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Acknowledgment of Receipt of Consideration

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Notes

ACKNOWLEDGMENT OF RECEIPT OF CONSIDERATION.

In *Real Estate Company of Pittsburgh v. Rudolph*[1] it appeared that the defendant had given the plaintiffs an option to buy certain real estate which read: "April 18, 1928. In consideration of one dollar in hand paid, I hereby give you the option to purchase * * *. This option to expire at 12 o'clock noon, April 24th, 1928 * * *".

On the next day, before he was notified of the acceptance of the option, the defendant informed the plaintiffs that he would not sell the property because his wife would not join in the conveyance. The plaintiffs were willing to accept a title without the joinder of the wife, but the defendant persisted in his revocation. The plaintiffs then filed a bill for specific performance. The court dismissed the bill, solely because the $1, specified in the option as having been paid, had not in fact been paid, and hence the optioner was well within his right in revoking it before acceptance.

On appeal the Supreme Court, although admitting that the authorities elsewhere were not harmonious, reversed the decree and ordered that a decree be entered awarding specific performance without the joinder of the wife.

The option was an offer and a promise to keep that offer open for a certain time.[2] Such promises, like other promises, are usually held to be invalid unless given for a consideration or under seal.[3] Hence options not under seal and for which no consideration is given are merely *revocable* offers.

The decision in the instant case to the effect that the offer contained in the option was *irrevocable* was based, in part at least, upon the theory that the recital in a written instrument of the receipt of a specified consideration pre-

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[1]301 Pa. 502, (1930).

[2]Williston on Contracts, secs. 25, 61.

[3]Williston on Contracts, secs. 25, 61.

cludes the parties from disputing the validity of the contract for lack of consideration.

The court quoted with approval the language of Justice Story in *Lawrence v. McCalmont*,[4] "The guarantor acknowledged the receipt of one dollar and is now estopped to deny it. If this is so as concerns a guarantor, in whose favor the law leans, it must be so in cases like the present, and so it has been held."

The import of Justice Story's statement is: (1) The acknowledgment of the receipt of a dollar as consideration amounts to a promise to give a dollar; (2) The acknowledgment, in an unsealed writing, of the receipt of a consideration estops the promisor from showing that no consideration existed.

The recital of an alleged past fact which both parties know to be untrue should not operate as a promise when the parties have manifested no intention to promise. The New York court[5] has well said: "It is said that it is an agreement to receive the sum named in full payment of his contract. That statement, however, is nothing of the sort. Nothing is promised. At most it is an admission of a past transaction or of an existing fact. It is a mere acknowledgment that an amount of money has been received by the plaintiff in full payment of his account. Hence it must be regarded as a receipt only and not as a contract."

The so-called estoppel amounts at most to an agreement to forego consideration. Both parties knew the facts. There was no reliance upon a misstatement. The policy of the law requires consideration and an agreement by the parties to forego the requirement cannot take its place.

If merely saying in a writing that a specified fictitious consideration has been received is enough to make a promise binding, a new kind of formal obligation has been created. Adopting this principle promises would be binding if

[4] 2 Howard (U. S.) 452.

[5] Komp v. Raymond, 175 N. Y. 102, 61 N. E. 113.

(1) under seal.

(2) based upon a consideration.

(3) drawn in conformity with the Uniform Written Obligations Act.[6]

(4) *contained in a writing which acknowledges the receipt of a consideration therefor.*

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IRRESISTABLE IMPULSE TO COMMIT CRIME

The existence of inclinational insanity described as "an irresistable inclination to kill or to commit some other particular offense"[1] was recognized by the earlier Pennsylvania cases,[2] but whether such insanity must be accompanied by some mental error, illusions, delusions, or hallucination in order that it might constitute a defence was not consistently determined.[3]

The question was discussed principally in homicide cases. Killing under an impulse to kill presupposes that the death of the victim is contemplated and intended. It presupposes also a knowledge of the physical qualities of the act done and of its physical consequences. Suppose there exists also a knowledge of its moral nature and also a knowledge of its legal nature and consequences. Does it, under such circumstances, constitute a defense in criminal cases?

In 1908, Dr. Trickett, after a careful examination of the cases said: "Probably the answer must be in the affirmative. If there can be an irresistable impulse to kill, despite the horror which such an act excites in the normal man, it is not impossible, despite the realization by the mind that suffers it, of the reprobation that killing excites

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[6]Act of May 13, 1927, P. L. 985.

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[1]Coyle v. C., 100 Pa. 573.

[2]C. v. Mosler, 4 Pa. 264; Taylor v. C., 109 Pa. 262; C. v. Hillman, 189 Pa. 548.

[3]Compare C. v. Mosler, 4 Pa. 264 and C. v. Hillman, 189 Pa. 548.