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RONALD NORMAN CHARLES DIXON
in the name of and on behalf of the
Administration of the Territory of
Papua and New Guinea

against

DENNIS HUGGINS

Mann, C.J. 6th and 10th September, 1957
Appeal from order of District Court of New Britain at Rabaul.

Contract - quasi-contract - implied contract
Administration of Territory - powers of officers
of to contract for
Medical services - implied contracts with patients.

Dixon, a Treasury official at Rabaul, sued Huggins for £20. 11. 5. for medical services provided by the Administration at his request, and in due course, extracted judgment. Later, on the application of Counsel for the Respondent, the District Court set the judgment aside; ordered the case argued, and found that (a) the sum of £7. 12. 0. only was proved to be owing but that (b) there was no cause of action because the legislation provides "that the Administration can make certain contracts provided Regulations in that "regard are promulgated, and unless these are promulgated any "contracts so entered into must be ultra vires. The Complainant "admits that there is no statutory power and I therefore must give "judgment for the Defendant." It is on the latter point (that "without statutory authority no charge can be made") that the appeal was brought.

Held; the claim is in substance the common indebitatus count for work and labour done for the Respondent at his request. It is not a claim to enforce a statutory debt or obligation;

Held; the Public Health Ordinance established a comprehensive public health service and, subject to the control of the Director, empowers individual officers carrying out their normal duties to employ the process of making contracts with members of the public as a means of carrying out the purposes of the scheme;

Held; there was no legal defence to the original claim, whether it is put on a basis of implied contract or quasi-contract.

Judgment appealed against set aside and in lieu thereof Judgment entered for Complainant-Appellant for £7. 12. 0. with costs.

See Chitty on Contracts, 21st Edition, Vol.I, p.69-71.
Halsbury, 2nd Edition, Vol.22, p.317.

Mr. P. J. Clay, of Counsel, for Appellant
No appearance for Respondent.

MANN, C.J.

This is an Appeal from a decision of the Stipendiary Magistrate at Rabaul pronounced on the 22nd July, 1957, in which he dismissed a complaint brought on behalf of the Administration against the Defendant Dennis Huggins for debt in respect of certain medical services.

It is apparent from the proceedings before the learned Magistrate that the defence raised at the trial not only took the Appellant's officers by surprise, but thereby deprived the learned Magistrate of the assistance which he would undoubtedly have received if he had had the benefit of fully considered submissions on both sides. The defence was based on a mistaken view of the effect of the Health Ordinance which was relied on by the Defendant as creating a special statutory power to recover charges of the nature in question conditional upon the appropriate regulations being made. It was common ground that no such regulations existed, and it was only a short step, on that line of reasoning, to say that the Complainant could not recover. This is in general effect the view into which the learned Magistrate was led.

In his reasons for Judgment, he makes it clear that on all other issues he was satisfied that the Complainant had proved an amount of £7. 12. 0. due to it.

Personally, looking at the evidence, I had some doubt whether it disclosed that the parties had any intention in fact to create any obligation to pay for the services rendered, but the Defendant's admissions appear to me to lend sufficient support for the inference drawn by the learned Magistrate on this issue.

The Health Ordinance 1932-1938 provides for the establishment of a system of Medical Officers under a Director whose chief duties are, under the Administrator, to administer the Ordinance. By Section 19 the Administrator-in-Council is empowered to make regulations covering a varied field of public health matters. Section 19(1)(s) extends this regulating power to the subject of charges to be made for services supplied or rendered in pursuance of the Regulations. The defence assumes that the subject matter of the present claim constitutes services supplied or rendered under the Regulations, and having regard to the wide scope of these, this may well be so. There is, however, no regulation-making power concerned with the creation of civil causes of action or liability at law, in contract. It may be that regulations fixing a scale of charges could create a statutory liability or could be enforced by information for an offence based on further regulations made under sub-paragraph (n) but I am not concerned to decide such a question now. The point only serves to illustrate that the regulation-making scheme set out in Section 19(1) of the Ordinance does not purport to affect the powers of the parties to incur civil obligations of a contractual nature on matters which are not affected by any regulation in force.

The correct approach to this problem is, I think, to look at the particulars of demand and then ascertain what cause or causes of action are relied on and what facts must be proved to establish the right claimed. This is not a claim to enforce a statutory debt or obligation. The particulars contain in substance the common indebitatus count for work and labour done for the Defendant at his request. Such a claim may be satisfied by proof of a contract express or implied or a quasi-contract. Mr. Clay based his submission that "quasi-contract" should be considered separately from implied contract, upon the fact that even in cases where Courts might be unable to imply an entire contract which would give rise to executory rights and obligations, a claim in indebitatus would succeed where the consideration had been paid over or performed, on a quantum meruit basis. (Fishmongers Coy. v. Robertson 5 M. & G. 192, 193-4). I agree with this view and I think that it helps to clarify the position. In the

present case, however, the distinction between implied contract and quasi-contract calls for care.

The warning given in Sinclair v. Brougham (1914) A.C. 398 that a claim in quasi-contract is in English law based on the fiction of an actual contract, and therefore cannot arise where the actual contract would be ultra vires, must be heeded. (See Viscount Haldane L.C. at pp.414-5, 417, Lord Sumner, p. 452). Mr. Clay concedes this point.

It was contended before me that the Crown has unlimited power at Common Law in relation to contracts and that the Administrator represents and exercises the power of the Crown by virtue of the appointment of the Administrator under the provisions of the Papua and New Guinea Act 1949-1950. Leave to produce further evidence on the Appeal to prove this appointment was granted by me, pursuant to Section 234B. of the District Courts Ordinance, since although the matter falls outside the scope of the defence as argued, it appeared to me to come within the terms of the Statement of Defence given on behalf of the Defendant at the hearing, and appeared to be a matter which the Complainant might be called upon to meet; although, taken somewhat by surprise at the hearing, the Complainant was not fully prepared for it then.

The appointment of the Administrator was by the Governor-General as provided by Section 14 of the Papua and New Guinea Act. It contains no limitations upon the general powers referred to in Sections 13 and 15 of the Act. These Sections confer upon the Administrator a general power of administration of the Government of the Territory on behalf of the Commonwealth.

The phrase "administering the government" are words of wide import and are apt to describe and cover all the executive powers of the territorial government. The limitation placed upon the powers of the Governor-General under Section 61 of the Commonwealth Constitution explained in Commonwealth v. Colonial Combing Spinning and Weaving Co. Ltd. 31 C.L.R. 421, 453-4, does not arise here because the whole aspect of territorial government is a Commonwealth matter.

It was argued therefore that there can be no lack of capacity to contract on behalf of the Government of the Territory, and the wide power of administration conferred on the Administrator must include the power to delegate authority to make contracts of this kind, since they must of necessity occur from dau to day all over the Territory in order to make government possible. The basis for this argument is logical enough, but difficulty arises by reason of the provisions of the Administration Contracts Ordinance 1941-1952. This Ordinance was in fact made by the Governor-General under statutory power, and may therefore be considered as a statutory provision imposing limitations by its own force in the Territory, or as an "instruction" of the Governor-General pursuant to Section 15 of the Papua and New Guinea Act. The effect of the Ordinance is to confer authority upon the Administrator to make contracts "on behalf of the Commonwealth" but to impose a limit of £25,000 on that authority unless special approval is obtained. If this Ordinance is to be construed as "covering the whole field" of the Administrator's power to make contracts, difficulty might arise because, although there is no question of exceeding £25,000 in this case, yet the only authority contemplated by this Ordinance is to enter into and execute contracts which "in his opinion" are necessary or desirable in the public interest. Since this opinion must clearly be that of the Administrator himself, I think that there is room for the argument that he cannot delegate this function and must therefore apply his own mind to the necessity or desirability of every contract he makes on behalf of the Commonwealth, whether under or over £25,000.

There may also be room for the argument that the authority conferred by the Ordinance is only concerned with contracts binding on the Commonwealth as such and has no reference to contracts of the local Administration which are not intended to be directly binding on the

Commonwealth, but if there is room for any such distinction as to the identity of the principal party to the contract, it is curious that this enactment which is binding on the Commonwealth as distinct from the Administration, should be by local Ordinance rather than by Commonwealth Act.

It is more likely, I think, that the Ordinance is concerned only with contracts entered into by the Administrator himself on behalf of the Commonwealth, and has no reference to contracts made by Officers of the Administration carrying out duties devolving upon them from statutory or other sources, quite apart from any authority derived from the Administrator.

Since the Administration of the Territory involves such a wide field and since the making of minor contracts and arrangements is such a common means of transacting business either of commerce or government, I would be reluctant to decide the questions outlined above in the present case unless such decision were essential to the case. Beyond expressing doubt whether power to make the contracts in question could be established by process of delegation of authority through the Administrator, I express no opinion, since I think that there is a clearer answer to the present problem.

It does not appear to me to be correct to say that the powers of all the Officers of the Administration are limited to those delegated by the Administrator from the wider powers conferred on him. The Health Ordinance itself is, I think, the appropriate source of their general powers. Under this Ordinance the Director has the duty subject to the Administrator of administering the Ordinance. The Ordinance provides for the appointment of Officers and the establishment of a comprehensive public health service by regulations to be promulgated by the Administrator-in-Council. The Administrator's function is not to delegate any of his own powers but to control the exercise by the Director and his Officers of their powers created by the Ordinance and the Regulations. This control is in turn exercised subject to any instructions from the Governor-General.

There is therefore no room for the application of any "non delegare potest" rule here. The simple question becomes whether having regard to the scope of the public health scheme as a whole, and the circumstances existing in the Territory under which the scheme is to be put into effect, it is a fair inference that the Ordinance intended to empower the individual Officers carrying out their normal duties to employ the process of making contracts with members of the public as a means of carrying out the purposes of the scheme. I think that in the absence of any indication to the contrary, such an inference is irresistable. In many parts of the Territory the Public Health Officers are the only source from which all kinds of services of an important character may be obtained, and the service could hardly achieve its object if its Officers had no power to contract with individuals. The exercise of such a power is of course a matter for control by the Director, according to policy laid down.

There is no need for me to decide the precise identity of the parties to any such contract; whether the contract should be regarded as made by the Crown in right of the Commonwealth or the Commonwealth in right of the Territory or simply by the Territorial Administration does not matter, since the Territory is administered on behalf of the Commonwealth and the Claims by and against the Administration Ordinance 1951 enables proceedings to be taken in the name of the Administration. I think that as a matter of form the heading used in the Affidavits filed in the Appeal proceedings is preferable to that employed in the original summons. The complaint might still be signed on behalf of the Administration by Mr. Dixon as authorised Officer.

For the reasons given I can see no legal defence to the claim whether it is put on a basis of implied contract or quasi-contract. In my opinion the Judgment or Order appealed against should be set aside and in lieu thereof Judgment entered for the Complainant for £7. 12. 0. with costs.