Implied-In-Fact Contracts—Recovery of Additional Compensation

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RECENT CASE NOTES

decedent is liable for services rendered for his family after his death, under a contract therefor made with him in his lifetime. *Leland v. Wells*, 59 Ind. 485 and 529. The Massachusetts case holds that, when testator employed counsel to defend his brother without control of the proceedings it was not such a relation as attorney and client as would terminate on the principal's death. *Barnett v. Toune*, 196 Mass. 487. The obligation of Mrs. Stapleton was not of such a personal character that her death must have necessarily terminated the contract. Even though the weight of authority upholds the Indiana case there is no reason, logical or legal, why the court could not have held that the death of Mrs. Stapleton did not terminate the contract. The court evidently blithely assumed that because one side was "personal", both were. It is possible to uphold this result on the grounds of agency, holding that the appellant had a power which was terminated by the death of the donor. But even then the result is not rational, and modern authority shows a tendency to reach an opposite result. *American Law Institute, Restatement of Agency*, sections 220 and 235. 31 *Yale Law Journal*, pages 283-290.

C. F. B.

**IMPLIED-IN-FACT CONTRACTS—RECOVERY OF ADDITIONAL COMPENSATION**—Appellant sues to recover on implied contract for services rendered by him in the management of certain trust property of which he had peculiar knowledge. He was paid for a time by appellee trust company (trustee) and for a time by other defendants who were acting as a committee for the protection of bondholders, and then later by both trust company and committee. He now claims he is entitled to further compensation although such claim was not made until several months after the services were furnished, and he accepted compensation without objection, and appellees understood they were paying him in full. *Held*. an implied contract is not unlike an express contract in that it grows out of the intentions of the parties, and there must be a meeting of the minds. Under the facts of the case here, there is created a conclusive presumption that the appellant was fully paid for his services. *Starbuck v. Fletcher Savings and Trust Co.*, Indiana Appellate Court, April 3, 1930, 170 N. E. 863.

Obligations usually termed contracts divide into two categories:

I. Contracts.
   a. Express.
   b. Implied-in-fact (inferred).

II. Quasi-contracts (sometimes called implied-in-law).

The Indiana courts seem to make little distinction between the implied-in-fact contract and the quasi-contract (implied-in-law), speaking of both groups of "implied" contracts. Some writers place the distinction on the assent element, while others take as a distinction the measure of damage. 33 Harv. L. Rev. 376, 19 Yale L. J. 609. A good definition of the implied-in-fact contract may be found in *Addison on Contracts* (11th Ed., 447):

"A contract is said to be inferred where the intention of the parties is not expressed in words, but may be gathered from their acts and surrounding circumstances. In these cases the law enforces what it deems to have been the intention of the parties." Professor Corbin in an excellent article in the *Yale Law Journal* (21-533) defines a quasi-contract as being a "legal obligation not based upon agreement, enforced either specifically or by com-
pelling the obligor to restore the value of that by which he was unjustly enriched.” Several recent cases also give good definitions, outlining the distinction. See First Natl. Bank v. Matlock, 99 Okla. 150, 226 Pac. 328, 36 A. L. R. 1088; Caldwell v. Missouri State Life Ins. Co., 148 Ark. 474, 230 S. W. 566; City of N. Y. v. Davis (CCA, N. Y.), 7 Fed. (2) 566, 573; Lombard v. Rahilly, 127 Minn. 449, 149 N. W. 95. It can be readily seen that there should be more of a distinction made by the courts of this state involving these different obligations.

An inferred contract is a matter of inference and deduction. Indianapolis Coal Traction Co. v. Dalton, 43 Ind. App. 330, 87 N. E. 552. An inferred contract is an agreement arrived at from the acts and conduct of parties, viewed in the light of surrounding circumstances and not from words, either oral or written; it differs from an express contract only in the mode of proof. Western Oil Refining Co. v. Underwood, 83 Ind. App. 488, 149 N. E. 85. These are cases of the implied-in-fact contracts.

The following cases seem to be in quasi-contract. Where one party to an entire contract has not complied with its terms, but professing to act under it, has delivered something of value to the other party, no action on the contract will lie; but the party who has benefited by the labor and services of the other will be liable in quasi-contract arising under the circumstances, to the extent of the value received. Lomax v. Bailey, 7 Blackford 599. Numerous Indiana cases are to be found which raise a quasi-contractual obligation where there are such circumstances to imply an obligation to pay for the rendition of the services. C. C. & St. L. R. R. Co. v. Shrum, 24 Ind. App. 96, 55 N. E. 515. Where one is employed in the services of another, the law imposes the duty to pay, and where one accepts and retains the beneficial results of another’s services, the judges say that a previous request is implied for the services and a promise implied to pay for them. (This previous request, of course is a pure fiction.) Chamness v. Cox, 2 Ind. App. 485, 28 N. E. 777. However, recovery cannot be had for services voluntarily rendered where there is no expectation of compensation at the time the services were rendered. McClure v. Lenz, 40 Ind. App. 56. Nevertheless, if special circumstances appear, there can be a recovery. Waechter v. Walters, 41 Ind. App. 408, 84 N. E. 22. When there is a family relation existing between the parties no promises will be raised on the ground that the services were presumed to be gratuitous. Kings’ Admr. v. Kelly, 28 Ind. 89; Daubenspeck v. Powers, 32 Ind. 42; but if such services were rendered with the hope of compensation on the one hand and the expectation of awarding it on the other, there will be an implication that an agreement to pay has arisen. Huffman v. Wyrick, 5 Ind. App. 183, 31 N. E. 823. This case may be considered as a borderline case.

As to the rendition of additional services, the character of the work requested and the circumstances attending the request and performance must be shown to be of such a nature as to justify the inference that extra compensation was intended by employer and employee. Middlebrook v. Slocum, 152 Mich. 286, 116 N. W. 422; Carrere v. Dun, 18 Misc. 18, 41 N. Y. S. 34. Where services have been performed and the party has accepted compensation therefore without objection on his part and thereafter claims for additional compensation, he will not be allowed recovery on the grounds that such services have been compensated for. Grissell v. Noel Bros. Flour &
RECENT CASE NOTES

Feed Co., 9 Ind. App. 251, 36 N. E. 352; Pittsburgh Etc. Co. v. Marable, 81 Ind. App. 46, 140 N. E. 443 (also 189 Ind. 278). The right of an employee to recover additional compensation for service rendered at the request of his employers depends on the existence of a contract to that effect, either express or implied. Pittsburgh Etc. Co. v. Marable, supra; Pittsburgh Etc. Co. v. Baker, 73 Ind. App. 332, 125 N. E. 233. Somewhat different from this case is that of Pittsburgh Etc. Co. v. Henderson, 9 Ind. App. 480, 36 N. E. 376, where recovery was allowed in the absence of express contract where such services were not in line of the regular duty of the employee.

It would seem that the obligation to pay for the services had been completely discharged by the payment of the amount to the employee and there is an accord and satisfaction of the debt, and there is nothing upon which to base an implied-in-fact contract. From the facts of the instant case, it would seem that it is wholly in accord with previous Indiana decisions.

A. W. E.

NEGLIGENCE—PROXIMATE CAUSE—Plaintiff was riding as a guest in a car which was being driven south over a bridge at a speed of from fifteen to twenty-five miles per hour towards a switch crossing maintained by defendant about fifteen feet from the south end of the bridge. It was a dark and rainy night and electric lights on the bannisters of the bridge so "glared" and blinded the driver that he was unable to see defendant's train standing on the crossing until he was about twenty or twenty-five feet from it when he applied his brakes but could not avoid hitting the cars whereby plaintiff received the injuries complained of. The cars had been standing on the crossing for three minutes while defendant's employees were engaged in a necessary operation of the train. There was a verdict and judgment for plaintiff in the trial court from which defendant appeals. Held, reversed, with instructions to sustain appellant's motion for a new trial; Remy, J., dissenting. When automobile driver could not stop after lights made train visible, the blocking of the crossing was not the proximate cause of plaintiff's injuries. Cleveland, C. C. & St. Louis Ry. Co. v. Gillespie, App. Court of Indiana, June 27, 1930, 172 N. E. 131.

In ruling upon the question of proximate cause the court seems to have decided a point which it was not necessary to decide. There is a confusion of the questions of negligence with the question of proximate cause and contributory negligence.

The reported opinion is very unsatisfactory and is inconsistent in its discussion of the problems involved. In the beginning of the opinion the court says, "The allegations are not sufficient to allege a violation of section 2903." (Sec. 2903, Burns' 1926, imposes a fine for permitting or suffering a freight train or any car or engine thereof to remain standing across any public highway, or when it becomes necessary to stop such train across any public highway, for failure to leave a space of sixty feet across such highway.) It would seem to be unnecessary to decide whether or not defendant was guilty of a violation of the statute. But, after remarking upon principles of common law negligence and giving a résumé of the evidence, the court returns to this point, and, citing cases, apparently decides the point which was said not to be raised by the allegations.

Proceeding then to a discussion of the common law principles involved, the court defines proximate cause, holds as a matter of law, that the driver