

Moses v. Macferlan

2 Burr. 1005 (1760)

B promised to pay A £6, giving him a series of promissory notes. A then assigned and endorsed these over to C, so that C could collect from B. It was a condition of the assignment that C promise not to sue A if B did not pay (a non-recourse note). B did not in fact pay. In spite of his promise not to sue, C sued A and collected £6 in a Court of Equity. A then sought to recover the £6 from C before Lord Mansfield “for money had and received.”

Lord Mansfield:--This kind of equitable action, to recover back money, which ought not in justice to be kept, is very beneficial, and therefore much encouraged. It lies for money which, *ex aequo et bono*, the defendant ought to refund; it lies for money paid by mistake; or upon a consideration which happens to fail; or for money got through imposition, (express or implied) or extortion; or oppression; or an undue advantage taken of the plaintiff's situation, contrary to laws made for the protection of persons under those circumstances. In one word, the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity, to refund the money.