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Contracts--Charitable Subscriptions--Consideration (First Methodist Church v. Estate of George Howard, 133 Misc. 723 (1929))

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CONTRACTS—CHARITABLE SUBSCRIPTIONS—CONSIDERATION.—Defendant's testator at the solicitation of the plaintiff subscribed, as a memorial to his wife, to the building fund of the plaintiff church. Plaintiff seeks to recover the amount of the subscription from the estate of the subscriber. *Held*, for plaintiff. *First Methodist Church v. Estate of George Howard*, 133 Misc. 723, 233 N. Y. Supp. 451 (1929).

The instant case is a restatement of the decision in *Allegheny College v. National Chautauqua County Bank*.¹ There is an express promise containing a condition that the payment be recognized as a memorial. The acceptance of the subscription and assumption of the condition constitutes the consideration, the sufficiency of which is established by the benefit ensuing to the promisor.² "The longing for posthumous remembrance is an emotion not so weak as to justify us in saying that its gratification is a negligible good."³ Thus, an additional judicial declaration is recorded in support of the modern trend toward enforcing a deliberate promise to subscribe to a charitable purpose. The trend is a worthy one, making for fair dealing and honesty of purpose. The difficulty lies in fitting the concept to the theory of a contract—that there must be consideration. The difficulty is more apparent when the case of a deliberate promise containing no conditional clause is presented. Probably, legalistic reasoning similar to that in the *Allegheny College* case and the instant case will be applied. In the case of a charitable subscription, an agreement may be said to exist though one of the mutual promises be a promise "implied in fact, an inference from conduct as opposed to an inference from words."⁴ That the promise is sufficient consideration may be established by the recognition that the longing to benefit society, as manifested by the act of subscribing, is an emotion strong enough to justify its characterization as a benefit to the subscriber. If this reasoning appeals as too tenuous, the alternative, in the absence of facts sufficient to make out a promissory estoppel,⁵ is to accord due recognition to an exception to the doctrine of consideration.

E. P. W.

¹ 246 N. Y. 369, 159 N. E. 173 (1927).

² An undertaking which is detrimental to the promisee of itself does not always furnish sufficient consideration. It must relate to the promise. "The promise and the consideration must purport to be the motive each for the other, in whole or at least in part. It is not enough that the promise induces the detriment or that the detriment induces the promise if the other half is wanting." 1 Williston, Contracts, Sec. 139.

³ *Allegheny College v. National Chautauqua County Bank*, *supra* at p. 377.

⁴ *Ibid.*

⁵ 1 Williston, Contracts, Secs. 139, 116; *Barner v. Perine*, 12 N. Y. 18 (1854); *Keuka College v. Ray*, 167 N. Y. 96, 60 N. E. 325 (1901).