

STRANGER TO CONTRACT ENFORCING IT.

it out of the question, to expect any move on the part of the Government to appoint Mr. Dalton, or any desire on his part to change his work and residence; yet we quite appreciate the wish of the Manitoba Bar to have such an able, upright lawyer placed on the prairie bench.

STRANGER TO CONTRACT ENFORCING IT.

The law has undergone remarkable changes upon the rights of one who is a stranger to a contract, which contains a clause for his benefit, to enforce such a contract. At one time the preponderance of opinion was plainly in favour of the proposition, that if one person made a promise to another for the benefit of a third, that third might maintain an action upon it. This, indeed, is the very language of Mr. Justice Buller, in *M. v. Chington v. Vernon*, 1 B. & P., 101 (*in notis*). The same was the opinion of Eyre C. J., as expressed in *The Company of Fellmakers v. Davis*, 1 B. & P., 102. Such was also the early view in Equity, as may be seen by referring to *Hook v. Kinnear*, 3 Swanst., 417 note, when the Lord Chancellor (1743), said: "it is certain if one person enters into an agreement with another for the benefit of a third person, such third person may come into a Court of Equity and compel a specific performance."

Subsequently, however, this doctrine was contravened at law by the case of *Tweddle v. Atkinson*, 1 B. & S., 393, where the Court disregarded the earlier authorities (those, however, which we have noted do not appear to have been cited), and held that a third person cannot sue at law on a contract made by others for his benefit, even if the contracting parties have agreed that he may, and they laid it down also, (departing from the doctrine of *Dutton v. Poole*, 2

Lev., 210), that near relationship makes no difference. And a similar position in equity appears to be laid down by Lord Langdale, in *Colyear v. Lady Mulgrave*, 2 Keen, 98, in which he remarked substantially as follows: "that if there is a covenant by one person with another to pay a sum of money to a stranger, or do any act for the benefit of a stranger, who is not a party to the instrument or agreement, the person to whom the money is to be paid, or who is to be benefitted cannot sue, either at law, or in equity, because there is no privity of contract."

But one finds in the still later decisions, a strong disposition to revert to the earlier rule, and to give a right of redress to the stranger so circumstanced. The more modern cases in effect adopt the position which was laid down by Lord Alvanley (a judge who distinguished himself both in equity and on the common law bench), in *Pigott v. Thompson*, 3 B. & P., 149 (1802). He there said: "it is not necessary to discuss whether, if A. let land to B., in consideration of which the latter promises to pay the rent to C. his executors and administrators, C. may maintain an action on that promise. I have little doubt, however, that the action might be maintained, and that the consideration would be sufficient; though my brothers seem to think differently upon this point. It appears to me that C. would be only a trustee for A., who might for some reason be desirous that the money should be paid into the hands of C." The same view is taken by Sir William Grant, in *Gregory v. Williams*, 3 Mer., 582, a case which is at the basis of the admirable judgment of Strong, V. C., in *Mulholland v. Merriam*, 19 Grant, 288. In that case the defendant had agreed with a person deceased, that upon an assignment of real and personal estate to him by the deceased, he would