The provision involved in the case at bar lies within that area of ambiguity in which modern courts will give expression of the framers' intent.[10] The court reaches a sound result in view of the growing importance of primaries in the election process, and one which accords with the framers' probable intent, since the term "election" of Art. 8, Sec. 3, had, before 1924, been held not to include primaries,[11] and in view of the legislative attempt at that time to rectify such interpretation by legislation and by proposing the constitutional amendment.[12]

W. A. H.

CONTRACTS—MUTUAL PROMISES AS CONSIDERATION FOR CHARITABLE SUBSCRIPTIONS—[Federal].—In the recent case of *Baker University v. Clelland*,[1] the Eighth Circuit Court of Appeals stated by way of dictum that in Missouri the subscription of one subscriber to a charitable institution does not constitute consideration for the subscription of another.

This dictum was based on the decision of the St. Louis Court of Appeals in the case of *Methodist Orphans' Home Association v. Sharp*.[2] That case, however, can be distinguished from cases involving the ordinary subscription contract,[3] in that there was no pretense of a contract, and the instrument did not express or even imply that there was consideration. There is a distinct difference between such an instrument and a subscription contract for a donee beneficiary in which the expressed consideration is the subscription of others. The dictum in the instant case might tend to be misleading, as there has been no decision by the Missouri appellate courts as to the validity or invalidity of such a subscription contract.

The modern tendency is to make subscriptions to charitable institutions binding wherever that can be done without entirely overstepping established rules requiring consideration.[4] A number of states have held that the mutual promises of subscribers are binding.[5] The result is probably based on public policy since most charitable institutions depend almost en-

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10. State ex rel. Russel et al. v. Highway Commission, 328 Mo. 942, 25 S. W. (2d) 196 (1931); Lovins v. City of St. Louis, 336 Mo. 1194, 84 S. W. (2d) 127 (1935).
11. Supra, note 5.
12. Supra, note 6.

1. Trustees of Baker University v. Clelland, 86 F. (2d) 14 (C. C. A. 8, 1936).
2. Methodist Orphans' Home Association v. Sharp, 6 Mo. App. 150 (1878).
3. Example of ordinary subscription contract: "Because of my interest in the organization, and in consideration of the promises of others, I the undersigned promise to pay —— dollars."
4. 38 A. L. R. 869 (1925).
5. Brokaw v. McElroy, 162 Iowa 288, 143 N. W. 1087, 50 L. R. A. (N. S.) 835 (1913); Greenville Supply Co. v. Whitehurst, 202 N. C. 413, 163 S. E. 446 (1932); Catner College v. Hyland, 133 Kan. 322, 299 Pac. 607 (1931); Petty v. Church of Christ, etc., 95 Ind. 278 (1884); Waters v. Union Trust Co., 129 Mich. 640, 89 N. W. 687 (1902).

tirely upon private beneficence. The arguments against holding mutual promises binding, as made by Professor Williston, are that the subscriptions are made at different times and directly to the charitable institution without reference to the other subscribers, and that earlier subscriptions would be open to the objection of past consideration.[6]

The state of Georgia has established the modern view by a statute[7] which provides that: "in the mutual subscription for a common object, the promise of the other is a good consideration." The courts, in interpreting this statute, have declared that a personal benefit to the promisor is not a necessary prerequisite to the validity of such a contract.[8] California supports the modern view, holding that even if at the time the subscription was made there was no consideration, yet if others were induced to subscribe because of the previous subscription, it becomes binding because of the reliance of the later subscribers.[9]

It is a common belief in the legal profession that the Missouri courts would follow the modern theory, if such a case arose, and would hold that the mutual promises of subscribers would constitute consideration sufficient to make the subscriptions binding.[10] In *Methodist Orphans' Home Association v. Sharp* there is constructive dictum to the effect that in a different factual situation "the consideration of the promise of each subscriber is the corresponding promise made by the other subscribers, and that as the party for whose benefit a promise is made may sue on it though the consideration is between the promisor and a third person, a subscription by many to raise money for a charitable purpose in which all feel an interest is binding on all."

O. J. G.

CORPORATIONS — INFORMAL DECLARATION OF DIVIDENDS — [Missouri].— Plaintiff was hired by a family corporation under a contract, according to the language of which he agreed to buy shares of stock by paying the purchase price out of dividends declared, with no right to the dividends in cash unless he was discharged before full payment of the price. Until the

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6. 1 Williston, *Contracts* (1st ed. 1927) sec. 116.

7. Georgia Code (1933) sec. 20-304. This statute is limited to written promises only. Y. M. C. A. v. Estill, 140 Ga. 291, 78 S. E. 1075 (1913).

8. Glass v. Grant, 46 Ga. App. 327, 167 S. E. 727 (1933); Miller v. Oglethorpe University, 24 Ga. App. 388, 100 S. E. 784 (1919); Y. M. C. A. v. Estill, 140 Ga. 291, 78 S. E. 1075 (1933); Wilson v. First Presbyterian Church, 56 Ga. 554 (1875); Jackson v. Forward Atlanta Comm. Inc., 39 Ga. App. 738, 148 S. E. 356 (1929); Lagrange Female College v. Carey, 168 Ga. 291, 147 S. E. 390 (1929).

9. First Trust & Saving Bank of Pasadena v. Coe College, 47 P. (2d) 481 (1935); University of Southern Cal. v. Bryson, 103 Cal. App. 39, 283 Pac. 949 (1929).

10. Charitable institutions have been raising money by this method in St. Louis for a number of years, without any case going to the Missouri appellate courts.

11. Methodist Orphans' Home Association v. Sharp, 6 Mo. App. 150 (1878).