

227 N.Y. 200
Court of Appeals of New York.
DOUGHERTY
v.
SALT.
Nov. 18, 1919.

CARDOZO, J.

The plaintiff, a boy of eight years, received from his aunt, the defendant's testatrix, a promissory note for \$3,000, payable at her death or before. Use was made of a printed form, which contains the words 'value received.' How the note came to be given was explained by the boy's guardian, who was a witness for his ward. The aunt was visiting her nephew.

'When she saw Charley coming in, she said, 'Isn't he a nice boy?' I answered her, Yes; that he is getting along very nice, and getting along nice in school; and I showed where he had progressed in school, having good reports, and so forth, and she told me that she was going to take care of that child; that she loved him very much. I said, 'I know you do, Tillie, but your taking care of the child will be done probably like your brother and sister done, take it out in talk.' She said, 'I don't intend to take it out in talk; I would like to take care of him now.' I said, 'Well, that is up to you.' She said, 'Why can't I make out a note to him?' I said, 'You can, if you wish to.' She said, 'Would that be right?' And I said, 'I do not know, but I guess it would; I do not know why it would not.' And she said, 'Well, will you make out a note for me?' I said, 'Yes, if you wish me to,' and she said, 'Well, I wish you would.'

A blank was then produced, filled out, and signed. The aunt handed the note to her nephew, with these words:

'You have always done for me, and I have signed this note for you. Now, do not lose it. Some day it will be valuable.'

The trial judge submitted to the jury the question whether there was any consideration for the promised payment. Afterwards, he set aside the verdict in favor of the plaintiff, and dismissed the complaint. The Appellate Division, by a divided court, reversed the judgment of dismissal, and reinstated the verdict on the ground that the note was sufficient evidence of consideration.

We reach a different conclusion. The inference of consideration to be drawn from the form of the note has been so overcome and rebutted as to leave no question for a jury. This is a case where the testimony in disproof of value comes from the plaintiff's own witness, speaking at the plaintiff's instance. The transaction thus revealed admits of one interpretation, and one only. The note was the voluntary and unenforceable promise of an executory gift. This child of eight was not a creditor, nor dealt with as one. The aunt was not paying a debt. She was conferring a bounty. The promise was neither offered nor accepted with any other purpose. A note so given is not made for 'value received,' however its maker may have labeled it. The formula of the printed blank becomes, in the light of the conceded facts, a mere erroneous conclusion, which cannot

overcome the inconsistent conclusion of the law. The plaintiff through his own witness, has explained the genesis of the promise, and consideration has been disproved.

We hold, therefore, that the verdict of the jury was contrary to law, and that the trial judge was right in setting it aside.