

men who were to use them in connection with the work of construction and maintenance.

For these reasons, I think the defendants were not bound to furnish unlimited passes, as demanded by the plaintiffs, but only such free transportation as was reasonably necessary in connection with the plaintiffs' work of construction and maintenance. This the defendants expressed themselves to the plaintiffs as at all times willing to furnish, and they did in fact from time to time furnish free transportation. There is no evidence to shew that the fares paid and here sued for were for trips in respect of which the plaintiffs are entitled to free carriage of their employees. For this reason alone the action must fail. But, even if this were shewn, are there any circumstances in this case which would entitle the plaintiffs to succeed in an action for money had and received, which is, in substance, the nature of this action?

The principle upon which relief is granted in an action for money had and received is that the circumstances are such as make it inequitable to permit the defendant to retain the fund, and therefore entitle the Court to declare the defendant a trustee thereof for the plaintiff. Here there is an entire absence of any question of trust affecting the money in question, nor did any fiduciary relationship exist between the parties. They were dealing with each other at arm's length with respect to a dispute as to their legal rights growing out of an ordinary business contract. The plaintiffs demanded more than their rights; the defendants were willing to grant them their rights. This the plaintiffs refused to accept, and voluntarily made the payments now sought to be recovered. The payments were made with full knowledge of all the facts, and not under any mistake of fact but of law. The moneys thus came honestly to the hands of the defendants, and became their property absolutely, and cannot now be regarded as a fund held in trust for the plaintiffs.

As stated by Mellish, L.J., in *Rodgers v. Ingham*, 3 Ch. D. 357: "There is no doubt as to the rule of law that money paid with a full knowledge of all the facts, although it may be under a mistake of law of both parties, cannot be recovered back . . . Nothing, in my opinion, would be more mischievous than for us to say that money paid, for instance, under a mercantile contract, according to the construction which the parties themselves put upon that contract, might, years afterwards, be recovered, because perhaps some court