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QUASI CONTRACTS-RECOVERY OF VALUE OF SUPPORT AND CARE RENDERED TO PARENT

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QUASI CONTRACTS—RECOVERY OF VALUE OF SUPPORT AND CARE RENDERED TO PARENT—In 1901, pursuant to an agreement for care and support, *A* conveyed land to his wife. After his wife's death in 1924, *A* supported himself for twelve years until he suffered a paralytic stroke, after which his son Adolph supported him and furnished constant care. The other children, including Charles, refused to aid Adolph financially or otherwise. After *A's* death, Charles petitioned in equity for a decree declaring the lien of his father on the land terminated by death. Adolph opposed, claiming a lien on the land for the value of support and care rendered to *A*. The trial court decreed that *A* had an equitable lien on the land for his care and support,¹ to which Adolph should be subrogated to the extent of the reasonable value of support and care furnished *A*. *Held*, affirmed. *Application of Mach*, (S.D. 1947) 25 N.W. (2d) 881.

The great majority of cases dealing with claims for the value of services, support, and care rendered to near relatives have proceeded on a theory of contract, express or implied.² Less frequently, the claimant has sought restitution of benefits conferred because of a mistake of fact.³ In either instance recovery is made difficult by the often repeated presumption that a gratuity was intended.⁴ Courts have said that such claims should be closely scrutinized and are to be looked upon with disfavor,⁵ but judicial attitudes will ordinarily depend upon a variety of complex factors,⁶ which tend to restrict policy generalizations to the facts of each case. Thus, where the claim is against the estate of the beneficiary and is disputed by an heir or distributee who showed slight interest in the deceased's welfare while he was living, the desire to grant recovery obviously will be

the conclusion that his contract of service has been violated by reason of misconduct and disloyalty *which substantially affect* the contract of employment, then there may be no recovery for such service."

¹ There is abundant authority for rescission of a contract for support in the event of the grantee's death. *De Atley v. Streit*, 81 Mont. 382, 263 P. 967 (1928); *Moran v. Beson*, 225 Mich. 144, 195 N. W. 688 (1923); *Payette v. Ferrier*, 20 Wash. 479, 55 P. 629 (1899). The equitable lien as an alternative remedy is equally applicable. *Loar v. Poling*, 107 W. Va. 280, 148 S. E. 114 (1929); *Simmons v. Shafer*, 98 Kan. 725, 160 P. 199 (1916).

² Havighurst, "Services in the Home—A Study of Contract Concepts in Domestic Relations," 41 YALE L. J. 386 (1932).

³ *Frain v. Brady*, 48 R. I. 24, 134 A. 645 (1926) (mistake as to financial condition of beneficiary); *Jones v. Stearns*, 97 Vt. 37, 122 A. 116 (1923) (mistaken belief as to financial condition of beneficiary induced by misrepresentation); *Hanrahan v. Baxter*, (Iowa 1908) 116 N. W. 595 (same; recovery denied).

⁴ 3 PAGE, CONTRACTS, 2d ed., §§1447-1454 (1920); Havighurst, "Services in the Home—A Study of Contract Concepts in Domestic Relations," 41 YALE L. J. 386 (1932); 11 L. R. A. (n.s.) 874 (1907).

⁵ *Hinkle v. Sage*, 67 Ohio St. 256, 65 N.E. 999 (1902); *Callahan v. Wood*, 118 N. C. 752, 24 S.E. 542 (1896); *Zimmerman v. Zimmerman*, 129 Pa. 229, 18 A. 129 (1889).

⁶ Such as the amount of benefit conferred, the hardship to the claimant, the degree of moral duty to render the services without compensation, the financial circumstances of the parties, and the relationship of the real parties to the controversy. An analysis of these several factors is found in Havighurst, "Services in the Home—A Study of Contract Concepts in Domestic Relations," 41 YALE L. J. 386 at 391 (1932).

strong.⁷ The principal case is a good illustration.⁸ However, the theory on which the court grants recovery is not so clear; the opinion merely states that "subrogation . . . includes every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable and which in equity and good conscience should have been discharged by the latter."⁹ and that "Adolph was not a mere volunteer." Possibly, the theory is that Adolph Mach performed the contract for which his mother was primarily liable.¹⁰ Generally, unless an element of self-interest is shown, the unsolicited performance of a contract for which another is primarily liable is said to be the work of an intruder or volunteer and recovery against the person whose liability is thus discharged is denied.¹¹ Even intervention by near relatives of a beneficiary of a contract for support sometimes has been described as "officious,"¹² but in this particular situation other courts have been less strict in applying the "volunteer" doctrine.¹³ And where recovery is conceived to be appropriate as against the grantee or his estate, subrogation to the grantor's rights has been deemed a convenient remedy.¹⁴ The decision of the principal case would seem to be an unusual departure from the usual approach that requires a showing of contractual liability, interest, or a mistake that can be the basis for restitution of benefits conferred.

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⁷ *Jones v. Jones*, 129 S. C. 8, 123 S. E. 763 (1924).

⁸ Charles Mach had not seen his father for many years before the latter's death and had refused to help support him. Principal case at 882.

⁹ Principal case at 882, quoting from 50 AM. JUR., Subrogation, §7.

¹⁰ This is not specifically stated, but the only case cited by the court. *Henry v. Knight*, 74 Ind. App. 562, 122 N. E. 675 (1921) is a case of this type. Also where recovery is sought against the beneficiary or his estate the courts prefer the term "presumption of a gift" to the words "volunteer" or "intermeddler." Hope, "Officiousness," 15 CORN. L. Q. 25, 205 (1929).

¹¹ WOODWARD, QUASI CONTRACTS, §191 (1913); Hope, "Officiousness," 15 CORN. L. Q. 25, 205 (1929).

¹² *Richardson v. Richardson*, 207 N. C. 314, 176 S. E. 744 (1934); *Matheny v. Chester*, 141 Ky. 790, 133 S. W. 754 (1911); *Savage v. McCorkle*, 17 Ore. 42, 21 P. 444 (1888). See WOODWARD, QUASI CONTRACTS, §209 (1913).

¹³ *Henry v. Knight*, 74 Ind. App. 562, 122 N. E. 675 (1921); *Huffmond v. Bence*, 128 Ind. 131, 27 N. E. 347 (1891); 31 A. L. R. 658 (1924). See Hope, "Officiousness," 15 CORN. L. Q. 25, 205 (1929), for a vigorous criticism of the volunteer doctrine in general, and specifically attacking its application in the contract for support cases.

¹⁴ *Huffmond v. Bence*, 128 Ind. 131, 27 N. E. 347 (1891).