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QUASI-CONTRACTS -- CONTRACTS UNENFORCEABLE UNDER STATUTE OF FRAUDS -- TEST OF BENEFITS

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QUASI-CONTRACTS — CONTRACTS UNENFORCEABLE UNDER STATUTE OF FRAUDS — TEST OF BENEFITS — Defendant orally contracted to buy fifty special type motion picture cameras which plaintiff was to build. Plaintiff had completed ten cameras in whole and forty in part when defendant repudiated, setting up the defense that the contract was void under the California statute of frauds. In an action on the common counts for labor done and materials furnished, the court *held*, that plaintiff could not recover because defendant had accepted or retained no benefit from which a promise to pay could be implied. *Mitchell Camera Corp. v. Fox Film Corp.*, (Cal. 1936) 59 P. (2d) 127.

It is well settled that performance of services on request with intent to exact payment, coupled with the acceptance of the benefits of those services by the requesting party, will ordinarily create liability in quasi-contract. Several cases have agreed with the principal case in holding that quasi-contract will not lie for work done and materials used in the manufacture of articles of which defendant later refused to accept delivery.[1] On the other hand, several courts have shown an inclination to extend the concept of benefit so as to permit recovery in cases scarcely distinguishable from the principal case.[2] A defendant has been charged for redecorations done at his request on premises which he has later refused to buy or lease.[3] A defendant has been charged for time lost by his employees while holding themselves ready and willing to work for him.[4]

[1] Dowling v. McKenney, 124 Mass. 478 (1878); Banker v. Henderson, 58 N. J. L. 26, 32 A. 700 (1895). For a collection of these cases, see 13 MINN. L. REV. 71 (1928); 37 L. R. A. (N. S.) 639 (1912); L. R. A. 1916D 895.

[2] Brown v. Hoag, 35 Minn. 373 (1886); Huey v. Frank, 182 Ill. App. 431 (1913); People's National Bank of Orlando v. Magruder, 77 Fla. 235, 81 So. 440 (1919); McCrowell v. Burson, 79 Va. 290 (1884); Randolph v. Castle, 190 Ky. 776, 228 S. W. 418 (1921); McDaniel v. Hutcherson, 136 Ky. 412, 124 S. W. 384 (1910).

[3] Where alterations are made at defendant's request in preparation for performance of an oral leasing agreement, quasi-contractual relief seems generally to be granted. People's National Bank of Orlando v. Magruder, 77 Fla. 235, 81 So. 440 (1919); Huey v. Frank, 182 Ill. App. 431 (1913); and see note in 59 A. L. R. 604 (1929).

[4] Randolph v. Castle, 190 Ky. 776, 228 S. W. 418 (1921). The court said at 778: "if plaintiffs remained there at his request and on his assurance that they were to have employment and thus earn pay, and but for such request would have sought and obtained other remunerative employment, the loss must be borne by the defendant, the one who caused it. . . ."

Certainly the "benefit" in these cases did not consist of an enrichment of the defendant. In such cases it appeared that plaintiff had relied to his detriment on defendant's oral request, and the loss was placed upon the party whose request induced it.[5] This theory of detrimental reliance has been applied in another class of cases. A party injured by the substantial breach of an enforceable express contract has long been given quasi-contractual relief even though that loss has not resulted in the breaching party's enrichment.[6] Certainly a remedy is more needed in the case of unenforceable contracts where no alternative relief is available. It may be that certain "preparations" for performance should be excluded from the range of the quasi-contract remedy, both in case of enforceable and unenforceable contracts.[7] The line at this point is difficult to define, since serious questions of policy are involved in throwing on the defendant all the losses suffered through the plaintiff's readjustment of his economic situation to meet the requirements of a transaction that must later be abandoned. It is also true that a deduction should be made for the value of the goods retained by the plaintiff after defendant's repudiation, insofar as they are salable or have a measurable use value.[8] But with these restrictions it would seem that an extension of the concept of "benefit" to include cases of mere detrimental reliance would produce desirable results. Though it might be claimed that such an extension would make further inroads on an already decrepit statute of frauds, it appears that the process of undermining the statute has already gone so far that it is unnecessary to stop at the point selected in the principal case.[9]

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[5] In the related field of contracts unenforceable because of indefiniteness, a leading case, Kearns v. Andree, 107 Conn. 181, 139 A. 695 (1928), noted in 26 MICH. L. REV. 942 (1928), placed the decision on exactly such equitable grounds.

[6] Planche v. Colburn, 8 Bing. 14, 131 Eng. Rep. 305 (1831); Mooney v. York Iron Co., 82 Mich. 263, 46 N. W. 376 (1890); French v. Cunningham, 149 Ind. 632, 49 N. E. 797 (1898); Wyman v. Passmore, 146 Iowa 486, 125 N. W. 213 (1910); Koslan v. Lebinson, 169 N. Y. S. 457 (N. Y. S. Ct. 1918). See 23 CAL. L. REV. 313 (1935).

[7] Hosmer v. Wilson, 7 Mich. 294 (1859); Cocheco Aqueduct Assn. v. Boston & Me. R. R., 59 N. H. 312 (1879); Ryan v. Remmey, 57 N. J. L. 474, 31 A. 766 (1895); Manning Mfg. Co. v. Miller Bros., 87 Vt. 455, 89 A. 479 (1913); Boone v. Coe, 153 Ky. 233, 154 S. W. 900 (1913).

[8] This may explain the decision in Banker v. Henderson, 58 N. J. L. 26, 32 A. 700 (1895), where plaintiff had, at defendant's request, constructed a woodchopping machine on a contract within the statute of frauds. The court intimated the machine might be worth as much, completed, as the value of plaintiff's services. As to the measure of damages in these cases, it would seem that once recovery is granted it should be measured by the same formula as is generally applied in the case of enforceable contracts, i.e., the reasonable cost of such services as plaintiff has performed, regardless of the value which defendant has received from those services. See 44 HARV. L. REV. 623 (1931); 2 WILLISTON, CONTRACTS, § 536 (1936); WOODWARD, QUASI-CONTRACTS 146 (1913).

[9] The split of authority as to recovery for preparatory expenses or service performed under a contract within the statute of frauds seems best to be accounted for by the varied views as to the underlying policy of the statute. 26 MICH. L. REV. 942 (1928); 44 HARV. L. REV. 623 (1931).