

habitants of the old municipality, as it appears. wanted to have it divided into two, and petitioned Parliament for that purpose, and got the present statute passed, employing the plaintiffs professionally to get it done; and it is for these services rendered before the Act of incorporation, that the action is brought against the new corporation. There is no doubt that the services were well and effectively rendered; but the corporation answers the action by pleading, 1st, by a *défense en droit*, and, 2nd, by a peremptory exception, that it had no existence as a corporation, at the time the services were rendered; and that the plaintiffs were really employed by the gentlemen individually who got this Act passed, and have no recourse except against them personally; and they, the defendants, having at that time no existence, could neither themselves employ nor authorize others to employ the plaintiffs. It was contended for the plaintiffs that there had been a *quasi-contract*; but it was answered no, because there was no body capable of *quasi-contracting*; there was no person at all either capable or incapable of contracting. This corporation (which if it had existed at the time would have been a person in law) had not then been created, and it was not merely the case of capacity or incapacity of an existing person, but the very existence of any party, person or corporation whatever, whether capable or incapable of contracting.

The plaintiffs cited articles 1041 and 1042 of the C. C. They are founded on the authority of Pothier and of Marcadé. The text of the articles is as follows. Article 1041 says: "A person capable of contracting may, by his lawful and voluntary act, oblige himself toward another, and sometimes oblige another toward him, without the intervention of any contract between them." Art. 1042 reads: "A person incapable of contracting may, by the *quasi-contract* of another, be obliged towards him."

It could be plausibly argued that both these articles seem to contemplate merely the capacity or incapacity, if not to contract, at all events to be bound. This is the first and obvious meaning, no doubt. Pothier's language in the example he gives is this: No. 128 Ob. : "Il est clair que les fous, les insensés, les enfans, ne sont pas capables de contracter les obligations qui naissent des délits ou des quasi délits, ni de contracter par eux-mêmes celles qui naissent des

*contrats*, puis qu'ils ne sont pas capables de consentement, sans lequel, il ne peut y avoir ni convention, ni délit ou quasi délit: mais ils sont capables de contracter toutes les obligations qui se contractent sans le fait de la personne qui la contracte. Par exemple, si quelqu'un a géré utilement les affaires d'un fou, d'un insensé, d'un enfant, cet enfant, cet insensé, ce fou contracte l'obligation de rembourser cette personne de ce qu'il lui en a coûté pour cette gestion."

Pothier's language is here admittedly inaccurate. The idiot cannot strictly contract an *obligation*, because consent is necessary. He can come under a liability—an *engagement* as some commentators call it, because the reason given in Pothier is that the *quasi contract* results from a fact, and not from a consent, and so the infant or the idiot could be bound though they had given no consent; but, it is said, they must have had an existence of some sort—incomplete if you will (undeveloped, perhaps, is the scientific word). Here it is contended that the undeveloped corporation which used the plaintiffs to obtain a state of full development for them were without power to consent, and not only without power to give any kind of consent, but without any form or kind of existence, inchoate or otherwise. Now, though the law, in its terms, and Pothier in his examples, says the incapacity of the idiot will not exclude obligation under a *quasi contract*, is that the whole extent of their meaning? The law makes the *quasi contract* to spring not from capacity or completeness of power, but from a fact—a benefit; therefore if the defendant has power to be benefited it would seem it ought to be bound. There is a special allegation in the declaration, and it is also repeated in the special answer to the exception, and I think it has great force, that the defendant has availed itself of the Act of Parliament got by the plaintiffs' professional exertions; so that this would change the aspect of the question; and it would no longer be whether a *quasi contract* can oblige an incapacitated person, or even an incompletely existing or organized body of persons; but whether the assumption, adoption and use by an existing person or body of persons of what was got for them by the services of another, renders him or them liable for the price or value of those services. Here there was, indeed, no body of persons having a com-