RESTITUTION IN PUBLIC AND PRIVATE LAW. BY GARETH JONES. [Sweet and Maxwell Ltd. and N.M. Tripathi Private Ltd. 1991. xi and 172 pp. (including index). £7.50.]

IT is now twenty-five years since "Goff and Jones" published the first edition of their epoch-making book *The Law of Restitution.* True there had been, under the title "quasi-contract", earlier writings on the subject. Thus Sir Percy Winfield wrote on the matter in 1952 and Professor Stoljar in 1964. Indeed, as early as 1936 R.M. Jackson had already written a history of the subject. In the United States, of course, there was something called "unjust enrichment", although the Restatement (published in 1937) was entitled *Restitution, Quasi Contract and Constructive Trusts.* Nevertheless, restitution, as we must now call it, only existed at the margin of legal academia. For most students the subject, under the title of "quasi-contract", was tucked away as a final chapter (for those who read that far) of the textbook on contract. Thus the edition of *Anson on Contract* (which I read as a student) devoted, as a last chapter, just eighteen pages to the subject.

All this changed in 1966 when Goff (now Lord Goff of Chieveley) and Jones (now Downing Professor of Law and Vice Master of Trinity College, Cambridge) published the first edition of their book. Most authors limit themselves to expounding existing subjects. Goff and Jones went one better: they virtually created the subject about which they were writing. They changed the paradigm.

Of course in creating the subject Goff and Jones did not make it up. The cases were there. Their achievement resembled that which Wigmore attributed to Blackburn J., for speaking of his decision in *Fletcher* v. *Rylands.*[1] Wigmore, referring to the earlier cases said that hitherto they had: "wandered about, unhoused and unsheperded, except for casual attention in the pathless fields of jurisprudence until they were met... by the master-mind of Mr. Justice Blackburn who guided them into the safe fold where they have since rested."[2]

The development of the subject is curious. Over 200 years before Goff and Jones published their first edition Lord Mansfield had decided *Moses* v. *Macferlan*[3] and therein had said:

> If the defendent be under an obligation, from the ties of natural justice, to refunds; the law implies a debt, and gives this action, founded in the equity, of the plaintiffs case, as it were upon a contract (*'quasi ex contractu',* as the Roman law expresses it).[4]

Hence, of course, the unfortunate earlier title of the subject. Assessing Lord Mansfield's achievement Sir William Holdsworth commented:

> He was not faced by a coherent body of principles like the doctrine of consideration, or the rules as to disseisin or the rule in *Shelley's* case. He found an incoherent set of rules stated in a number of heterogenous cases; and if there was any one principle at their back it was the innate feeling of the judges that it was just as equitable that a convenient remedy should be given in these cases.[5]

The principle had been laid down but the name was unfortunate, for the common law is not enamoured of quasi-doctrines and certainly not quasi-doctrines which disturb the paradigm. Viscount Haldane in *Sinclair* v. *Brougham*[6] was clear on the matter:

> ... so far as proceedings in personam are concerned the Common law of England really recognises (unlike the Roman law) only actions of two classes, those founded on contract and those founded on tort. When it speaks of actions arising *quasi ex contractu* it refers merely to a class of actions in theory based on a contract which is imputed to the defendent by a fiction of law.[7]

It was not until 1943 that, in *Fibrosa Spolka Akcyiina* v. *Fairbairn Lawson Combe Barbour, Ltd.*[8] that Lord Wright pointed out the fallacy:

> Lord Mansfield does not say that the law implies a promise. The law implies a debt or obligation which is a different thing. In fact, he denies that there

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1 (1866) 4 H. & C. 263.
2 (1894) 7 Harv. L. Rev. 441 at 454.
3 (1760) 2 Burr. 1005.
4 *Ibid.,* at 1009.
5 History of English Law, Vol. VIII at 97.
6 [1914] A.C. 398.
7 *Ibid.,* at 415.
8 [1943] A.C. 32.

> is a contract; the obligation is as efficacious as if it were upon a contract. The obligation is a creation of the law, just as much as an obligation in tort.[9]

It was the achievement of Goff and Jones to release the law of restitution from its past. If Lord Mansfield was responsible for the conception, Goff and Jones, two hundred years later, were the midwives. Emancipated from the shackles of contract; freed from its quasi-status, the obligation now stands *sui generis* as one of the fundamental categories of the common law, thus enabling the common law courts to prove once again, contrary to the expectations of many, that they, like the Court of Chancery, have not passed the age of child-bearing.

Lord Justice Atkin in *The Susquehanna*[10] stated that: "I think the law of damages still awaits a scientific statement which will probably be made when there is a completely satisfactory textbook on the subject."

Goff and Jones provided the scientific statement and wrote the completely satisfactory textbook for their subject.

Now from the pen of Professor Gareth Jones we have a further contribution to the same subject being the first series of Nambyar Lectures delivered in India in 1991. There were four lectures of which the first was "Restitutionary Claims against Public Authorities: A Comparative Study" to which is added a short postscript dealing with additional Indian decisions although, of course, Indian decisions are discussed in the body of the lecture. The second lecture is entitled "Restitutionary Claims against Wrongdoers". The third lecture which is entitled as printed "Restitution of Benefits Conferred under an Ineffective Contract" was apparently not delivered, its place as a lecture being devoted to a development of the views which Professor Gareth Jones expressed in his first lecture. The fourth lecture is entitled "Restitutionary Claims arising from Necessitous Intervention".

Anything coming from the pen of one of the founding fathers of the subject is necessarily important and Professor Gareth Jones does not disappoint the reader. This book will join the growing body of literature on the subject as a significant contribution thereto.

A Table of Cases, though, would have been helpful.

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9 *Ibid.,* at 62.

10 [1925] P. 196 at 210. See *McGregor on Damages* (15 ed., 1988).