

STRANGER TO CONTRACT ENFORCING IT—PERSONAL PROPERTY IN ICE.

pay thereout certain sums to the children of the deceased. It was contended that the beneficiaries had no right to seek to recover the amounts by a suit in their own names, but that the only remedy was by an action at law in the name of the personal representative of the father with whom the agreement had been made. The Vice-Chancellor, however, argued thus: that if a personal representative of the deceased did sue at law and recover the money from the defendant, he would recover as trustee for the beneficiaries. If the money when recovered would be affected with a trust, so would in like manner the right of action which vested in the personal representative be impressed with a like trust, and if so, then the personal representative and the beneficiary might conjointly maintain the bill. For this he cites *Gregory v. Williams*. Another and later decision might also have been referred to, and to the same effect, namely, that of Vice-Chancellor James, in *Peel v. Peel*, 17 W. R., 586. In *Mulholland v. Merriam*, there was no personal representative of the deceased, and as such a representative would have been merely a formal party, the Vice-Chancellor directed that the suit might proceed in the absence of any person representing the estate of the deceased under the authority of the general orders. This decision was affirmed on re-hearing by the full court in S. C., 20 Gr., 152. The views of the present Chancellor upon this important question may be found in *Shaw v. Shaw*, 17 Gr., 282. He there held that when land was conveyed in consideration of the grantee's agreeing to convey a part to a third person who was a stranger to the transaction, this third person could maintain a suit in his own name for the recovery of the part in question. In that case, both the contracting parties were made defendants, and the benefi-

ary was the plaintiff. The Chancellor at p. 285, pointedly adverts to this, and says that in his opinion the suit was properly constituted.

The conclusions reached in these Canadian decisions are also fortified by very recent English authorities. Thus in *Touche v. Metropolitan Railway Warehousing Company*, L. R. 6 Ch. 777, Lord Hatherley states that there is authority for holding that where a sum is payable by A. B., for the benefit of C. D., then C. D. can claim under the contract, as if it had been made with himself. See also *Gale v. Gale*, L. R. 6 Ch. D. 144.

In the Irish courts reference to the following cases will be found useful on this head of the law. In *Joyce v. Halton*, 11 Ir. Ch. R. 123, the Master of the Rolls in Ireland decided against the right of third persons collateral to the contract to sue. This was reversed on appeal in S. C., 12 Ir. Ch. R. 71, the Lord Justice giving very much the same reasons as Vice-Chancellor Strong. See also *Cowbray v. Thompson*, I. R. 2 Ch. 226, where the authority of *Tweedlev. Atkinson* was recognized and followed: *Brennan v. Brennan*, Ir. R. 2 Eq. 270, where the right of the third parties to intervene was given effect to, chiefly on the ground that the agreement was in the nature of a family arrangement, and for the benefit of the relatives who brought the suit.

PERSONAL PROPERTY IN ICE.

In this Canada of ours we see ice, both in winter and summer. In winter, its principal use is to provide a means of exercise for the rising generation, and to a more limited extent, to enable surgeons to practice setting broken limbs, and lawyers to bring actions against corporations and others. In summer it is largely used for various household purposes, as well as for many others, varying from an out-