

Opinion delivered January 23, 1939.

1. **BILLS AND NOTES—SOURCE FROM WHICH PAYMENTS TO BE MADE.**—Where appellants and appellee, interested in the Old Safety Life Insurance Company, borrowed money on their note from the Interstate National Bank, and the receiver of the bank which had failed pressed payment, and, by agreement, appellee, on payment by appellants of \$100 and their agreement to pay him \$20 per week, paid the note to the bank, the theory in appellee's action to recover from appellants who had failed to make their payments on the note that the note was to be paid with funds of the insurance company could not, under the evidence, be sustained.
2. **ACTIONS—CONTRIBUTION.**—Where appellee, originally liable with appellants on their note to the bank, by agreement with appellants, paid the note and accepted their note to him, *held* in an action on the note by appellee, that appellants' contention that appellee should not be permitted to change his position by accepting their note could not be sustained in his action at law, since contribution between parties could be determined only according to the principles of equity, and no motion to transfer to equity was made.
3. **BILLS AND NOTES—CONSIDERATION.**—Where two of appellants who had, subsequent to the execution of the note to the bank, been discharged in bankruptcy, entered the plea of want of consideration, the action of the trial court, in appellee's action on their note to him in consideration of which he had paid the note to the bank, in refusing to sustain the plea was proper, since the moral obligation was sufficient consideration for the note to appellee.

Appeal from Phillips Circuit Court; *J. M. Jackson*, Special Judge; affirmed.

C. L. Polk, Jr., for appellants.

A. M. Coates, for appellee.

MEHAFFY, J. Appellants seek to reverse the judgments in this cause on the theory that the trial court erred in excluding certain testimony.

Appellee and the four appellants had been interested in the Old Safety National Life Insurance Company. In 1930, \$3,000 was borrowed from the Interstate National Bank of Helena by one of the appellants. The note was indorsed by all of the appellants, and by appellee. It is conceded that funds realized from the loan were used by the insurance company. In December of the year the