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Pleading--Motion for Judgement--Quasi-Contracts

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of the holding company was in turn distributed to the stockholders of the old corporation. The Court held this a taxable gain although it was argued that it was a distribution in liquidation, and not a distribution of surplus. However, in *Weiss v. Stearn*,[8] where an exchange of stock was made between two corporations, and the stock received by one corporation was distributed to its stockholders, the Court held the entire arrangement a financial reorganization, which in itself was insufficient to render the new stock taxable as income to the stockholders. Mr. Justice Holmes and Mr. Justice Brandeis dissented on the ground that the Court was taking a stand inconsistent with its former decisions, and it rightly appears so.

In summary it may be said that as a general rule any gain accruing on the exchange of stock in one company for that of another will be taxable unless the arrangement was a mere reorganization of a single going concern.

—AUGUST W. PETROPLUS.

PLEADING — MOTION FOR JUDGMENT — QUASI-CONTRACTS. — In *Lambert v. Morton*[1] the Supreme Court of Appeals of West Virginia recently held that the statute[2] providing for the recovery of money by action on any contract by motion for judgment applies as well to contracts implied in law (quasi-contracts), as to express contracts. The case is one of first impression in West Virginia.

Under equally broad statutory language the Supreme Court of Appeals of Virginia reached the same conclusion in the case of *Long v. Pence's Committee*.[3] Such a construction is desirable in view of the object of the statute, which is to simplify and shorten pleadings and other proceedings, with less chance of a miscarriage of justice. Another advantage of procedure by motion is that a plaintiff may so proceed when it is too late to mature a regular action, or even after the beginning of a term of court, if it shall continue in session long enough for that purpose.[4]

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[8] 265 U. S. 242, 44 S. Ct. 490, 33 A. L. R. 520 (1924). *Contra*: Marr v. United States, 268 U. S. 536, 45 S. Ct. 575 (1925). Four judges dissented on the ground that the case fell within the rule of Weiss v. Stearn.

[1] 160 S. E. 223 (1931).
[2] W. VA. REV. CODE (1931) c. 56, art. 2, § 6.
[3] 93 Va. 584, 25 S. E. 593 (1896).
[4] BURKS, PLEADING AND PRACTICE (2d ed. 1920) c. 20, p. 219 *et seq.*

It is submitted that this holding may be extended to all quasi-contractual obligations, and likewise to obligations arising upon the commission of a tort where such tort gives rise not only to damage to the person injured, but also to a monetary benefit to the tort-feasor. Alternative obligations arise—on the one hand an obligation to pay such damages as the plaintiff has suffered, and on the other an obligation to pay for such benefits as the defendant has received. If the plaintiff elects to enforce the obligation to make restitution, and proceeds under the statute in question, no violence is done the language of the statute. True there has been no assent or voluntary assumption of the obligation, but the whole law of quasi-contract, from the remedial point of view, depends on the fiction that the defendant has promised to do that which in justice he ought to do.[5]

Virginia has found it desirable to extend the scope of the remedy, until at the present time one may proceed by notice of motion for judgment in any case, with certain jurisdictional limitations, where there is a right to maintain an action at law.[6] Such provision is a compromise between a system of code pleading, and a system of common law pleading as modified by statutes. Doubtless we have proponents of each system. If West Virginia should make this extension the advocates of code procedure will have full opportunity to develop the merits of the system. If they prove more satisfactory than the present system the transition would be much easier than a complete change at one time.[7]

—DONALD M. HUTTON.

PUBLIC UTILITIES — IS AN ICE BUSINESS "AFFECTED WITH A PUBLIC INTEREST"? — The plaintiffs were engaged in the manufacture and sale of ice in Oklahoma City pursuant to a license granted according to the statute of Oklahoma.[1] The defendant was about to set up a similar business in the same city without applying to the Corporation Commission for the required certificate of convenience and necessity.[2] The plaintiffs sought to enjoin this establishment on the grounds that it is in violation of the

[5] WOODWARD, THE LAW OF QUASI-CONTRACTS (1913) c. 19, 20.
[6] VA. CODE ANN. (1930) § 6046.
[7] BURKS, *The Code of 1919* (1919) 5 VA. L. REG. (N. S.) 97, 120.

[1] Okla Sess. Laws 1925, c. 147.
[2] *Ibid*, § 2.