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QUASI-CONTRACTS --TORTS -- QUASI-CONTRACT AS AN ALTERNATIVE REMEDY FOR INTERFERENCE WITH CONTRACT RELATIONS

QUASI-CONTRACTS — TORTS — QUASI-CONTRACT AS AN ALTERNATIVE REMEDY FOR INTERFERENCE WITH CONTRACT RELATIONS — An action in tort for damages against a defendant who has induced a third person to breach his contract with plaintiff is permitted in most states today,[1] although the action is of comparatively recent origin.[2] The basis of the action is the obligee's interest in the performance of the contract, which is thought to deserve protection against the third-party interference.[3] The invasion of this right must, as the cases now stand, be an intentional invasion, although there seems to be no reason for excluding negligent invasions subject to the usual limits of foreseeability.[4] The motives of the tort-feasor, suggested by one writer as a test for tort liability,[5] would likewise seem a less satisfactory limitation than the usual principles of justification and privilege applied to the particular case.[6]

Recent cases [7] have raised the question whether quasi-contract remedies on the theory of waiver of tort can supply a convenient device

[1] The cases are collected in a note in 84 A. L. R. 44.

[2] Lumley v. Gye, 2 El. & Bl. 216, 118 Eng. Rep. 749 (1853), is generally considered the first decision establishing this doctrine although its antecedents go back to the Statute of Laborers, 23 Edw. III (1349). See Sayre, "Inducing Breach of Contract," 36 HARV. L. REV. 663 (1923).

[3] R. and W. Hat Shop v. Sculley, 98 Conn. 1, 118 Atl. 55 (1922), 21 MICH. L. REV. 234 (1922); Temperton v. Russell, [1893] 1 Q. B. 715 at 730.

[4] Carpenter, "Interference with Contract Relations," 41 HARV. L. REV. 728 (1928); 40 HARV. L. REV. 302 (1926).

[5] Sayre, "Inducing Breach of Contract," 36 HARV. L. REV. 663 (1923); 12 MINN. L. REV. 147 (1928).

[6] R. and W. Hat Shop v. Sculley, 98 Conn. 1, 118 Atl. 55 (1922); Stillwell Theatre v. Kaplan, 259 N. Y. 405, 182 N. E. 63, 84 A. L. R. 6 (1932), noted in 46 HARV. L. REV. 125 (1932); Carpenter, "Interference with Contract Relations," 41 HARV. L. REV. 728 (1928); 39 HARV. L. REV. 749 (1926).

[7] Federal Sugar Refining Co. v. United States Sugar Equalization Board, Inc.,

for protecting contract relationships against third-party interference. Most of the procedural and substantive advantages of the quasi-contract action would presumably apply to the type of tort which is here "waived." [8] It will be recalled that quasi-contract for restitution of benefits received through tort is generally treated as coming within such phrases as "actions on contracts express or implied," as used in counterclaim statutes,[9] in attachment statutes,[10] in defining provable claims in bankruptcy,[11] and in the rules as to survivorship [12] and limitation of actions.[13] Although the federal courts have refused to permit the waiver to avoid the governmental immunity for tort,[14] some state courts have allowed it.[15]

A serious limitation on the use of quasi-contract actions for tort is the requirement that the tort-feasor must have benefitted by his wrong.[16] The cases do not state any uniform and consistent test for the nature of the benefit required, but in general the result of the decisions is that the benefit must be the sort of a thing for which there is a market value.[17] This test excludes the remedy in those torts, such

(S. D. N. Y. 1920) 268 Fed. 575; Second Nat. Bank of Toledo v. M. Samuel & Sons, (C. C. A. 2d, 1926) 12 F. (2d) 963, 53 A. L. R. 49.

[8] "Waiver" is not the correct technical term; the tort remains the basis of the action and must be proved as in ordinary actions *ex delicto*. Strictly speaking, it is an election to enforce the obligation to make restitution instead of an obligation to pay damages. WOODWARD, QUASI-CONTRACTS, sec. 271 (1913).

[9] Felder v. Reeth, (C. C. A. 9th, 1929) 34 F. (2d) 744; Kubat v. Zika, 186 Minn. 122, 242 N. W. 477 (1932).

[10] Barth v. Graf, 101 Wis. 27, 76 N. W. 1100 (1898); Mason v. Moore, 221 Ky. 481, 298 S. W. 1100 (1927); Kristoffy v. Iwanski, 255 Mich. 25, 237 N. W. 33 (1931), garnishment statute.

[11] See 31 MICH. L. REV. 389 (1933); Schall v. Camors, 251 U. S. 239, 40 Sup. Ct. 135 (1919).

[12] Phillips v. Homfray, 24 Ch. Div. 439 (1883); Head v. Porter, (C. C. Mass. 1895) 70 Fed. 498.

[13] Garrity v. State Board of Administration, 99 Kan. 695, 162 Pac. 1167 (1917); Whitaker v. Poston, 120 Tenn. 207, 110 S. W. 1019 (1907); see WOODWARD, QUASI-CONTRACTS, sec. 294 (1913) for criticism of this result.

[14] Schillinger v. United States, 155 U. S. 163, 15 Sup. Ct. 85 (1894). But the federal cases indicate willingness to imply a contract in fact: United States v. Buffalo Pitts Co., 234 U. S. 228, 34 Sup. Ct. 840 (1914), appropriation of machinery; Portsmouth Harbor Land and Hotel Co. v. United States, 260 U. S. 327, 43 Sup. Ct. 135 (1922), firing guns over plaintiff's property. See 43 YALE L. J. 674 (1934), 21 ILL. L. REV. 290 (1926), 38 HARV. L. REV. 1104 (1925).

[15] Nelson County v. Coleman, 126 Va. 275, 101 S. E. 413 (1919); Kerns v. Couch, 141 Ore. 147, 12 Pac. (2d) 1011 (1932), 17 Pac. (2d) 323, noted in 31 MICH. L. REV. 864 (1933). *Cf.* Commonwealth v. Chilton Malting Co., 154 Va. 28, 152 S. E. 336 (1930), where there was no substantial benefit.

[16] WOODWARD, QUASI-CONTRACTS, sec. 272 (1913); Scherger v. Union Nat. Bank, 138 Kan. 239, 25 Pac. (2d) 588 (1933).

[17] Fanson v. Linsley, 20 Kan. 235 (1878), illustrates the test nicely in distin-

as personal injuries and injuries to property, where the only benefit is the saving of expenditure in not having to pay for the privilege of committing the tort,[18] but does not limit it to cases where defendant has received money by virtue of the wrong.[19] The reliance on market value as a measure of "benefit" is not always explicit in the cases, and at times this test breaks down.[20] It is in fact no more than a working compromise between a tort measure of recovery, for the loss suffered by the plaintiff, and simple restitution of the defendant's actual "enrichment." Like so many devices worked out by the common law, it is not the product of imaginative generalization, but it avoids, by the very refusal to generalize, some of the confusion that may result from too much speculation.[21]

The first application of a quasi-contract action to interference with contractual relations is found in the apprentice cases. In 1808 Lord Mansfield allowed an action of assumpsit against one who abducted

guishing between the counterclaim for value of use and for items of damage to machine and cost of hauling it back.

[18] Singley v. Bigelow, 108 Cal. App. 436, 291 Pac. 899 (1930); Plefka v. Detroit United Ry., 147 Mich. 641, 111 N. W. 194 (1907); Gulf & S. I. R. R. v. Wells Lumber Co., 111 Miss. 768, 72 So. 194 (1916). *Cf.* Jacobs v. City of Seattle, 100 Wash. 524, 171 Pac. 662, L. R. A. 1918E 131 (1918).

[19] This is the modern rule. WOODWARD, QUASI-CONTRACTS, sec. 273 (1913); Braithwaite v. Akin, 3 N. D. 365, 56 N. W. 133 (1893); *cf.* Jones v. Hoar, 5 Pick. (22 Mass.) 285 (1827), which lays down minority rule that property must be converted into money.

[20] Jacobs v. City of Seattle, 100 Wash. 524, 171 Pac. 662, L. R. A. 1918E 131 (1918); Felder v. Reeth (C. C. A. 9th, 1929) 34 F. (2d) 744; Meyers v. Cohen, 259 Mich. 535, 244 N. W. 154 (1932). For a general discussion of quasi-contract recovery in cases arising from partly performed express contracts, see 44 HARV. L. REV. 623 (1931).

[21] The development of the theory of unjust enrichment in French law provides an interesting contrast with common law techniques of law formulation. The French Code does not recognize in generalized form any remedy for restitution of unjust enrichment. Modern doctrines are the product of generalizations by text writers during the nineteenth century, who declared that scattered references to this idea in the Code were the manifestation of a general principle, based on "equity" or elementary justice. This reasoning was not finally adopted by the Cour de Cassation until 1892. BAUDRY-LACANTINERIE & BARDE, TRAITÉ THEORIQUE ET PRACTIQUE DU DROIT CIVIL, XV, sec. 2849 viii-xii (1905-09). The applications and theoretical bases of the remedy have since been developed very largely by text writers, whose debates and uncertainties are reviewed by RIPERT, LA RÈGLE MORALE DANS LES OBLIGATIONS CIVILES, sec. 135-147 (1925). It seems to be agreed that the remedy is not available unless there has been "impoverishment" of the plaintiff as well as an "enrichment" of the defendant, the reason given by one writer being that the object of the action is "indemnity." RIPERT, *ibid.*, sec. 143. With this should be compared the contention of Woodward that the benefit must be "taken from the plaintiff." QUASI-CONTRACTS, sec. 274 (1913). But the bases of the remedy as well as the measure of recovery remain very greatly obscured in modern French law by the theoretical speculation through which the remedy was first introduced and then consolidated.

plaintiff's apprentice, to recover the value of his services.[22] The early application of the remedy here may be partly explained by the anomalous position of an apprentice as both servant and member of the family and by his obligation to serve the entire term, specifically enforceable after the statute of 4 Elizabeth.[23] Analogous to the apprentice cases are those in which a parent has been given a quasi-contract action for the value of services rendered by an unemancipated minor child.[24] A quasi-contract action has been allowed as a remedy alternative to an action on the case for destroying a non-possessory lien.[25] Nearly related, though seldom discussed in the same terms, is the large group of cases where a defendant secures a "benefit" through inducing a payment to himself which was owed originally to the plaintiff.[26] A closer analysis of the bases of quasi-contract liability is required in two cases which rest more definitely on the theory of interference with contractual relations.

In the case of *Second Nat. Bank of Toledo v. M. Samuel & Sons*,[27] plaintiff was the purchaser of a draft drawn on the Irving Trust Co. by a vendor of certain goods which defendant had purchased and whose purchase price was in part represented by the draft. The draft was drawn in reliance on an irrevocable letter of credit issued at defendant's request by the Irving Trust Co., which promised to pay the holders of drafts drawn in conformity with the letter of credit. The draft was found to have been drawn and presented according to the provisions of the letter of credit, but at defendant's order the bank refused to pay. Plaintiff brought a bill in equity against defendant alone. The circuit court of appeals reversed the decree below, which had dismissed the plaintiff's bill, and ordered the action transferred to the law docket as a quasi-contract action, based on defendant's tort in inducing the bank to breach its contract to pay the draft. The court disposed of defendant's allegation that the goods were already paid for by saying: [28]

[22] Lightly v. Clouston, 1 Taunt. 112, 127 Eng. Rep. 774 (1808). Also Foster v. Stewart, 3 M. & S. 191, 105 Eng. Rep. 582 (1814); James v. LeRoy, 6 Johns. (N. Y.) 274 (1810); Cook v. Husted, 12 Johns. (N. Y.) 188 (1815), slave.

[23] 6 LABATT, MASTER AND SERVANT, 2d ed., sec. 2192 (1913).

[24] Adams v. Woonsocket Co., 11 Metc. (52 Mass.) 327 (1846); Culberson v. Alabama Constr. Co., 127 Ga. 599, 56 S. E. 765 (1907).

[25] Albertville Trading Co. v. Critcher, 216 Ala. 252, 112 So. 907 (1927).

[26] Heywood v. Northern Assurance Co., 133 Minn. 360, 158 N. W. 632, Ann. Cas. 1918D 241 (1916). In addition to cases in annotation, Millett v. Omaha Nat. Bank, (C. C. A. 8th, 1929) 30 F. (2d) 665; Peterson v. Smith, 75 W. Va. 553, 84 S. E. 250 (1915). *Cf.* Markworth v. State Savings Bank, 212 Iowa 954, 237 N. W. 471 (1931).

[27] (C. C. A. 2d, 1926) 12 F. (2d) 963, 53 A. L. R. 49.

[28] Second Nat. Bank of Toledo v. Samuel & Sons, (C. C. A. 2d, 1926) 12 F. (2d) 963 at 968.

> "The commission of the tort not only results in damage to the person injured, but often in a benefit to the tort-feasor. It so resulted in this case, as the defendant benefitted to the extent of the draft which remained unpaid; and whenever the tort-feasor is so enriched he is under a clear moral obligation . . . to make restitution either in specie or in value. And this obligation may be enforced against the tort-feasor in an action of indebitatus assumpsit."

The benefit to defendant here seems to have been at most an indirect one, with several stages intervening between plaintiff's outlay for the purchase of the draft and defendant's ultimate enrichment. The extension of quasi-contract into this situation finds some support in the group of cases where the benefit received is purely technical; [29] for example, where plaintiff performs an express contract which defendant subsequently breaches.[30] Here, as in the tort cases, there seems to be no purpose in a narrow definition of "benefit" if defendant is clearly liable in another form of action, so that a refusal of quasi-contract relief will simply result in the start of another suit on an alternative theory. It is still possible to require a more substantial benefit where the resort to quasi-contract remedies will have more serious consequences.[31] The recognition of either an indirect or a purely technical benefit is a useful extension of quasi-contract principles which leaves considerable flexibility in their application and may be especially valuable in the situation here considered.

An even more serious challenge to accepted quasi-contract doctrines is presented by *Federal Sugar Refining Co. v. United States Sugar*

[29] Against agent who has turned proceeds over to principal: Knapp v. Hobbs, 50 N. H. 476 (1871); Weems v. Melton, 47 Okla. 706, 150 Pac. 720 (1915); *contra*, Greer v. Newland, 70 Kan. 310, 77 Pac. 98, 70 L. R. A. 554 (1904). Against an innocent purchaser for value: Allen v. M. Mendelsohn & Son, 207 Ala. 527, 93 So. 416 (1922); Bristol Knife Co. v. First Nat. Bank, 41 Conn. 421, 19 Am. Rep. 517 (1874); *contra*, Benjamin v. Welda State Bank, 98 Kan. 361, 158 Pac. 65 (1916); Gaffner v. American Finance Co., 120 Wash. 76, 206 Pac. 916, 28 A. L. R. 624 (1922). Against principal whose agent absconded with money received on principal's account: National Trust Co. v. Gleason, 77 N. Y. 400, 33 Am. Rep. 632 (1879). In waiver of tort cases: Bank of Grottoes v. Brown, (C. C. A. 4th, 1925) 8 F. (2d) 321; Pitcock v. Higgins, (Mo. App. 1922) 239 S. W. 870, with which *cf.* Reynolds v. Pagett, 94 Ga. 347, 21 S. E. 570 (1894). See Diamant v. Keane, Higbie & Co., 260 Mich. 261, 244 N. W. 467 (1932), and note in 31 MICH. L. REV. 1171 (1933).

[30] See 44 HARV. L. REV. 623 (1931). The author explains the results in many of these cases on the theory of plaintiff's indemnification sounding in tort.

[31] See Reynolds v. New York Trust Co., 110 C. C. A. 409, 188 Fed. 611 (1911); Schall v. Camors, 251 U. S. 239, 40 Sup. Ct. 135 (1919); 31 MICH. L. REV. 389 (1932); Commonwealth v. Chilton Malting Co., 154 Va. 28, 152 S. E. 336 (1930).

Equalization Board, Inc.[32] In that case it was alleged that plaintiff had contracted to sell sugar to the Kingdom of Norway at 6.6 cents per pound. One Rolph, the head of the Sugar Division of the United States Food Administration during the war, refused to grant an export license to plaintiff and through defendant, a government corporation of which Rolph was president, induced Norway to break its contract with plaintiff. Defendant then sold Norway its sugar requirements, making as its profit from the transaction the difference between the current domestic price of 8.82 cents and the export monopoly price of 11 cents. Plaintiff brought the action on a quasi-contract theory to recover this profit, and the court overruled a demurrer to the complaint. The technical restriction on quasi-contract actions that the benefit must be "taken from" plaintiff was urged by counsel as preventing the action in this case. Judge Mayer disposed of the contention by an admirably liberal statement of quasi-contract principles: [33]

> "The point is not whether a definite something was taken away from plaintiff and added to the treasury of defendant. The point is whether defendant unjustly enriched itself by doing a wrong to plaintiff in such manner and in such circumstances that in equity and good conscience defendant should not be permitted to retain that by which it has been enriched."

Although the case, being decided on a demurrer, did not settle the measure of recovery, the fact that plaintiff suffered no loss from defendant's wrong indicates that the court must have assumed the possibility of recovering defendant's profits.[34] This suggests an inquiry into the advisability of liberal rules of damages in the quasi-contract action. In the tort action for inducing breach of contract there is no agreement as to the proper measure of damages, the commonest statement being that plaintiff is limited to what could have been recovered from the other contracting party.[35] But when the contract measure will not

[32] (S. D. N. Y. 1920) 268 Fed. 575.

[33] Federal Sugar Refining Co. v. United States Sugar Equalization Bd., (S. D. N. Y. 1920) 268 Fed. 575 at 582.

[34] Counsel have kindly supplied the referee's opinion in the subsequent suit of Norway v. Federal Sugar Co. to recover $165,000 paid by the Equalization Board in settlement of the first case. The referee's opinion states that one-half of the sugar ultimately sold to Norway was purchased from the Federal Sugar Co. at 8.86 cents per pound and that the domestic demand enabled all refiners to sell their entire product at that price. In any case it would seem that the Federal Sugar Co. had actually gained through its release from a contract to sell at 6.6 cents a pound.

[35] 2 SEDGWICK, DAMAGES, 9th ed., sec. 470a (1912); Knickerbocker Ice Co. v. Gardiner Dairy Co., 107 Md. 556, 69 Atl. 405, 16 L. R. A. (N. S.) 746 (1908); Swaney v. Crawley, 133 Minn. 57, 157 N. W. 910 (1916); see comment in 30 COL. L. REV. 232 (1930).

adequately compensate plaintiff's injuries, there is a disposition on the part of the courts to adopt one of the tort standards.[36] Since defendant here is in no position to argue the policy behind the *Hadley v. Baxendale*[36a] limitation of plaintiff's recovery, the liberality here shown is commendable.

The implication in the *Federal Sugar Co.* case, that profits are recoverable in quasi-contract, is a justifiable extension of the usual measure of damages in this action. In equity the remedies of constructive trust and equitable accounting afford a means of reaching the tort-feasor's profits.[37] Normally the necessity for discovery,[38] the complexity of the facts,[39] or a fiduciary relationship[40] is necessary for the equitable jurisdiction over accounting. But where plaintiff can prove the receipt of profits from the tort and can identify the proceeds with the aid of liberal rules of tracing, the profits are recoverable on the constructive trust theory.[41] Therefore a refusal to allow profits in quasi-contract will merely drive plaintiff to one of these equitable remedies which will be available against a tort-feasor in nearly every case. There is some authority for the recovery of profits in quasi-contract in those patent infringement cases in which the normal remedy

[36] Anderson v. Moskowitz, 260 Mass. 523, 157 N. E. 601 (1927); Gould v. Kramer, 253 Mass. 433, 149 N. E. 142 (1925); Hooker, Corser & Mitchell Co. v. Hooker, 89 Vt. 383, 95 Atl. 649 (1915); Griffin v. Palatine Ins. Co., (Tex. Comm. of App. 1921) 235 S. W. 202; Lopes v. Connolly, 210 Mass. 487, 97 N. E. 80, 38 L. R. A. (N. S.) 986 (1912) (mental suffering); Doucette v. Sallinger, 228 Mass. 444, 117 N. E. 897 (1917). Lally v. Cantwell, 40 Mo. App. 44 (1890) and Twitchell v. Glenwood-Inglewood Co., 131 Minn. 375, 155 N. W. 621 (1915), suggest that the contract measure is only *prima facie* correct. But see Swaney v. Crawley, 133 Minn. 57, 157 N. W. 910 (1916).

[36a] 9 Exch. 341, 156 Eng. Rep. 145 (1854).

[37] Rosenblum v. Springfield Produce Brokerage Co., 243 Mass. 111, 137 N. E. 357 (1922); Massachusetts Bonding and Ins. Co. v. Josselyn, 224 Mich. 159, 194 N. W. 548 (1923); Shaler v. Trowbridge, 28 N. J. Eq. 595 (1877).

[38] POMEROY, EQUITY JURISPRUDENCE, 4th ed., secs. 2356-2362 (1919); Rosenblum v. Springfield Produce Brokerage Co., 243 Mass. 111, 137 N. E. 357 (1922); Boriss Const. Co. v. Deasey, 212 Ala. 528, 103 So. 470 (1925). Fur & Wool Trading Co. v. Fox, Inc., 245 N. Y. 215, 156 N. E. 670, 58 A. L. R. 181 (1927), allowed an accounting in equity when equitable discovery was desirable though a procedure for discovery at law existed.

[39] POMEROY, EQUITY JURISPRUDENCE, 4th ed., secs. 2356-2362 (1919); County of Dallas v. Timberlake, 54 Ala. 403 (1875); Dyer Bros. Iron Works v. Central Iron Works, 182 Cal. 588, 189 Pac. 445 (1920); Terrell v. Southern Ry., 164 Ala. 423, 51 So. 254 (1909); Goffe & Clarkener, Inc. v. Lyons Milling Co., (D. C. Kan. 1928) 26 F. (2d) 801.

[40] POMEROY, EQUITY JURISPRUDENCE, 4th ed., secs. 2356-2362 (1919); Custis v. Serrill, 303 Pa. 267, 154 Atl. 487 (1931); Pedowski v. Southern Michigan Fruit Ass'n, 261 Mich. 271, 246 N. W. 58 (1933).

[41] Cases cited in note 35, supra. Also, Carleton Mining & Power Co. v. West Virginia Northern R. R., 113 W. Va. 20, 166 S. E. 536 (1932), in which a constructive trust was allowed although plaintiff was ignorant of the amount of profits.

of injunction is not available.[42] If quasi-contract remedies cannot be emancipated from the artificial requirement that the benefit must be "taken from" the plaintiff, it seems probable that equity will undertake the development of alternative remedies for interference with contract relations. The injunction has already become a typical means of protecting contract relations against third party interference, in the very large group of cases where damages cannot be adequately measured.[43] In such cases it might be extremely difficult to determine what profit by the defendant was directly traceable to his interference with the plaintiff's contract.[44] But where the benefit of plaintiff's contract had been successfully appropriated by defendant, an attempt to reach the resultant profit would at least have the advantage of starting from the profits that defendant had actually made, rather than speculating about the profits that plaintiff would have made. There is strong language in one decision as to the power of equity to attach by constructive trust the defendant's gains through interference with contract relations.[45]

There is a persuasive analogy in the field of unfair competition, where the restitution of profits has developed under the influence of similar remedies for patent and copyright infringement.[46] From a

[42] Head v. Porter, (C. C. Mass. 1895) 70 Fed. 498; Steam Stone Cutter Co. v. Sheldons, (C. C. Vt. 1883) 15 Fed. 608; Root v. Railway Co., 105 U. S. 189, 26 L. ed. 975 (1881); Sayles v. Richmond R. R., Fed. Cas. No. 12424, 3 Hughes 172 (1879). Falk v. Hoffman, 233 N. Y. 199, 135 N. E. 243 (1922), intimates that profits are recoverable only in equity. But King Mechanism & Engineering Co. v. Western Wheeled Scraper Co., (C. C. A. 7th, 1932) 59 F. (2d) 546, denies that equity can assume jurisdiction solely for the purpose of reaching the profit made through patent infringement, rather than the royalty value of the patent.

[43] Resale price control cases, annotation in 7 A. L. R. 491 (1920); Montgomery Enterprises v. Empire Theatre Co., 204 Ala. 566, 86 So. 880, 19 A. L. R. 987 (1920); in general, annotation in 84 A. L. R. 85 (1933).

[44] The difficulties in segregating the profits made through invasion of the plaintiff's right from those attributable to defendant's own initiative or resources appear clearly in cases of trade-mark infringement and unfair competition. See 30 COL. L. REV. 242 (1930). In many cases of interference with contract relations the difficulties would probably be at least as great, but should this lead to a denial of any recovery whatever?

[45] Angle v. Chicago, St. P., M. & O. Ry., 151 U. S. 1, 14 Sup. Ct. 240 (1894). Plaintiff contracted to construct a line for the Portage R. R., which road had a land grant. Defendant, having gotten control of the Portage Company, induced the legislature to withdraw the land grant from the Portage Company and give it to defendant with the result that plaintiff could not finish the construction work. Plaintiff sued the Portage Company for breach of contract and on return of the judgment unsatisfied brought a creditor's bill against defendant to reach the land. The court overruled defendant's demurrer, using both the theory suggested in the text and the theory that defendant as sole stockholder in the Portage Company had caused its assets to be transferred to defendant, thus becoming liable to restore them on a creditor's bill.

[46] 30 COL. L. REV. 242 (1930); 41 HARV. L. REV. 906 (1928).

wholly different direction and with different analytical machinery, equity has built up remedies against third persons with notice who receive property already subject to express or constructive trust or to specifically enforceable contract.[47] How much further these remedies should be extended, toward a general recognition of equitable servitudes in chattels, is a difficult question of social and economic policy and only secondarily a remedial problem.[48] It is too soon to predict what methods will be used for the further protection of contract relations against interference. But it is to be hoped that where a money judgment is appropriate quasi-contract will be resorted to, and that unnecessary distinctions between legal and equitable remedies will not be preserved.[49]

R. T. A.

[47] Stone in his article on "The Equitable Rights and Liabilities of Strangers to a Contract," 18 COL. L. REV. 291 (1918), explains the enforcement of rights against strangers as a manifestation of the duty on third persons to refrain from conduct which interferes with the cestui's or vendee's right *in personam* against the trustee or vendor. Professor Scott in "Nature of the Rights of the Cestui Que Trust," 17 COL. L. REV. 269 (1917), proposes that the explanation is the existence of a right *in rem* in the trust res or subject of the contract; Professor Chafee adopts the latter view in his article on "Equitable Servitudes on Chattels," 41 HARV. L. REV. 945 (1928).

[48] This aspect is fully discussed in Chafee's pioneer article in 41 HARV. L. REV. 945 (1928).

[49] China Fire Ins. Co. v. Davis, (C. C. A. 2nd, 1931) 50 F. (2d) 389, illustrates the difficulty of preserving any clear distinction between quasi-contract and constructive trust in actions of this type based on unjust enrichment.