

Williams v Roffey Bros & Nicholls (Contractors) Ltd [1991] 1 QB 1

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Whether performance of an existing duty can amount to consideration.

Facts:

The appellants Roffey Bros, were builders who were contracted to refurbish 27 flats belonging to a housing corporation. The contract had a penalty clause for late completion. The appellants subcontracted some work to Williams, a carpenter. When Williams fell behind with his work the appellants offered him bonus payment to finish on time. Williams carried on working until the payments stopped. He sued the appellants for breach of contract.

Issues:

The appellants argued that the agreement to pay extra was unenforceable as Williams had provided no consideration; the appellants only received the practical benefit of avoiding the penalty clause. They did not receive any benefit in law. Williams was only agreeing to do what he was already bound to do. The appellants relied on ***Stilk v Myrick (1809) 2 Camp 317*** where it was held that performance of an existing duty was not good consideration.

Held:

The Court of Appeal held that the doctrine in ***Stilk v Myrick*** had been refined since then. Gildwell LJ said a promise to make bonus payments to complete work on time was enforceable if the promisor obtained a practical benefit and the promise was not given under duress of by

fraud. It was the appellants' own idea to offer the extra payment. Therefore, there was no duress. The appellants also gained a practical benefit by avoiding the penalty clause. Russel LJ said (at 19) that the court would take

'a pragmatic approach to the true relationship between the parties'.

Consequently, the promise for extra pay was enforceable.