

chaser's privity and liability are established by his deed, which not only makes him a party to the mortgage transaction, but makes him the party who is to pay the money.

But, if this be not so, the rule in question is not inflexible. Numerous exceptions have been engrafted upon it, and among them we find (1) executors, (2) administrators, (3) beneficiaries under a settlement, (4) assignees, whether of debtor or creditor. (See Pollock on Contracts, Bl. Ser., chap. 5.)

None of these persons is or was a party to the contract sued upon, yet any of them may be a proper party or parties to an action for the enforcement of the contract.

The dearth of authority in England upon cases such as the one in question is probably owing to the rarity of such transactions there. But the principles applicable to such cases are frequently invoked, and they affirm the liability, as well as the privity, of the purchaser.

*Werderman v. Societe Générale D'Electricité*, L.R. 19 Ch.D. 246, is an instance in point. There a patentee assigned letters patent to A. and B., who covenanted that the patentee should be entitled to receive £5 per cent. of all net profits, whether arising from royalties, sale, or otherwise, which should be received by A. and B. or the survivor of them, or the executors or administrators of the survivor, their or his assigns, etc., etc. A. and B. had taken the assignment with a view to forming a company to work the patent. The company was formed, and the patent made over to them. The patentee sued the company for an account of profits. The company demurred, on the ground that there was no privity between them and the plaintiff, and that the plaintiff's right, if any, was against A. and B. only.

Bacon, V.C., and, subsequently, the Court of Appeal, gave judgment for the plaintiff.

Jessel, M.R., in delivering judgment, says, at p. 252 :

"It was clearly the meaning of the parties that, as long as Denayrouze and Marcilhacy worked the patent, they were to make out the account and pay over the share of the profits. When their assigns worked the patent, the assigns were to make out the account and pay; in other words, the arrangement between them was, that the owners of the patent for the time being should be bound to work it to the best advantage; to keep proper accounts, and to pay a share of the profits to the plain-