by the other contracting party against either of them.* The alternative character of the obligation is made clearer by considering the case of a contract made with an agent in the agent's name, the principal also being made known: then the other contracting party has still a right to sue the agent or the principal at his election.† As for the analogous cases where parties not named in a transaction conducted by some of their number, are nevertheless treated as parties to it, "all questions between partners are no more than illustrations of the same questions as between principal and agent." ‡

The legal aspect of the matter is the same when the principal's authority is given by subsequent ratification, and this whether the other party at the time of making the contract knows that he is dealing with an agent or not.§

2. There is another class of apparent exceptions when contractual relations exist between two persons, and one of them acquires new rights by the dealings of the other with a third person; and in the case of principal and surety.‖ But these new rights, though immediately acquired in consequence of a transaction to which the party acquiring them is no party, are really incidental to the prior contract to which he was a party, and may therefore be properly referred to it; so that the case is analogous to a conditional contract depending on a collateral event, the difference being that here the condition is annexed to the contract, not by the will of the parties but by judicial rules.

Generally speaking,¶ A and B may make a contract conditional on any collateral event; and they may choose for that purpose the event of a certain transaction taking place between C and D, or between A and B, as well as any other; and this may or may not be connected with the principal matter of the contract. Then the mutual rights of A and B under their contract depend on and are to be determined by a transaction between different parties; but their foundation is not in that transaction, but in the agreement of the parties themselves. But the creation or modification of the rights arising out of a contract may be annexed to a collateral event by the law as well as by the agreement of the parties, and will still be no less referable to the original contract. However the event invested with such consequences by the law will naturally be something affecting the matter of the principal agreement, and thus a confusion may arise at first sight which cannot present itself in the simpler case above stated.

3. Again, the powers of a majority of creditors in bankruptcy proceedings and compositions to bind the rest may be considered as forming an exception to the rule in question.* But it is to be observed that such proceedings are really not so much independent transactions as steps in a judicial process, or an arrangement carried out by machinery made capable by special legislation of taking its place, the ultimate result of which, as of every litigation carried out to its end, is a complete transformation of the previously existing rights on which the process was founded.

4. There exists, however, a real and important exception in the case of trustees. The equitable obligations of a trustee are partly in the nature of contract, partly analogous to the class of obligations known in the common law as duties founded on contract: and he may become bound by these to persons, who not only are not parties to the contract from which their rights are derived, but are not and cannot be in existence when it is entered into, and whom, indeed, it often taxes the utmost ingenuity of judicial interpretation to ascertain.

It is not usual either in practice or in books† to regard the relations of trustee and *cestui que trust* in this light; nor perhaps is there very much to be gained

* The limitations to which this is subject are not material for the present purpose.

† *Calder* v. *Dobell*, L. R., 6 C. P. 486.

‡ *Beckham* v. *Drake*, 9 M. & W., 98, *per* Parke B.

§ *Bird* v. *Brown*, 4 Ex. 798.

‖ Pothier, Obl. s. 89, who treats this as a real exception. The doctrine as to co-sureties rests on the general principle of *quasi*-contract: 1 Wms. Saund., 267 f. (The equitable principle of *Dering* v. *Lord Winchelsea*, 1 Wh. & T., L.C. 89, 95, is differently expressed but in substance the same, and therefore gives rise to no difficulty here.)

¶ *I.e.*, subject to the restraints imposed by public policy, which need not be now considered.

* Pothier, Obl., sec. 88.

† Mr. Story in his work on Contracts has a chapter on Trustees, but gives no explanation of the ground on which it is inserted, nor does he discuss this aspect of the matter.