

formed. And where it is found during performance that further performance would be illegal, the further performance may be refused, and an action will lie for the part done.

A party, himself in default in performance of a contract, without any default of the other party, cannot in general claim for the part executed; but if the latter party *voluntarily* retain the benefit of the part executed he will be liable to pay for it. So, if part only of a quantity of goods contracted for is delivered, and is retained, the buyer must pay for the part delivered. But if there is no option of accepting or rejecting the consideration, no promise to pay will be implied.

If completion is prevented by accident or without default of either party, there is usually no claim for the part of the consideration executed. And if, after partial execution, the contract is rescinded by mutual consent, there is no claim for the part executed, unless there has been some express stipulation or implied understanding to that effect.

Wrongful dismissal during a period of employment gives a claim for services rendered up to time of dismissal; but after bringing an action for the wrongful dismissal there can be no claim for services.

Contracts implied in law are divided into three classes:

- (1) Debts for *money paid* for use of another;
- (2) Debts for *money received* for use of another;
- (3) Debts for money due upon *accounts stated*.

In each case the law imposes a debt, and also implies a promise to pay it. A debt for money paid arises when one has paid money at the request of another, but without an express promise to repay being given; or where one has been compelled to pay what another ought to pay, so that the debt of that other is discharged; or where a surety has paid the debt of the principal debtor. If one of several co-debtors pays the whole debt, or more than his share, he may claim contribution from the other debtors. And the same rule applies as between co-sureties, when one of them has paid more than his share; and between several insurers of the same risk to the same