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Master and Servant--Bonus--Not a Gift--Recoverable on Wrongful Discharge

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ahue v. *Rafferty,* 82 W. Va. 535, 96 S. E. 535; *Armstrong* v. *Maryland Coal Co.,* 67 W. Va. 589, 69 S. E. 195. The argument of the courts which refuse a recovery to the party not signing against the party signing is not that the statute precludes such recovery in terms but that it robs the promise of the party not signing of the element of enforceability, which makes it consideration for the promise of the opposite party and that there is hence no contract because of lack of consideration. *Willebrant* v. *Sisters of Mercy,* 185 Mich. 366, 152 N. W. 85; *Wilkinson* v. *Havendrick,* 58 Mich. 574, 26 N. W. 139. The case of a party orally agreeing to convey land bears an exact analogy to the case of an illusory promise where it is held that such promise is not sufficient consideration to create a binding contract. *Ellis* v. *Dodge,* 237 Fed. 860; *Eclipse Oil Co.* v. *South Penn Oil Co.,* 47 W. Va. 83, 34 S. E. 923; *Chicago & Great Eastern Ry. Co.* v. *Dane,* 43 N. Y. 240. The sole difference is that an oral promise to convey land becomes defective because of legislative enactment, whereas in the case of an illusory contract the defect is inherent in the promise. The legal effect of the two promises is exactly the same, there being no detriment to the promisor or benefit to the promisee in either case. It may be said that the same objection could be urged with equal force to an infant's or insane person's promise. This objection is easily disposed of on the ground that there the court is dealing with a favored class. Here, there is no reason, the party being legally competent, for extending the privilege. There being no reason for allowing a recovery in the principal case, except the fact that the statute does not expressly deny a recovery, it would seem preferable to refuse a recovery on the grounds laid down by the Michigan Court in *Wilkinson* v. *Havendrick, supra.*

—*W. B. H.*

MASTER AND SERVANT—BONUS—NOT A GIFT—RECOVERABLE ON WRONGFUL DISCHAGE.—Employee was discharged without cause before the specified length of time in which a bonus was to be paid, *Held,* employer was liable for bonus on *quantum meruit.* The offer was for faithful service and makes a supplementary contract for benefit of which the employee could not be deprived without cause. *Roberts et ux* v. *Mays Mills, Inc.,* 114 S. E. 530 (W. Va. 1922).

A California case of practically the same facts held the opposite. *Russell* v. *H. W. Johns-Manville Co.,* 200 Pac. 668 (Cal. App. 1921). The reasons given for that decision are: First, the offer of a bonus was a mere gratuity; Second, there was no consideration for the employer's offer; and, Third, the employee does not bind himself not to quit. The principal case discusses those three points and takes quite an opposed view to them. The offer, it holds, is an offer to procure efficient and faithful service, and continuous employment. Upon this point it is supported by *Payne v. United States,* 269 Fed. 871, 50 App. D. C. 219; *Kenicott* v. *Wayne County,* 16 Wall. (U. S.) 471, 21 L. Ed. 322. The consideration is the faithful and efficient service, and continuous employment acquired. *Zwolneck* v. *Mfg. Co.,* 140 Wis. 517, 137 N. W. 769, is authority for that statement, and that case adds that the employer is relieved of the annoyance of hiring, and breaking in new men, and is assured of a full working force when jobs are plentiful and labor scarce. In support of the view that there is no consideration for the employer's offer the California case cites *Duncan* v. *Cone,* 16 Ga. App. 253, 85 S. E. 203. The court in that case though says that the grant of the bonus is optional on whether or not the services were satisfactory to the employer, and of this he is the sole judge. It would seem that where the services were admittedly satisfactory as in the principal case, the rule of the Georgia case would not apply. To constitute a binding contract for the bonus it is not necessary for the employee to bind himself not to quit. The offer of the bonus and its acceptance by entering on the work form a supplementary contract, the consideration being the employee's remaining in the service a specified length of time. This did not change the contract of employment. But by this contract, if the employee did not remain the specified time, he would forfeit all claim to the bonus, but on the other hand, if the employer discharged him without good and sufficient cause, he was liable for the bonus earned on a *quantum meruit* basis. On principle it would seem that the rule of the principal case was much sounder than that of the California case.

—*K. V. J.*