

action, there must be, first, an intent by the promisee to secure some benefit to the third party; and, second, some privity between the two, the promisee and the party to be benefited, and some obligation or duty owing from the former to the latter, which would give him a legal or equitable claim to the benefit of the promise, or an equivalent from him personally. *It is true there need be no privity between the promisor and the party claiming the benefit of the undertaking, neither is it necessary that the latter should be privy to the consideration of the promise, but it does not follow that a mere volunteer can avail himself of it. A legal obligation or duty of the promisee to him will so connect him with the transaction as to be a substitute for any privity with the promisor, or the consideration of the promise, the obligation of the promisee furnishing an evidence of the intent of the latter to benefit him, and creating a privity by substitution with the promisor. A mere stranger cannot intervene and claim by action the benefit of a contract by other parties. There must be either a new consideration or some prior right or claim against one of the contracting parties, by which he has a legal interest in the performance of the agreement; there must be a legal right, founded upon some obligation of the promisee, in the third party to adopt and claim the promise as made for his benefit.'"*

However complete, concise, and accurate the above statement may seem to Mr. Marsh, we must confess it is not so to us. Almost the only clear idea we have been able to extract from it is that it assumes a want of privity between the promisor (*i.e.*, the purchaser) and the party claiming the benefit of the undertaking (*i.e.*, the mortgagee), and seeks to find a substitute for it.

Mr. Marsh's argument No. 2, upon the doctrine of subrogation, is to be found on p. 157, *et seq.*, of 2 C.L.T. The definition of the doctrine which he adopts is to be found on p. 158, and it contains the following distinct averment: "The doctrine does not depend upon privity, nor is it confined to cases of strict suretyship."

Finally, in working out the mortgagee's right under the doctrine of trusts, our learned correspondent says, at p. 223: "In order, therefore, to stamp the money in the hand of the purchaser with an irrevocable trust, it is not necessary that there should be any agreement between the purchaser and the mort-