v. Bowie (1916) 123 Ark. 463, 185 S. W. 793; *Am. Bonding Co. of Baltimore v. Kelly* (1916) 172 App. Div. 437, 158 N. Y. S. 812.

The plaintiff in the principal case indirectly derived some benefit from the fulfillment by the defendant of his obligation with the third party since the plaintiff was holding a third deed of trust on this particular land.

As a general rule of law it is well settled that a mere promise to fulfill an existing obligation to the promisee does not supply consideration for a new promise. *Awe v. Gadd* (1917) 179 Iowa 520, 161 N. W. 671; *Mortensen v. Knudson* (1920) 189 Iowa 379, 176 N. W. 892. But when the pre-existing liability is with a third party the courts are split over the question. The great weight of authority in this country holds that it is not. *Devitt v. Stokes* (1917) 174 Ky. 515, 192 S. W. 681; *Vanderbilt v. Schreyer* (1883) 91 N. Y. 392; *Schuler v. Myton* (1892) 48 Kan. 282, 29 Pac. 163. These cases are based on the ground that the promisee is doing only what he is already bound to do by the other contract.

In England such agreements are upheld. *Shadwell v. Shadwell* (1859) 30 L. J. C. P. (N. S.) 145; *Scotson v. Pegg* (1861) 6 H. & N. 295; *Cheichester v. Cobb* (1866) 14 L. T. Rep. (N. S.) 433. And several American jurisdictions are in accord with the English rule. *Humes v. Decatur Land Improvement Co.* (1893) 98 Ala. 461, 473, 13 So. 368; *Donnelly v. Newbolt* (1901) 94 Md. 220, 50 Atl. 513; *Abbott v. Doane* (1895) 163 Mass. 433, 40 N. E. 197. These decisions rest on the ground that the promisee has derived some benefit from the contract with the third party and the promisor has assumed an additional obligation by the second contract. Some courts reason that he has waived his right to rescind the first contract, such a forbearance being implied in the second contract. But this argument is weak, because the law for the sake of practicability must deal with the question on the supposition that the obligation contained in the first contract will continue to bind the parties. Williston advocates a rule of consideration which would be in conformity with definitions given by the courts and which would support such agreements not based exclusively upon detriment to the promisor, but which would allow benefits to the promisee to serve as an alternative. 1 Williston, Contracts (1920 ed.) 287.

While we can see by this case that Missouri has adopted the English ruling, the court has not given the line of reasoning upon which it has rested its decision. C. E., '32.

CORPORATIONS—PREFERRED STOCK DIVIDENDS—CHARTER MUST SPECIFY WHETHER CUMULATIVE.—By statute in Missouri, R. S. Mo. (1919) sec. 10144, whether preferred stock dividends shall be cumulative or not must be indicated in the articles of incorporation. In the case of *Murphy v. Richardson Dry Goods Co.* (Mo. 1930) 31 S. W. (2d) 72, the articles of incorporation provided that the dividends on preferred stock were to be paid "out of the net yearly income in any one year." Immediately after

incorporation a by-law was adopted declaring that the preferred stock was to be cumulative. The plaintiff sued for his cumulative dividends. *Held,* " . . . the by-law here in question not only attempts to cover matters which the statutes provide shall be covered by the articles of incorporation, but, in stating that the preferred stock shall be cumulative, it is in direct conflict with the plain articles of incorporation, and to the extent of the conflict the language of the articles must prevail." 1 COOK, CORPORATIONS (8th ed. 1923) 4a; STOCKARD, MISSOURI CORPORATION LAW, 178; *Kahn v. Bank of St. Joseph* (1879) 70 Mo. 262.

As a general rule the by-laws of a corporation which are contrary to or inconsistent with its charter, articles of association, or governing statute are ultra vires and void, even though they have been unanimously assented to by the stockholders or members. 14 C. J. 362; *Chicago City R. Co. v. Allerton* (1873) 18 Wall. 233; *National Union v. Keefe,* (1914) 263 Ill. 453, 105 N. E. 319; *Kent v. Quicksilver Mining Co.* (1879) 78 N. Y. 159. The principal case follows this rule, the sound public policy of which can hardly be questioned. A contrary view would mean that the will of the stockholders could be substituted at any time for the articles of incorporation, and creditors and others dealing with a firm would have no definite information to rely upon.

The unique feature of the Missouri statutory provision is that it is unusual for state incorporation statutes to require the articles of incorporation in each particular case to state whether or not the preferred stock shall be cumulative. "When preferred stock is issued it is generally specified in the certificate itself whether it is cumulative or non-cumulative. . . . If preferred stock is issued without any mention of whether or not the dividends are cumulative, then the law makes them cumulative. . . . This is the well settled rule at common law in this country and in England." COOK, CORPORATIONS (8th ed. 1923) 273; *Englander v. Osborne* (1918) 261 Pa. 366, 104 Atl. 614; *Lockhart v. Van Alstyne* (1874) 31 Mich. 76; *Elkins v. Camden R. R.* (1882) 36 N. J. Eq. 233.

C. F. M., '31.

CRIMINAL LAW—HABITUAL CRIMINALS ACT—PROHIBITION LAW VIOLATION AS INVOLVING MORAL TURPITUDE.—A North Dakota statute provides for increased punishment for subsequent felony convictions involving moral turpitude. The appellant had been convicted of two other felonies in other states and here pleaded guilty to a charge of engaging in liquor traffic as a second offense. However, he challenged jurisdiction of the court to impose any further sentence on him according to the statute on the ground that the crime in question was not one involving moral turpitude. *Held,* violation of a state prohibition law does involve moral turpitude. *State v. Malusky* (N. D. 1930) 230 N. W. 735.

The concurring opinion in the instant case reasons that all felonies as such involve moral turpitude while the dissenting opinions point out that this could not have been the intention of the legislature, since leg-