

youngest daughters. One of the daughters brought suit against the husband and the trustees to enforce the husband's covenant. The trustees had refused to join as plaintiffs. It was held that the plaintiff was not in a position of cestui que trust to maintain the action.

Cotton, L.J., says, after noticing the general rule: "That rule is however subject to this exception; the contract although in form it is with A, is intended to secure a benefit to B, so that B is entitled to say that he has a beneficial right as cestui que trust under that contract, then B would, in a Court of Equity, be allowed to insist upon and enforce the contract." Bowen, L.J., on page 69 says: "It is sufficient to say that in the case of *Tweedle v. Atkinson*, to which we were referred, that though the common law doctrine has been laid down, whatever may have been the common law doctrine if the true intent and the true effect of this deed was to give the children a beneficial right under it, that is to say, to give them a right to have these covenants performed and to call upon the trustees to protect their rights and interests under it, then the children would be outside the common law doctrine and would in a Court of Equity be allowed to enforce their rights under the deed. But the whole application of that doctrine, of course, depends upon its being made out that upon the true construction of this deed it was a deed which gave the children such a beneficial right." See also *Touche v. Metropolitan Railway Warehousing Company*, L.R. 6 Ch. 671, discussed and explained in *Gandy v. Gandy*.

Henderson v. Killey, 14 O.R. 137, is a leading case in our courts. On the dissolution of the partnership existing between Killey and Muirhead, trading as J. H. Killey & Co., Killey gave Muirhead promissory notes to the extent of \$8,000 as Muirhead's share in the dissolved partnership. Killey afterwards formed a partnership with William and Robert B. Osborne, which was afterwards formed into a joint stock company. By the partnership agreement under seal, Killey transferred to the new firm all the assets of his business subject to the deduction of all liabilities of J. H. Killey & Co. Amongst Killey's liabilities known to the Osbornes, were ten of these notes which Muirhead had endorsed to the plaintiff Henderson before they became due. The new firm paid two of the notes with interest on others, and there was evidence of negotiations for an extension of the time to pay the whole.