his factum states his case very frankly, and it is worth while to quote these passages.

It appears that the late Mr. James Ross, the father of Mr. J. K. L. Ross, died in the year 1913 and by his will bequeathed the sum of $100,000 to McGill. In the year 1914 Mr. J. K. L. Ross wrote the University authorities agreeing to contribute the sum of $150,000 towards the building of a gymnasium. This offer was subject to the following conditions: (1) That the gymnasium should be built by the University. (2) That it should be called "The Ross Memorial Gymnasium." (3) That the sum of $100,000 left by the late Mr. James Ross would be used to partially defray its cost. The gymnasium was never built, and when the campaign for the Centennial Endowment Fund was inaugurated, in the year 1920, it was stipulated as a condition of the subscription of Mr. J. K. L. Ross that any understanding between himself and the University authorities in regard to the gymnasium would be considered as at an end. Accordingly, when Mr. J. K. L. Ross agreed to contribute $200,000 to the Centennial Endowment Fund, as evidenced by his pledge card and letter, the understanding in regard to the building of a gymnasium was completely ended. Mr. Ross was released from his obligation, such as it was, and on the other hand, the McGill authorities were released from their obligation to build a gymnasium, to expend on it the $100,000 which they had received from the late Mr. James Ross and to name it "The Ross Memorial Gymnasium." Sir Arthur Currie fully understands this and explains it as follows:—

Q. Will you tell me what consideration Mr. Ross received from the University of McGill for the signing of that pledge card?—A. The release of an obligation to pay $150,000, which was to be devoted to the building of a gymnasium. The release of any obligation to pay $20,000, which was in dispute—not in dispute, but somebody seemed to have forgotten just what it was about.

Q. You speak of the release of the subscription for the building of the gymnasium of $150,000; the consideration of that subscription was the building of a gymnasium, $150,000?—A. Yes.

Q. And the gymnasium has never been built up to the present time, is that correct?—A. Yes, that is correct.

Q. So consequently the first subscription must be left out of the question altogether, because the building of a gymnasium which was the consideration for that subscription, has not been proceeded with?—A. The subscription had never been received; the amount was subscribed in 1914 and never paid.

1931

HUTCHISON v. THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING.

Newcombe J.

Q. The release was a release to the McGill University of this obligation to build this gymnasium?—A. Yes, and we relieved Mr. Ross of the obligation to pay $150,000, which he had promised.

Q. And he on the other hand relieved you from the obligation of building the gymnasium?—A. Yes.

Q. It was a mutual discharge and release, as regards the $150,000?—A. Yes.

Mr. Justice Panneton disposes of this evidence by stating that, in his view, Sir Arthur Currie is evidently mistaken since at no time was the University under an obligation to build a gymnasium, but Ross was under the obligation to pay if they built it. "There was, therefore, no mutual discharge or release as regards the $150,000."

This is obviously incorrect. The University was formally released from the obligation of erecting the building, of contributing the $100,000 received from the late Mr. James Ross and of naming it "The Ross Memorial Gymnasium." Mr. J. K. L. Ross, on the other hand, was released from the obligation of contributing the $150,000. There was, as Sir Arthur Currie truly stated, a mutual release and discharge.

Now if, as the appellant contends, the matter is governed by the common law of England, the mutual release and discharge upon which he relies really satisfies the requirement of valuable consideration. Obviously, when Mr. Ross's offer of 1914 was accepted, it became a promise; and it is unnecessary to consider whether or not he had power to revoke that promise; he never did revoke it or manifest any intention to exercise any power of revocation, if any, which he may have had. Sir Frederick Pollock in the 9th edition of his Principles of Contract, at p. 195, says that

> In many cases a promisor has the option of avoiding his contract for some cause existing at the date of the promise. But in all such cases the contract is valid until rescinded, and the right to rescind it may be lost by events beyond the promisor's control; so there is no difficulty in treating his promise as a good consideration.

And when, in 1920, Mr. Ross arranged with the university authorities the terms of his present subscription, it was one of his stipulations, and a term of the bargain upon which he insisted, that the amount promised for the gymnasium should, with the consent of the university, be diverted from that object and figure in the Endowment Fund. It was upon that footing that he consented to subscribe, and the substitution of the new agreement must be regarded as consideration of value to both parties. Mr. Ross says in terms of his letter to the treasurer of the university of 26th November, 1920, that

> The special conditions I asked for with regard to my contribution (meaning his contribution to the Endowment Fund) were (1) that an amount of $150,000 which I had previously promised towards a gymnasium

for McGill should be included in my present contribution, in consideration of which I should withdraw the restriction on the destination of that amount.

If, therefore, as I think, Mr. Ross's subscription to the Endowment Fund upon the terms agreed involved him in liability for the stipulated payments, the forbearance or extension of time limited for the balance of those payments which he subsequently obtained by the giving of the note was valuable consideration within the meaning of the law. This, I think, is established beyond doubt by the English authorities, and I shall refer to some of them.

Sir Frederick Pollock, in the book cited, at pp. 186, 187, quotes as an elementary principle that the law will not enter into an enquiry as to the adequacy of the consideration.

> The idea is characteristic (he says) not only in English positive law but in the English school of theoretical jurisprudence and politics. Hobbes says: "The value of all things contracted for is measured by the appetite of the contractors, and therefore the just value is that which they be contented to give." And the legal rule is of long standing, and illustrated by many cases. "When a thing is to be done by the plaintiff, be it ever so small, this is a sufficient consideration to ground an action."

The footnote refers to *Sturlyn* v. *Albany* (1), and marginal references there.

Professor Story in his book on Bills of Exchange, 4th ed., c. vi, s. 183, puts the following question:

> What then is a valuable consideration in the sense of the law?

And he answers, quoting Comyn's Digest, Action of Assumpsit, B. 1 to 15, and other authorities mentioned in the note:

> It may, in general terms, be said to consist either in some right, interest, profit, or benefit, accruing to the party, who makes the contract, or some forbearance, detriment, loss, responsibility, or act, or labour, or service, on the other side. And, if either of these exists, it will furnish a sufficient valuable consideration to sustain the drawing, indorsing, or accepting a bill of exchange in favour of the payee or other holder. Thus, for example, not only money paid, or advances made, or credit given, or the discharge of a present debt, or work and labour done, will constitute a sufficient consideration for a bill; but, also, receiving a bill as security for a debt, or forbearance to sue a present claim or debt, or an exchange of securities, or becoming a surety, or doing any other act at the request, or for the benefit, of the drawer, indorser, or acceptor, will constitute a sufficient consideration for a bill.

(1) (1588) Cro. Eliz. 67, and Cro. Car. 70.

1931

HUTCHISON v. THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING.

Newcombe J.

To the same effect is the judgment of the Exchequer Chamber in *Currie* v. *Misa* (1).

In *Smith* v. *Holmes* (2), Parke, B., said that "an action will be on mutual promises."

In *Westlake* v. *Adams* (3), the defendant, upon the apprenticing of his son to the plaintiff by a charitable society, agreed to give the plaintiff, in addition to a premium of £20 to be paid by the society, four I.O.U's for £5 each, payable at intervals of a year, and the indenture stated the consideration to be £20 payable by the society. The boy served the full term, and the plaintiff sued the defendant upon the last of the I.O.U's. It was held by Willes, J. and Byles, J., Williams, J. dissenting, that the circumstances of the indenture being void by the 39th section of 8 Ann. c. 9, for not truly setting forth the consideration, did not prevent the plaintiff from maintaining his action upon the I.O.U. Byles, J., in his judgment, at p. 265, says

> The indenture was the very indenture that the plaintiff agreed to give and which the defendant agreed to take. There was no fraud; the defendant knew all the facts and cannot be heard to say that he was ignorant of the law. It cannot even be said that the deed, though liable to be proved to be void, was valueless; for, it was a good deed on the face of it, and had the evidence of the additional consideration perished, or not been forthcoming, the deed would have had its full operation in every way.
>
> It is an elementary principle, that the law will not enter into an inquiry as to the adequacy of the consideration; so that much less consideration than here existed might have sufficed.
>
> Lastly, it must be remembered that the defendant in this case has received a full performance of the terms of the indenture at the hands of the plaintiff. The jury have, I think, made an end of the question; for, they have found (as they well might) that the defendant received what he bargained for, and all that he bargained for.
>
> The only difficulty I feel, is, in distinguishing this case from the case of *Jackson* v. *Warwick* (4). But that was an action on a promissory note: the defendant had there certainly received some consideration: and the law was not at that time so well settled as it has since been, that an action to recover the full amount due on a bill or note can be sustained unless the consideration fails entirely, or fails to an ascertained and liquidated amount.

The case had been tried by Willes, J., with a jury, and his direction was, in substance, that the indenture of apprenticeship was void by the statute for not truly setting out the consideration; "but that," see pp. 261 and 262 of the report,

(1) (1875) L.R. 10 Ex. 152, at 162, 169.
(2) (1846) 10 Jur. 862, at 363.
(3) (1858) 5 C.B. N.S. 248.
(4) (1797) 7 T.R. 121.

if the consideration for the I.O.U. upon which the action was brought was the execution of the indenture, notwithstanding it might be void, such execution was a sufficient consideration for the promise.

And, in discharging the rule for a new trial at the conclusion of the case, the learned judge said

I am not ashamed of having been somewhat astute at the trial to defeat what I conceived to be an unjust and unworthy defence: and of course I do not express any different opinion now.

The well known cases of *Cook* v. *Wright* (1), and *Calisher* v. *Bischoffscheim* (2), both decided by Blackburn, J., and Lord Justice Bowen's judgment in *Miles* v. *New Zealand Alford Estate Co.* (3), were approved by Lord Atkinson in the Privy Council, in a Ceylon case, *Jayawickreme* v. *Amarasuriya,* (4).

In *Crears* v. *Hunter* (5), it was held by the Court of Appeal that forbearance by the plaintiff at the defendant's request constituted sufficient consideration, even in the absence of a promise. Lopes, L.J., at p. 346 states the law thus,

In this case the question is whether there was evidence of a consideration for the making of this note by the defendant. The law appears to be that a promise to forbear is a good consideration, but also that actual forbearance at the request, express or implied, of the defendant would be a good consideration.

In *Fullerton* v. *Provincial Bank of Ireland* (6), upon the question of consideration, Lord McNaghten held the point to be settled by authority that

It is quite enough if you can infer from the surrounding circumstances that there was an implied request for forbearance for a time, and that forbearance for a reasonable time was in fact extended to the person who asked for it.

And His Lordship referred to *Oldershaw* v. *King* (7), *Alliance Bank* v. *Broom* (8), *and Miles* v. *New Zealand Alford Estate Co.* (9), and he added that "the proposition seems to be good sense".

In *Dunlop Pneumatic Tire Co.* v. *Selfridge & Co.* (10), Lord Dunedin said

My Lords, I am content to adopt from a work of Sir Frederick Pollock, to which I have often been under obligation, the following words as to consideration: "An act or forbearance of one party, or the promise

(1) (1861) 1 B. & S. 559.
(2) (1870) L.R. 5 Q.B. 449.
(3) (1886) 32 Ch. D. 266, at 291.
(4) (1918) 87 L.J. N.S. P.C. 165, at 168, 169.
(5) (1887) 19 Q.B.D. 341.
(6) [1903] A.C. 309.
(7) (1857) 2 H. & N. 517.
(8) (1864) 2 Dr. & S. 289.
(9) (1886) 32 Ch. D. 266, at 289
(10) [1915] A.C. 847, at 855.

1931

HUTCHISON v. THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING.

Newcombe J.

thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable." (Pollock on Contracts, 8th ed., p. 175.)

I would have thought that the question as to whether Mr. Ross's agreement of 1920 to contribute to the Endowment Fund was binding and enforceable would naturally fall to be determined by the law of Quebec, the province in which the parties resided and made the agreement and where it was meant to be performed; but, if that question is governed by the law of Quebec, the appellant's difficulty is greater and becomes even more obvious. It is true that the rules of the common law of England, including the law merchant, apply to bills of exchange and promissory notes, because the Parliament of Canada has, by the *Bills of Exchange Act*, so declared in the exercise of its exclusive legislative authority over that subject; but the Dominion legislation does not and was not intended to affect a subscriber's liability to implement his subscription, and, as I understood the argument, no contention to the contrary was submitted.

I quote articles 982 and 984 of the Civil Code of Quebec:

982. It is essential to an obligation that it should have a cause from which it arises, persons between whom it exists, and an object.

984. There are four requisites to the validity of a contract:
Parties legally capable of contracting;
Their consent legally given;
Something which forms the object of the contract;
A lawful cause or consideration.

It is essential therefore that an obligation shall have "a cause from which it arises", and that a contract shall have "a lawful cause or consideration"; but it is not meant that a contract which has a lawful cause within the meaning of article 984 C.C. shall be void or defective for lack of that which, under the English authorities, would constitute valuable consideration. Pothier's view is expressed in the second edition of his works by Professor Bugnet, 3 and 42. Under the latter number he says

42. Tout engagement doit avoir une cause honnête.

Dans les contrats intéressés, la cause de l'engagement que contracte l'une des parties est ce que l'autre partie lui donne, ou s'engage de lui donner, ou le risque dont elle se charge. Dans les contrats de bienfaisance, la libéralité que l'une des parties veut exercer envers l'autre, est une cause suffisante de l'engagement qu'elle contracte envers elle. Mais lorsqu'un engagement n'a aucune cause, ou, ce qui est la même chose, lorsque la cause pour laquelle il a été contracté, est une cause fausse, l'engagement est nul, et le contract qui le renferme est nul.

Article 1131 of the *Code Civil* provides that

1131. L'obligation sans cause, ou sur une fausse cause, ou sur une cause illicite, ne peut avoir aucun effet.

M. Rogron, in the 19th edition of his commentaries, at pp. 4236-7, explains the words " sans cause " in this article as follows:

Sans cause. La cause est ce qui détermine l'engagement que prend une partie dans un contrat; il ne faut pas la confondre avec la cause implicite du contrat, autrement dit le motif qui porte à contracter. La cause de l'engagement d'une partie est le fait ou la promesse de l'autre partie; elle peut aussi consister dans une pure libéralité de la part de l'une des parties: ainsi, lorsque je m'oblige à payer mille francs à Paul pour tels services que son père m'a rendus, la cause déterminante du contrat, ce sont les services qui m'ont été rendus; si celui-ci ne m'a jamais rendu les services dont il a été parlé dans l'acte, le contrat est sans cause, mais au cas où l'acte ne mentionnait point ces services le contrat pourrait être maintenu, si les juges décident par l'appréciation des circonstances que le désir de m'acquitter de services plus ou moins réels a été le motif et non la cause de mon engagement. Je m'oblige à donner mille francs à Paul pour qu'il suive une affaire pendante devant le tribunal de la Seine: la cause déterminante est la promesse de Paul qu'il suivra mon affaire; si elle est jugée irrévocablement au moment où nous avons stipulé, le contrat est sans cause. Enfin je donne, dans la forme des dispositions entre vifs, ma maison à Paul, qui l'accepte: ma libéralité est ici la seule cause du contrat.

Professor Langdell also quotes M. Rogron's comment in a note to *Thomas* v. *Thomas* (1), in his select cases on Contracts, Part I, 2nd ed., p. 169.

I extract the following paragraph from Sir Frederick Pollock's Principles of Contract at p. 185.

No one ever argued before an English temporal court that deliberate bounty or charitable intention will support a formless promise; but such was undoubtedly the canonical view, and is to this day, in theory, the rule of legal systems which have followed the modern Roman law. There was no room within the common law scheme of actions for turning natural into legal obligation.

And the note is

(*y*) Pothier, obl. para. 42; Sirey and Gilbert on Code Nap. 1131; Demolombe, Cours du Code Nap. xxiv. 329 sqq.; Langdell, Sel. Ca. Cont. 169; so in Germany from the 17th century onwards, with only theoretical differences as to the reason of the rule: Seuffert, Zur Gesch. der obligatorischen Verträge, 130 sqq.

My interpretation of the authorities, as applicable to the facts of this case, leads me to the view that there were both lawful cause and consideration for Mr. Ross's subscription, within the meaning of the Civil Code of Quebec; and that, as to the note, by the giving of which Mr. Ross, at his urgent request, secured an extension of the time

(1) (1842) 2 Q.B. 851.

1931

HUTCHISON v. THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING.

Newcombe J.

limited for the payment of the balance of his subscription, the consideration was valuable and satisfied the requirements of the common law and of the *Bills of Exchange Act.*

A considerable part of the appellant's argument was devoted to a contention that a promissory note cannot be the subject of a gift by the maker to the payee; but it is not necessary to determine that question in this case if, as I think, the note was intended not as a gift, but as evidence of the maker's promise, in consideration of the extension of his term of credit, to pay the balance of his subscription in accordance with the tenor of the note.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Cook & Magee.*

Solicitors for the respondent: *Ewing & McFadden.*