1912.

Present: Lascelles C.J. and Wood Renton J.

SILVA *v.* FERNANDO.

131—D. C. Colombo, 32,516.

Quantum meruit—Quasi *contract—Agreement to give share of plumbago for pumping water from mine—How far persons who were not parties to agreement are bound to pay for services rendered.*

B agreed to give A a one-fifteenth share of the plumbago from B's pit in consideration of A working certain pumping machinery, which drained the mines of A and B. C worked B's pit on an agreement with B. In an action by A against C, the District Judge held that the defendant was not bound by the agreement between A and B.

Held, on appeal, affirming the judgment, that plaintiff was not entitled to succeed even on a *quantum meruit* or on the basis of an implied contract.

THE facts appear sufficiently from the judgment.

Elliott, for the plaintiff, appellant.

No appearance for the respondent.

Cur. adv. vult.

July 5, 1912. LASCELLES C.J.—

The plaintiff by his plaint averred that by indenture of February 15, 1908, made between the plaintiff of the one part and A. H. Fernando and others of the second part, it was agreed that the parties of the second part should give the plaintiff a one-fifteenth share of the plumbago won from their respective mines in consideration of the plaintiff working certain pumping machinery, which drained the plumbago mines of the parties of the second part as well as that of the plaintiff; that A. H. Fernando carried out the agreement, as well as one Ponniah who worked A. H. Fernando's pit under an arrangement with Fernando; that the defendant subsequently worked the pit under an arrangement with Ponniah or Fernando, but has refused to pay one-fifteenth of the produce of the mine to the plaintiff. The plaintiff claims the value of the plumbago which the defendant should have paid on the footing of the agreement. The defence is that the plaint discloses no cause of action. The learned District Judge held that the defendant was not bound by the agreement, and threw out a suggestion that the plaintiff might have recovered on a *quantum meruit*. In the appeal it is not contended that the learned District Judge's finding with regard to the absence of any contract between the plaintiff and the defendant is wrong, but we are asked to allow the plaintiff an opportunity of basing his claim on a *quantum meruit*.

No authorities were cited to us by the appellant in support of the proposition that the plaintiff could recover on this footing. If the principles of the English law were applicable, the plaintiff's claim would not be sustainable on this ground. The law is thus stated by Bowen L.J. in *Falcke v. The Scottish Imperial Insurance Co.*[1]: "The general principle is, beyond all question, that work and labour done or money expended by one man to preserve or benefit the property of another do not, according to English law, create any lien upon the property saved or benefited, nor even, if standing alone, create any obligation to repay the expenditure. Liabilities are not to be forced upon people behind their backs any more than you can confer a benefit on a man against his will."

It cannot be said that in the present case the defendant by accepting the benefit of the plaintiff's pumping operations must be taken to have entered into a fresh contract. As is generally the case where the work is done on land, the circumstances are such as to give the defendant no option in the matter (*Sumpter v. Hedges*[2]).

The advantage which the defendant's mine received from the plaintiff's pumping came to him whether he desired it or not; it was the natural consequence of the relative situations of the plaintiff's and the defendant's mines, and there is no principle of

[1] *34 Chan. Div. 249.* [2] *(1898) 1 Q. B. 673.*

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English law which requires a person to contribute to an outlay merely because he has derived a material benefit from it. *The Ruabon Steamship Company v. The London Assurance.*[1]

The Roman-Dutch law on the subject is different. Quite apart from contracts and implied contracts, the Roman-Dutch law acknowledges a class of obligations arising *quasi ex contractu* from the circumstances in which the parties find themelves. The best known of these *quasi* contracts is the *negotiorum gestio, i.e.*, the administration of the property or affairs of another during his absence without his authority, where the Roman-Dutch law makes provision for the reimbursement of the expenditure incurred by the unauthorized administrator and defines his rights and liabilities. Another example of a *quasi* contract is the *solutio indebiti*, the obligation which arises when payment has been made by mistake of restoring what has been unduly received.

But I cannot find any authority in the text books in which the principle that no one should be enriched at the expense of another has been extended to a case like the present. As far as I can ascertain, the application of the principle is limited to certain well-defined cases. In *Morice's English and Roman-Dutch Law* the use of the term *quasi* contract by the Roman-Dutch jurists is regarded as a mode of explaining certain legal relations which arise in particular circumstances, such as the administration of a partnership, apart from contract or the obligation incurred on entering on an inheritance. But there is another objection to the application of the principle in the present case. There is no question here of a service being rendered to a person during his absence or without his knowledge. The plaintiff and the defendant were both present and aware of the condition under which the mines were worked. The question must be whether the plaintiff, in keeping his pumping machinery at work, acted with the authority, express or implied, of the defendant. There is no room for the doctrine of *negotiorum gestio.*

Burge (*vol. III., p. 990, 1st ed.*) states: " There is no foundation for any action on this species of contract, if the party has acted under the authority or in the presence or with the knowledge of the person for whose benefit he acted, because in either of these cases his remedy is on his mandate, express or implied."

In my opinion the findings that the contract between the plaintiff and Fernando is not binding on the defendant, and the absence of any evidence from which a fresh contract can be implied, are fatal to the plaintiff's action.

For the above reasons I think the appeal fails, and must be dismissed.

WOOD RENTON J.—I agree.

Appeal dismissed.

[1] (1900) *A. C. 6.*