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

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 addi-
tional 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.

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¹246 N. Y. 369, 159 N. E. 173 (1927).
²An 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.
⁴Ibid.
⁵1 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).