Consideration--What Constitutes the Consideration

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the surface land by a claim of right, but they asserted no ownership over the oil and gas that would give them title to it by the running of the statutory period. In other words, the conclusion of the court was right had they confined their decision to the oil and gas rights.

—W. F. B.

**Consideration**—What constitutes the Consideration.—A and B mutually agreed to allow C to receive the dividends on the stock owned by them in the X Co. The X Co. paid dividends to C, in accordance with this agreement, for four years. A then instructed the X Co. to pay no further dividends on his stock to C. The X Co. filed a bill of interpleader to determine to whom the dividends should be paid. Held, the dividends on A's stock must be paid to A. *Banner Window Glass Co. v. Barriot et al.*, 102 S. E. 726 (W. Va. 1920).

A West Virginia statute gives a party the right to sue on a contract made for his benefit. *W. Va. Code*, c. 71, § 2. The question here, then, is whether there was a contract. This depends upon whether there was a consideration for A's promise. A benefit to the promisor, or a detriment to the promisee, is a valuable consideration. See Wald's *Pollock, Contracts*, 3 ed., 185 n. 1. If the promisee suffers a detriment, it is immaterial whether or not the promisor is benefited. *German v. Gilbert*, 83 Mo. App. 411; *Hamer v. Sidway*, 124 N. Y. 538, 27 N. E. 256. A detriment consists in giving up some legal right or privilege. *German v. Gilbert*, supra; *Hamer v. Sidway*, supra; *Ballard v. Burton*, 64 Vt. 387, 24 Atl. 769; *Bainbridge v. Firmstone*, 8 A & E. 743, 112 Eng. Reprint 1019; *Haigh v. Brooks*, 10 A. & E. 309, 113 Eng. Reprint 210. Mutual promises are sufficient consideration for one another. *Buckingham v. Ludlum*, 40 N. J. Eq. 422; *Phillips v. Preston*, 5 How. 278 (U. S.); *Walke v. McGehee*, 11 Ala. 273. See Wald's *Pollock, Contracts*, 3 ed., 201. The promise, and not the performance, is the consideration. *Walke v. McGehee*, supra; *Buckingham v. Ludlum*, supra; *United & Globe Rubber Mfg. Cos. v. Conrad et al.*, 80 N. J. L. 286, 78 Atl. 203. In the principal case it is difficult to see why B's promise was not sufficient consideration. B was not obliged to enter into this agreement with A, nor to make A the promise he did. If B had promised to pay and had paid his share of the dividends to A, it would be clear that B had suffered a legal detriment. He suffers the
same detriment by promising to pay and by paying a third party. The New York Supreme Court recently held an agreement similar to that in the principal case binding, and allowed the sole beneficiary to recover. *Harbeck v. Harbeck*, 87 Misc. Rep. 420, 149 N. Y. Supp. 791, affirmed in 170 App. Div. 910, 154 N. Y. Supp. 1125. There is a *dictum* to the same effect in an early Virginia case. *Price v. Winston*, 4 Munf. 63 (Va.). It is true a promise to make a gift is not binding. *Presbyterian Church of Albany v. Cooper*, 112 N. Y. 517, 20 N. E. 352. See Wald’s Pollock, Contracts, 3 ed., 186. But if the promisee incurs a detriment in reliance upon the promise, it becomes enforceable. *Devecmon v. Shaw*, 69 Md. 199, 14 Atl. 464. See Wald’s Pollock, Contracts, 3 ed., 186. B, in the principal case, in reliance upon A’s promise, incurred a detriment both by giving his counter promise and by performing it. Moreover, in cases where several individuals promise some third party, not each other, as in this case, to contribute money to some charitable purpose, it is held, on one theory or another, that these promises are enforceable. See Wald’s Pollock, Contracts, 3 ed., 186 n. 3. The principal case should be an *a fortiori* one. On principle and authority, therefore, the conclusion reached by the court in the principal cases seems open to doubt.

—W. F. K.

**Constitutional Law—Separation of Powers—Judicial Review of Administrative Discretion.**—A West Virginia act (1917 Acts, West Virginia, c. 57) provided that before any municipality might issue bonds payable by taxation, the validity of the bond issue should first be approved by the Attorney General. His approval was to render the validity of the indebtedness forever incontestible in any court, unless, within ten days, a taxpayer filed a petition in the Supreme Court of Appeals, asking that the Attorney General’s action be reversed or modified. The Court was then to proceed as in cases of original jurisdiction, and to decide the matter, on the merits, as it saw fit. *Held*, the statute does not violate the separation of powers. *State ex. rel. Allen v. England*, 103 S. E. 400 (W. Va. 1920).

For a discussion of this case, see Notes, p. 84