

PERSONAL CHARACTER OF OBLIGATIONS.

agree that he may.* And it was laid down by the Court of Chancery many years earlier to the same effect, that "when two persons, for valuable consideration between themselves, covenant to do some act for the benefit of a mere stranger, that stranger has not the right to enforce the covenant against the two, although each one might as against the other.† On the other hand, it does not appear that an arrangement made between the contracting parties for their own convenience has ever been allowed to give a right of action to a person not a party; the person suing must show a promise made immediately to himself.‡ But as regards contracts under seal, the rule of the common law has always been clear and inflexible (even where simple contracts admit,§ or have been supposed to admit,|| of exceptions), that on a deed made between parties no stranger can have an action, or join in any action for non-performance of covenants contained in it.¶ "Those parties only can sue or be sued upon an indenture who are named or described in it as parties."

The principle has been carried out consistently and even rigorously in modern times. An agreement for hiring the tolls of certain fen lands at a rent "to be paid to the treasurer of the com-

* *Tweddle v. Atkinson*, 1 B. & S., 393.

† *Colyear v. Mulgrave*, 2 Keen, at p. 98. The right of the parties themselves is perhaps over-cautiously expressed. It was in truth but an instance of the "elementary principle that will not enter into an inquiry as to the adequacy of the consideration" (per Byles J., 5 C.B., N.S., 265): it is presumed that the party who wants a thing done finds some benefit in it (8 A. & E., 743), and there need not be any apparent benefit at all. The doctrine is not new: ep. Ro. Abr. 1, 593, pl. 7, Y.B. 17 E., 4, 5: if I promise to pay vi s. a week for the commons of another "la ley intend que il est un tiel per que service jeo aie avantage." In other words, that which a man has with his eyes open chosen to treat as valuable is conclusively taken as against him to be of the value he has put upon it. But this belongs to the general doctrine of consideration.

‡ *Price v. Easton*, 4 B. & Ad., 433.

§ *Beckham v. Drake*, 9 M. & W., at p. 95, per Parke B.; 1 Wms. Saund., p. 477.

|| *Gilly v. Copley*, 3 Lev. 140, on a demurrer: as to the end of the cause itself the reporter adds: "I suppose the parties agreed, for I never heard more on't."

¶ *Lord Southampton v. Brown*, 6 B. & C., 718.

missioners," gave no right to the treasurer to sue for payment of the rent, for the contract was with the commissioners only, independent of the further objection that the true meaning of the agreement was to secure payment to the treasurer *for the time being*, which it was admitted would be bad as an attempt to contract with an uncertain person.* In an action on a by-law of a company imposing a fine to be paid to the master and wardens for the use of the master wardens and company, the right to sue was determined to be in the master and wardens only.† And an agreement by co-adventurers amongst themselves that the amount of calls due from any one of them shall be considered as a debt due to an officer of the partnership, who shall have power to sue for it, is in violation of the law, and gives no right of action to such officer.‡

On the whole then the rule is firmly established; and there is good ground in reason for it. The obligation of contracts is a limitation imposed on what

* *Pigott v. Thompson*, 3 B. & P., 147.

† *Company of Feltmakers v. Davis*, 1 B. & P., 98. In a case the converse of this, there being a joint contract by several persons for a payment to be made to one of them, the Court of Exchequer inclined to think "the action ought to have been by all upon the promise made to all, though only one was to receive the money:" *Chanter v. Leese*, 4 M. & W., 295; but no judgment on that point. *Jones v. Robinson* (1. Ex. 454), is rather the other way: that case was in effect as follows:—the purchaser of a business from two partners promised them in consideration of the assignment of the partnership effects to him to pay the debts of the partnership; one of the late partners who had himself advanced money to the partnership was not repaid, and thereupon sued the purchaser on the promise made to both partners; and it was held well.

[But the decision is not easy to understand. For—

1. It seems hardly doubtful on principle that both the late partners must have joined as plaintiffs, if the partnership debt the defendant refused to pay had been due to a stranger.

2. The circumstance of the suing partner himself having been the creditor ought to have made no difference, for there was no separate promise to pay him in his capacity of creditor. How far this did in fact influence the judgment is not clear.]

Spurr v. Cass, L.R., 5 Q.B., 656, goes on the ground of Agency, and is, therefore, not decisive on this point.

‡ *Hybart v. Parker*, 4 C.B., N.S., 209; Cp., *Gray v. Pearson*, L.R., 5 C. P., 568.