Wooldumpers case. On a subject matter of such importance in present industrial relations, it will not be long before the jurisdiction of the Commission to deal with disputes over reinstatement comes before the High Court again. Parties would be well advised to focus on the future consequences of such disputation rather than looking to the past. Whilst up until now the High Court has avoided questions about the nature of the jurisdiction of the Commission to deal with threatened, impending or probable disputes or to exercise its prevention power, the time is rapidly approaching when this will no longer be possible. The consequences of this for the whole industrial relations system will be immense; for example, it is likely to alter significantly the role of the 'paper disputes'. Just how immense those changes will be, only time will tell.

ROSEMARY J. OWENS*

[Since this note was written the Industrial Relations Commission has held that it had jurisdiction to exercise its preventative powers of conciliation and arbitration to deal with a reinstatement dispute — see *Australian Social Welfare Union v. Stones Corner Training Association* [1989] AILR 268. R.J.O.]

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PAVEY & MATTHEWS PTY LTD V. PAUL[1] AND THE LAW OF RESTITUTION

It is a well-established rule that where a person has expressly or impliedly requested another to render a service without specifying any remuneration, but the circumstances of the request imply that the service is to be paid for, the law implies a promise to pay *quantum meruit*, that is, the reasonable price of the service provided.[2] Such a promise is inferred from the existing contract between the parties.[3] The action may also lie where services have been rendered in the absence of a genuine agreement or where such agreement is void, frustrated, discharged or unenforceable.[4] In the past, recovery in the latter types of cases was ordered on the basis of an implied contract between the parties.[5] In *Pavey & Matthews Pty Ltd v. Paul* the High Court of Australia sought to apply this principle to a claim which, although on a *quantum meruit*, was based on a building contract made unenforceable against the building owner by the provisions of s. 45 of the Builders Licensing Act 1971 (N.S.W.) (The Act). The problem was that if *quantum meruit* in the latter types of cases was indeed based on an implied promise to pay, then recovery in this case would amount to an indirect enforcement of a contract which the legislature had declared unenforceable and would, on the Court's interpretation of the section, be unavailable. However, on the facts,[6] the plaintiff clearly ought to have recovered in order to prevent the unjust enrichment of the defendant by the receipt of a benefit at

1 (1987) 69 A.L.R. 577. High Court, 4 March, Mason, Wilson, Brennan, Deane and Dawson JJ.
2 Bird, R. (ed.), *Osborn's Concise Law Dictionary* (7th ed. 1983) 273.
3 Although it may well be questioned whether the basis of recovery is indeed contractual or restitutionary. The question was left open in *Pavey & Matthews* (*per* Deane J., 603).
4 Some examples are: *Craven-Ellis v. Canons Ltd* [1936] 2 K.B. 403 (contract void), *White & Carter (Councils) v. McGregor* [1962] A.C. 413 (contract discharged).
5 This was despite the fact that it was accepted that in many cases the real basis of recovery was restitutionary: see for example Lord Atkin's judgement in *United Australia Ltd v. Barclays Bank Ltd* [1941] A.C. 1, 26-9 and Lord Wright in *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.* [1943] A.C. 32, 61.
6 Apart from the wider-reaching implications of allowing recovery, *i.e.*, frustration of legislative intent (see *infra*).

the plaintiff's expense. In order to find for the plaintiff, the Court had to find that s. 45 of the Act did not apply in this case, and they were able to do so by resorting to the principles of restitution or unjust enrichment.

THE FACTS

The facts of the case were simple. The plaintiff, a licensed builder, entered into an oral agreement with the defendant to carry out building work and supply the materials involved in the renovation of the defendant's cottage. It was agreed by the parties that upon completion of the work the defendant would pay a reasonable remuneration for it, to be calculated 'by reference to prevailing rates of payment in the building industry'.[7] The work was indeed completed and accepted by the defendant who, having paid a sum of $36,000, refused to pay the sum stipulated by the builder as constituting the reasonable price for the work. The plaintiff sued for a sum of $26,945.50, being the balance owing in respect of the work, payable as on a *quantum meruit*.

By her statement of defence Mrs Paul put in issue certain matters of fact and denied the reasonableness of the charges. She also pleaded that the oral contract under which the work had been performed was made unenforceable against her by virtue of s. 45 of the Act. That section provides that a building contract under which a licensed builder undertakes to carry out building work is not enforceable against the building owner unless it is in writing, signed by both parties and sufficiently describes the work to be done under the contract.

The issue was initially decided in favour of the plaintiff. An appeal by the defendant was allowed by the Court of Appeal (N.S.W.)[8] which unanimously held that the plaintiff's claim on a *quantum meruit* was an action to recover the agreed remuneration under the oral contract, thus amounting to an indirect enforcement of the unenforceable contract. The builder appealed against this decision to the High Court of Australia.

The High Court had to consider the interpretation of s. 45 of the Act as it related to actions not directly on the contract and to decide whether an action on the old *indebitatus* count, of which *quantum meruit* was a part, amounted to an action on the contract which was precluded under the Act.

THE JUDGMENTS

Section 45

The majority of the Court (Mason, Wilson, Deane and Dawson JJ., Brennan J. dissenting) regarded s. 45 of the Act as sufficient to preclude both the direct and the indirect enforcement of the oral agreement.[9]

Mason and Wilson JJ. considered the meaning of the words 'enforceable' and 'unenforceable' and concluded that, unlike the Statute of Frauds 1677 (U.K.)[10] and its successors which, although barring an action on the contract, did not exclude enforcement 'by judicial and curial remedies', the provisions of s. 45 of the Builders Licensing Act were 'apt to provide for unenforceability in the wider sense',[11] thus disallowing enforcement both direct and indirect of a contract which failed to satisfy its requirements. Deane J. also concluded that although the Statute of Frauds did not preclude actions on *indebitatus*, whether in debt or in *assumpsit*, such actions would be barred by the Builders Licensing Act if their basis was contractual.[12]

Having considered the legislative intent underlying the Act, the majority concluded that although s. 45 precluded the direct or the indirect enforcement of an oral contract in the sense discussed, it

[7] The issue of a defence base on s. 45 of the Act, by consent, was tried by Clarke J. on certain agreed facts; strangely, the 'reasonableness' or otherwise of the sum stipulated by the builder was not considered to be an issue in dispute.

[8] *Paul v. Pavey & Matthews Pty Ltd* (1985) 3 N.S.W.L.R. 114.

[9] The terms are used in the sense of (a) a direct action on the contract, *e.g.* for damages for breach and (b) an indirect enforcement such as the recovery of a debt arising under the contract.

[10] 29 Car. 2, c. 3, s. 4.

[11] (1987) 69 A.L.R. 577, 582.

[12] *I.e.* if based on an implied promise to pay.

would not prevent a claim which was non-contractual in character such as one based on the principles of restitution or unjust enrichment. The section was held to be unlike such provisions as s. 22 of the Moneylenders and Infants Loans Act 1941 (N.S.W.) which was seen as entailing total unenforceability of non-complying contracts, leaving no room for any quasi-contractual claims on the part of the moneylender.[13] In that sense s. 45 of the Act was construed in a manner analogous to s. 4 of the Statute of Frauds which, although precluding an action on the contract, does not affect the availability of quasi-contractual relief.

Brennan J. in dissent was of the opinion that unenforceability under s. 45 of the Act extended to all contractual actions and that 'there is no room, while the unenforceable contract is subsisting, for a quasi-contractual claim',[14] such a claim being historically based on an express or implied agreement between the parties.

Indebitatus Assumpsit

Having concluded that s. 45 of the Act may leave room for recovery on the basis of unjust enrichment or restitution, the Court proceeded to consider whether a claim on a *quantum meruit* in these circumstances was indeed restitutionary in nature or, as traditionally believed, depended upon the existence of an 'implied contract'.

The Court (Brennan J. dissenting) held that an action on a *quantum meruit* brought in *indebitatus assumpsit* rested not on implied contract but on restitution or unjust enrichment.[15] Reversing the decision of the Court of Appeal, the Court held that the recovery of a reasonable remuneration for work performed and accepted did not amount to an indirect enforcement of the unenforceable contract. In a detailed analysis of the historical development of the action, Deane J. concluded that the liability to pay on a *quantum meruit* brought in *indebitatus assumpsit* arose from the recognition by the law of an obligation in many categories of cases to make restitution in circumstances where the defendant had received a benefit at the expense of the plaintiff and it would be unjust to allow the defendant to retain that benefit without payment. The obligation not being contractual at all but arising 'from the operation of law upon the circumstances',[16] such an action would not be precluded under either the Statute of Frauds or the Builders Licensing Act. The reason given was that in such a case the plaintiff is not suing 'on the contract' or 'under the contract' at all;[17] its action is not dependent upon a contractual obligation to pay, but on a separate legal obligation based on the concept of unjust enrichment and arising from the defendant's acceptance of benefits accruing to her from the plaintiff's performance of the unenforceable contract.[18] It was recognized by the Court that proof of the oral contract may be an indispensible element in the plaintiff's success but they stated that this was in order to show that the benefits were not intended as a gift and that the defendant had not rendered the promised exchange value: 'The purpose of providing the contract is not to enforce it but to make out another cause of action having a different foundation in law.'[19]

Brennan J. in dissent recognized that some quasi-contractual obligations were imposed by law independently of contract, but held that there was no ground in restitution for imposing an obligation

[13] The point of distinction was held to be the purpose underlying the Moneylenders and Infants Loans Act, which was designed to protect borrowers from oppressive conduct on the part of moneylenders. It was thought that s. 45, seen in its setting and in conjunction with the insurance scheme established by the Act, stood on a different footing ((1987) 69 A.L.R. 577, 585, *per* Mason and Wilson JJ.).

[14] *Ibid.* 595.

[15] *Ibid.* 583 (*per* Mason and Wilson JJ.), 603 (*per* Deane J.), 613-4 (*per* Dawson J.).

[16] *Ibid.* 601.

[17] Indeed, his Honour stated that 'the *quasi*-contractual obligation to pay fair and just compensation for a benefit which has been accepted will only arise in a case where there is no applicable genuine agreement or where such an agreement is frustrated, avoided or unenforceable. In such a case, it is [that] very fact . . . that provides the occasion for (and part of the circumstances giving rise to) the imposition by the law of the obligation to make restitution.' (*Ibid.* 604. Compare this view with Brennan J. at 591; see *infra* n. 20.)

[18] *Ibid.* 583 (*per* Mason and Wilson JJ. (in agreement with Deane J.)).

[19] *Ibid.* 583.

to pay remuneration where there was a subsisting but unenforceable contract which expressly or impliedly provided for that remuneration.[20] In his view this would amount to an indirect enforcement of the unenforceable contract: 'An action to recover money due on an executed contract may be distinguished from an action to enforce a promise to pay contained in the contract — the point of distinction being the debt to which the contract gives rise — but the debt is nevertheless a cause of action arising out of the contract.'[21]

Such a view is not wholly unjustifiable. For although the Court clearly stated that the obligation to pay on a *quantum meruit* was independent of, and altogether separate from, a contractual obligation to pay, it is difficult to see how in this case the ordering of restitutionary payment of a reasonable remuneration for services provided under an unenforceable contract did not amount to an indirect enforcement of it.[22] Despite the fact that restitutionary relief is not dependent upon contract, recourse to restitutionary principles in this case had the effect of enforcing a contract which the legislature had declared to be unenforceable. That may be the reason why Mason and Wilson JJ. (in their joint judgment)[23] and Deane J.[24] emphasised the requirement that the plaintiff not only prove performance of the work, but also the acceptance of it by the defendant without payment. Deane J. was at pains to point out that the unenforceable contract was not relevant to the plaintiff's claim except as to the fact of request and acceptance of the work, and as a point of reference in the calculation of the reasonable remuneration, the contract being used 'as evidence, but as evidence only' on the question of amount.[25] Mention was also made by his Honour of the relevance of 'any identifiable real detriment' incurred by the defendant as a result of the plaintiff's non-compliance with statutory requirements which, although far from establishing a 'change of position' defence, makes it clear that the remedy is not based upon a contractual obligation but is restitutionary in nature.[26]

Legislative Intent

The fact that recourse to restitution in this case amounted, in effect, to enforcement of the oral agreement may also be the reason why the majority felt compelled to justify their holding further by considering the legislative policy underlying the Act, concluding that such 'enforcement' did not defeat the legislative intent.

The Court found that s. 45 of the Act was enacted in order to ensure that building work was sufficiently described so as to attract the benefit of the compulsory insurance scheme[27] as well as to prevent disputes arising over the work to be done, and its cost, and to provide protection of building owners against spurious claims by a builder.[28] But it was held that this protection did not extend to a

20 His Honour thought that such an obligation would either duplicate or contradict the subsisting contract which he regarded as the source of the rights and obligations of the parties. In his view if the contract was ineffective the law could not impose other rights and obligations to vary its provisions or to negative the rule which rendered it unenforceable — *ibid.* 591.

21 *Ibid.* 594.

22 Particularly so, given the fact that the agreement itself provided for payment of a 'reasonable price' as opposed to a specified amount.

23 (1987) 69 A.L.R. 577, 583.

24 *Ibid.* 605.

25 *Ibid.*

26 *Ibid.* 609. His Honour stated that any real detriment sustained by the building owner as a result of the builder's non-compliance was to be taken into account in determining what constituted a fair and reasonable remuneration in the circumstances, but that this did not include a situation where the reasonable remuneration exceeded the defendant's expectations.

27 Mason and Wilson JJ. thought that the section performed a function similar to s. 75 of the Builders' Registration and Home-Owners' Protection Act 1979 (Qld) the purpose of which was to ensure that a degree of precision was introduced into house building contracts so as to attract the benefit of the insurance afforded under the Queensland Act. (*Ibid.* 584.)

28 Although it was not fully explained how this purpose would not be undermined by allowing recovery. Compare the view of McHugh J.A. in *Paul v. Pavey & Matthews Pty Ltd* (1985) 3 N.S.W.L.R. 114, 132: 'Disputes between builders and home owners as to what work was agreed upon and what was to be its cost have plagued the building industry for many years. Section 45 represents a legislative attempt to overcome this problem by forcing licensed builders to obtain written contracts for building work before they are enforceable by builders. We must give effect to the legislative policy embodied in s. 45, however harsh it may seem in the individual case.'

case where the owner requested and accepted the building work and declined to pay for it on the ground that the contract failed to comply with the statutory requirements.[29] To hold that the builder was not entitled to payment in these circumstances would lead to the 'draconian consequences' of leaving the builder liable to perform its contractual obligations without an enforceable right to demand payment. It may be that the legislative policy underlying the statute places a penalty of total loss upon the builder for non-compliance (notwithstanding that this may result in an unjust enrichment of the other party) in order to force builders to reduce such agreements to writing for the protection of the public. This was the view taken by Brennan J.[30] and it is indeed a plausible one; however, given the fact that the Act incorporates a compulsory insurance scheme for home owners and that, unlike the Moneylenders and Infants Loans Act,[31] it does not provide for any alternative form of relief for non-compliance, it may not be unreasonable to suppose, as the majority did, that such a harsh and unjust operation was not intended by the legislature.

Deane J. also concluded that it was not conflicting with any discernible legislative policy to allow a builder who was precluded from enforcing an agreement to bring proceedings on a common *indebitatus* count to recover fair and reasonable remuneration for work which was actually done and had been accepted by the building owner. His Honour held that such action would not frustrate the purpose of the section to provide protection for a building owner as the owner remained entitled to enforce the contract and could not be forced to comply with its terms or to permit the builder to carry it to completion; all that the owner could be required to do was to pay reasonable compensation for work done of which the owner had received the benefit, and for which in justice s/he would be obligated to make such a payment by way of restitution.[32]

IMPLIED CONTRACT v. UNJUST ENRICHMENT: THE 'IMPLIED CONTRACT' THEORY OF RESTITUTION

For a long time it was believed that restitution was based on the notion of 'implied contract', a view which has its roots in the old forms of action on money counts. Those actions developed from the actions of debt and account, both of which were gradually supplanted by the common law action of *assumpsit* because of its procedural advantages. Under *assumpsit* the action did not lie merely for the recovery of a debt but for the non-performance of an implied promise to pay. The promise was often wholly fictitious and was implied from the bargain. Later, however, this fiction enabled *assumpsit* to be used in enforcing obligations which were non-contractual and which had never been otherwise actionable. By the 18th century the foundations of the modern law of *quasi*-contract (based on a theory of implied agreement) had been laid.

The fiction which lay at the root of *indebitatus assumpsit* left a 'legacy of confusion' about the theoretical basis of money counts which arguably hindered the development of a law of restitution until this century.[33] That the promise to pay was often fictional and imposed in the appropriate category of case to avoid unjust enrichment was recognized as far back as the 17th century. In 1760 Lord Mansfield described the action for money had and received as an action in which 'the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money.'[34] However, the forms of action which then existed dictated that an implied promise to make restitution had to be pleaded even though such a promise was fictional, as it was only through that fiction that a *quasi*-contractual claim was enforceable in *indebitatus assumpsit*. After the abolition of the forms of action in the 19th century[35] it was no longer necessary to plead an implied promise to pay. However, the fiction did not die. After the contract-tort dichotomy, the *quasi*-contractual claims

29 (1987) 69 A.L.R. 577, 584 (*per* Mason and Wilson JJ.).
30 This was also the view of the Court of Appeal in this case. See (1985) 3 N.S.W.L.R. 114, 132 (*per* McHugh J.A.) (*cf.* n. 29 *supra*).
31 Under s. 30A of the Moneylenders and Infants Loans Act the Court has the power to relieve moneylenders from non-compliance. The Builders Licensing Act has no corresponding provision.
32 (1987) 69 A.L.R. 577, 609.
33 Goff, R., and Jones, G., *The Law of Restitution* (3rd ed. 1986) 8.
34 *Moses v. Macferlan* (1760) 2 Burr. 1005, 1012.
35 S. 3 of the Common Law Procedure Act 1852 provided that it was no longer necessary to mention any form or cause of action in the writ. The final demise of the early forms of action was effected by the Judicature Acts 1873-1875 (Schedule I to the Judicature Act 1875).

were 'relegated to the status of an appendix to the law of contract', using the historical connection of these claims with the contractual action of *assumpsit* as the justification for this step.[36] The implied contract having thus become the basis of the law of *quasi*-contract, the courts in England and Australia continued to search for implied promises to pay as the basis for ordering restitution well into this century, despite the fact that the early actions which necessitated the development of the fiction had long been abolished.[37]

The concept of 'implied contract' was not without criticism even at the end of the last century. In *Re Rhodes*[38] Cotton L.J. said that 'the term "implied contract" is a most unfortunate expression'[39] and in 1941 Lord Atkin in a much-quoted *dictum*, described the concept as involving 'fantastic resemblances of contracts invented in order to meet requirements of the law as to forms of action which have now disappeared', suggesting that when the 'ghosts of the past stand in the path of justice clanking their medieval chains the proper course of the judge is to pass through them undeterred.'[40] Other judges had joined them in asserting that the fiction ought to be disregarded.[41] In *Pavey & Matthews*, Deane J. described the tendency to speak of implied contracts as 'but a reflection of the influence of discarded fictions, buried forms of action and the conventional conviction that, if a common law claim could not properly be framed in tort, it must necessarily be dressed in the language of contract.'[42] His Honour stated that 'the fictional promise of *assumpsit* has no further purpose to serve'[43] and that a common *indebitatus* count could 'just as properly and much more realistically' be seen as the equivalent of a claim for restitution or one based on unjust enrichment.[44]

Pavey & Matthews is not the only case in which unjust enrichment was held to be the real basis of recovery. Recent decisions of the High Court in the areas of constructive trusts, privity of contract, unconscionability and promissory estoppel[45] are suggestive of an attempt to establish a 'unified set of principles' governing those areas of the law which fall outside the structure of the private law and which have until recently been conveniently but artificially dealt with under the law of contracts. Such principles appear to be those of the law of restitution or unjust enrichment.[46] In *Pavey & Matthews*, Deane J. described the concept of unjust enrichment as a 'unifying legal concept which explains why the law recognises, in a variety of distinct categories of case, an obligation on the part of a defendant to make fair and just restitution for a benefit derived at the expense of a plaintiff and which assists in the determination, by the ordinary processes of legal reasoning, of the question whether the law should, in justice, recognise such an obligation in a new or developing category of case.'[47] However, although restitutionary claims are unified by principle, the English law has not as

36 Goff and Jones, *op. cit.* 8.

37 Some Australian cases which have adopted the implied contract approach are: *Simmonds v. Kee* [1923] V.L.R. 119; *Blood v. Kerr* (1934) 51 W.N. (N.S.W.) 14; *Horton v. Jones* (1939) 39 S.R. (N.S.W.) 305, 319; *Van Amstel v. Country Roads Board* [1961] V.R. 780.

38 (1890) 44 Ch.D. 94.

39 *Ibid.* 105.

40 *United Australia Ltd v. Barclays Bank Ltd* [1941] A.C. 1, 28-9.

41 For example, see Lord Wright in *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour* [1943] A.C. 32, 63; Lord Denning in *Kiriri Cotton Co. v. Dewani* [1960] A.C. 192, 204; Lord Pearce in *Nissan v. Att.-Gen.* [1970] A.C. 179, 228.

42 (1987) 69 A.L.R. 577, 604.

43 *Ibid.* 606.

44 *Ibid.*

45 Some examples are: *ANZ Banking Group Ltd v. Westpac Banking Corporation* (1988) 164 C.L.R. 662 (money had and received); *Waltons Stores (Interstate) Ltd v. Maher* (1988) 164 C.L.R. 387 (promissory estoppel); *Trident General Insurance Co. Ltd v. McNiece Bros Pty Ltd* (1988) 62 A.L.J.R. 508 (privity of contract); *Baumgartner v. Baumgartner* (1987) C.L.R. 137 (constructive trusts).

46 Note, however, that at present unjust enrichment is not sufficient in itself to give rise to a cause of action. See *infra*.

47 (1987) 69 A.L.R. 577, 604. This statement is in marked contrast to Lord Diplock's statement in *Orakpo v. Manson Investments Ltd* [1978] A.C. 95, 104, that there is no general doctrine of unjust enrichment recognized in English law, and that the remedies provided were 'empirical' remedies to prevent a particular kind of unjust enrichment. Jack Beatson has suggested that the approach of Deane J. may assist in neutralizing some statements by English judges such as Lord Diplock which might be thought to go too far in the other direction. See Beatson, J., 'Unjust Enrichment in the High Court of Australia' [1988] 104 *Law Quarterly Review* 13, 14.

yet recognized a generalized right to restitution in every case of unjust enrichment. At present the concept may only operate in cases which fall within an existing category of case where a right to restitution has been, or justice demands that it should be, recognized.[48]

Writing in 1966, Goff and Jones[49] suggested that 'the law is now sufficiently mature for the courts to recognize a generalized right to restitution.' This has not yet happened. However, the statement of Deane J. in *Pavey & Matthews*, together with the recent decisions of the High Court already mentioned,[50] provide good evidence that the growth of some generalized right to restitution in cases of unjust enrichment may well be taking place. It has been suggested that the High Court's treatment of recent cases on money counts may be said to show 'the emergence of principles based more on the characterization of parties' conduct than on the application of traditional legal doctrines.'[51] This would be a welcome development in the law. It is important to note, however, that, as unjust enrichment is not in itself sufficient to give rise to a cause of action, the adoption of the conceptual framework of unjust enrichment would not greatly affect the circumstances in which restitutionary obligations arise. It is also doubtful whether all actions on money counts can be explained on the bases of a theory of unjust enrichment without reference to the notion of 'agreement'; as a practical matter, 'proof of an implied or express "agreement" to repay must be one of the factors which define those actions as "categories of case"' in which unjust enrichment gives rise to an obligation to make restitution.[52]

Despite the attractiveness of a general doctrine of enrichment, some caution should be taken when considering its scope. As not all *quasi*-contractual claims can be explained on a theory of enrichment,[53] an overinclusive general principle may well lead to the fictions and artificialities of the implied contract theory.[54] Nevertheless, this should not deter the courts from adopting such a principle where an obligation is clearly not contractual but restitutionary in nature.

This leaves us to consider the practical importance of the decision of *Pavey & Matthews* in the development of the law of restitution. Although the effect of a pronouncement that the basis of *quantum meruit* is not implied contract but unjust enrichment may, in practical terms, be considered minimal (after all, restitution seemed to be the basis of recovery in the appropriate case in the past also, even though hidden under the labels of 'implied contract', '*quasi*-contract' and 'equity'), *Pavey & Matthews* is a significant step in the removal of artificial and misleading anachronisms which have long impeded the development of this area of the law and a step towards the emergence of a unified treatment of all claims, *quasi*-contractual or otherwise, which are founded upon the principles of restitution or unjust enrichment.

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[48] (1987) 69 A.L.R. 577, 604 (*per* Deane J.).
[49] *Op. cit.* n. 33, 13.
[50] See *supra* n. 45.
[51] Hayne, K., Grossman, B., Whelan, S., Olmond, P., *Australian Civil Litigation Laws and Precedents* (from a draft manuscript of the chapter on money counts) 6.
[52] *Ibid.* 5.
[53] Some examples are: *Planche v. Colburn* (1831) 8 Bing. 14; *Brewer Street Investments v. Barclays Woollen Co. Ltd* [1953] 2 All E.R. 1330; *William Lacey (Hounslow) Ltd v. Davis* [1957] 1 W.L.R. 932. That some *quasi*-contractual claims cannot be founded on enrichment has been recognized by Goff and Jones, *op. cit.* 510.
[54] See Beatson, J., *op. cit.* n. 47, 15-6.

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