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# Contracts--Quasi-Contract--Right of Tobacco Board of Trade to Regulate Non-Member Warehouses

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sufficient consideration for the return promise of the defendants to sell and deliver the total output of their mines.

It is a matter for conjecture what the attitude of the court will be in future cases involving a promise to sell total output. It is to be hoped that the court will bend to the dictates of business convenience and hold enforceable an agreement wherein such a promise is given in consideration for a return promise to buy the entire output or the total needs of the purchaser.

*John T. Bondurant*

CONTRACTS—QUASI-CONTRACT—RIGHT OF TOBACCO BOARD OF TRADE TO REGULATE NON-MEMBER WAREHOUSES—Congress, under its power to regulate interstate commerce, enacted the Tobacco Inspection Act<sup>1</sup> to provide for a uniform system of classification and inspection of tobacco to be sold at auction markets.<sup>2</sup> Pursuant to this Act no tobacco may be sold on a designated market until it has been inspected by an authorized representative of the Secretary of Agriculture.<sup>3</sup> Lexington is a designated market. To assist in carrying out the purpose of the Act the Secretary is authorized, under the Act, to cooperate with local organizations, such as boards of trade.<sup>4</sup> The Secretary has been cooperating with the Lexington Tobacco Board of Trade, which is an association of warehouse organizations<sup>5</sup> and persons engaged in the same general business acting together for their mutual benefit in the sale and purchase of tobacco. Of the twenty-eight tobacco warehouses located in Lexington, the owners of twenty-one are members of this association. Appellants are owners and operators of four of the non-member warehouses. The Board adopted regulations prescribing the order in which the sets of buyers of the tobacco would visit the Lexington warehouses, allotting selling time to each warehouse, prescribing the amount of space allowed per basket of tobacco, and prohibiting selling of tobacco in driveways. The appellants, in a declaratory judgment action, challenged the right of the Board to exercise such control over them, as non-members of the Board. The lower court held that the Board could exercise such control over non-member warehouses so long as it did not do so in a "discriminatory, unreasonable, arbitrary, or capricious manner." Upon

<sup>1</sup> 49 Stat. 735 (1935), 7 U.S.C. sec. 511 (1952).

<sup>2</sup> Id. sec. 511a.

<sup>3</sup> Id. sec. 511d.

<sup>4</sup> Id. sec. 511m.

<sup>5</sup> Not organized under statutory authority as in some states. E.g., see *Co-operative Warehouse, Inc. v. Lumberton Tobacco Board of Trade, Inc.*, 242 N.C. 123, 87 S.E. 2d 25 (1955).

proof taken the Chancellor found the regulations to be reasonable. This appeal goes only to the right of the Board to exercise control over non-members. *Held*: Affirmed. The Board may enforce its reasonable regulations against members and non-members alike. *Fayette Tobacco Warehouse Co., Inc. v. Lexington Tobacco Board of Trade, a Corporation*, 299 S.W. 2d 640 (Ky. 1956).

The court reasoned in this case to the following effect. Under the Tobacco Inspection Act an orderly system of sales was made a condition precedent to the sending of tobacco inspectors by the Secretary of Agriculture to the Lexington market. Without this inspection no one in Lexington could sell tobacco. The regulations of the Board create an orderly market and the resultant benefit to warehouses in Lexington. Therefore the acceptance of this benefit carries with it the corresponding obligation of abiding by the regulations of the Board. This applies to both members and non-members alike. The member warehouses impliedly contracted to be bound by all reasonable regulations of the Board by virtue of accepting membership in the association. In imposing upon non-members the obligation to abide by the Board's regulations the court relied on the theory of quasi-contract. The acceptance of the benefit deriving from a regulated, and hence orderly, market must be paid for by obedience to the regulations which secure this benefit.

The scope of this comment is limited to a discussion of two aspects of the principal case. (1) The novel use of the quasi-contract theory. (2) The correctness of the court's application of the quasi-contract theory to the facts of this case.

(1) When one has voluntarily accepted from another a benefit under circumstances that make it unconscionable for him to retain this benefit without paying for it, the law will impose an obligation to pay. Since such an obligation was ordinarily enforced in a contract action, the obligation was spoken of as a contract implied in law and, in more recent years, as quasi-contract. A quasi-contractual obligation is not based on the intentions of the parties and is really not a contract at all. It is an obligation enforced by courts to prevent the unjust enrichment of one person at the expense of another.<sup>6</sup>

The doctrine of quasi-contract has ordinarily been used to require one receiving property, services, or money under the above mentioned circumstances either to return what he has unjustly re-

<sup>6</sup>E.g. *Illinois Cent. R. Co. v. Reconstruction Finance Corporation*, 68 F. Supp. 78 (W.D. Ky. 1946); *First Nat. Bank of Okmulgee v. Matlock*, 99 Okla. 150, 226 P. 328, 36 A.L.R. 1088 (1924); *Highway Comrs. v. Bloomington*, 253 Ill. 164, 97 N.E. 280, Ann. Case 1913A, 471 (1911); *Herter v. Mullen*, 159 N.Y. 28, 53 N.E. 700, 44 L.R.A. 703, 70 Am. St. Rep. 507 (1899).

ceived or to pay for it with money.<sup>7</sup> But in the principal case the appellants were required to pay for the benefit of the tobacco inspection, they allegedly received through the Board, by an adherence to the Board's regulations which made this benefit possible.<sup>8</sup> This is certainly an extension of the quasi-contract theory.

There have been no previous Kentucky cases in which the theory was so broadly applied and the writer has failed to find cases from other jurisdictions analogous to the principal case. The best support that has been found for the court's extension of the theory in the principal case is Williston's broad language on the subject.<sup>9</sup>

One may wonder if this use of quasi-contract can be authority for requiring a company employee who is a non-member of the local union to pay dues or abide by other union regulations to pay for the benefits he receives by virtue of the union's existence and activi-

<sup>7</sup> Among the instances of the use of the theory of quasi or constructive contracts are those in which money is improperly received, e.g. *Keyes v. First Nat. Bank*, 25 F. 2d 684 (8th Cir. 1928), certiorari denied 278 U.S. 633; cases in which a person fails to deliver specific property and becomes liable for the money value thereof, e.g. *Cushing v. Chapman*, 115 F. 237 (C.C.E.D. Mo. 1902); or when money has been improperly paid e.g. *Roach v. Roach*, 68 Ga. App. 10, 21 S.E. 2d 859 (1942); cases of account stated, e.g. *Crittenden & Eastman Co. v. Leader Furniture Co.*, 23 Ariz. 93, 201 P. 843 (1921); judgments on which an action of assumpsit or debt may be maintained, e.g. *Grothier v. Meyer Rosenberg*, 11 Cal. App. 2d 268, 53 P. 2d 996 (1936); cases in which an obligation to pay money is imposed by a statute, e.g. *Western Union Tel. Co. v. Taylor*, 84 Ga. 408, 11 S.E. 396, 8 L.R.A. 189 (1890); cases in which a person by wrongfully appropriating property to his own use becomes liable to pay the owner the reasonable value thereof, e.g. *First Nat. Bank v. Perth Amboy Iron & Metal Co.*, 119 N.J. Eq. 569 (1936); cases in which one person has wrongfully compelled another to render him valuable services, e.g. *Blackwood v. Southern Ry. Co.*, 178 N.C. 342, 100 S.E. 610 (1919); cases in which one man has obtained money from another by oppression, extortion, or deceit; or by commission of a trespass, e.g. *Chudnovski v. Eckels*, 232 Ill. 312, 83 N.E. 846 (1908); cases in which necessities are supplied to a person who by reason of disability cannot himself make a contract, e.g. *Snyder v. Nixon*, 188 Iowa, 779, 176 N.W. 808 (1920); and cases of recovery by a husband against his wife's estate of funeral expenses, e.g. *In re Wagner's Estate*, 178 Okl. 384, 62 P. 2d 1186 (1936).

<sup>8</sup> The regulations referred to are those pertaining to the allotment of selling time, rotation of sales, floor space for baskets, and prohibition against selling in drive-ways. It seems the court might have made some distinction between those regulations which went to actually create an orderly market, as rotation of sales, and allotment of selling time, and other regulations which have, at best, an indirect effect upon the orderliness of the market.

<sup>9</sup> 1 Williston, *Contracts* sec. 3 (rev. ed. 1936), stating: . . . In the first place as quasi contractual obligations are imposed by the law for the purpose of bringing about justice without reference to the intention of the parties, the only apparent restriction upon the power of the law to create such obligations is that they must be of such a sort as would have been appropriately enforced under common law procedure by a contractual action. Indeed even this limitation is too narrow, for a bill in equity or a libel in admiralty might be the appropriate means of enforcing some quasi contractual obligations. As the law may impose any obligations that justice requires, the only limit in the last analysis to the category of quasi contracts is that the obligation in question more closely resembles those created by contract than those created by tort. . . .

ties; or to require a retail merchant to abide by the regulations of a retail merchant's association, of which he is not a member, because he receives some benefits resulting from there being such an association? Some may feel that such a result would be desirable; but no doubt there are others who feel that it is not the function of the courts to foster labor or business organizations by protecting them from the disharmony caused by recalcitrant potential members.

(2) Assuming the soundness of this extension of the quasi-contract theory, did the court properly fit the theory to the facts of the principal case? It would appear obvious that if the non-member warehouses must pay the Board for a benefit bestowed, the benefit in question must have actually come from, or by way of, the Board. The court said that the benefit received by the non-members was the providing of tobacco inspectors by the Secretary, but that this benefit came by way of the Board since the Board made possible an orderly market which was a condition precedent to the sending of inspectors. But *was* an orderly market a condition precedent to the sending of inspectors to the Lexington market? The opinion of the court in the principal case fails to indicate a source for this requirement, and neither the Tobacco Inspection Act nor the regulations made by the Secretary pursuant thereto<sup>10</sup> mention such a condition. Unless this requirement of an orderly market stems from a source not mentioned in either the record, briefs, or opinion it would seem that the court in the principal case has indulged in a bit of legislating in order to supplement the Tobacco Inspection Act.<sup>11</sup>

The conclusion which appears to follow from the above discussion is that the court has stretched the concept of quasi-contract to, at least, its outer limits and has added a requirement to those of the Tobacco Inspection Act in order to subject the non-member warehouses to the Board's regulations. There might well have been reasons of public policy behind the court's decision which made such a result appear desirable for the Lexington tobacco market.<sup>12</sup> A discussion of these policy considerations is beyond the scope of this comment, but regardless of whether the result is considered desirable or undesirable, one may question the court's use of quasi-contract theory and its interpretation of the Tobacco Inspection Act in reaching the result.

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<sup>10</sup> 7 CFR sec. 29 (1953, Supp. 1958).

<sup>11</sup> Courts cannot reach out and usurp powers belonging to the legislature, e.g. *McCray v. United States*, 195 U.S. 27, (1904).

<sup>12</sup> Since the purpose of most of the Board's regulations is to control competition the members would appear to be put at a distinct disadvantage if non-members may disregard the regulations and use sharper methods of doing business.