

PERSONAL CHARACTER OF OBLIGATIONS.

containing an appropriate inscription, written by his friend Mr. Phillimore, stands in the Triforium of the Temple.—*Albany Law Journal*.

THE PERSONAL CHARACTER OF OBLIGATIONS.

CONTRACT: EFFECTS ON THIRD PERSONS.

The original and simplest form of contract is that which is made between certain persons, and the effects of which are strictly confined to those persons or their representatives.* It is still the most frequent, and may be taken as the general type. In such a case the persons who actually negotiate the contract are the same who are bound by the consequent obligation; moreover they appear as individual persons acting each in his individual capacity, and not as members of a class answering to a general description.† Assuming this as the rule, we have two conceivable kinds of departure from it.

1. Where the persons who act in concluding the contract do not coincide with the ultimate parties to it: that is, where immediate rights or duties are created in persons not parties to the transaction.

2. Where the parties are not completely ascertained at the time of making the contract: that is, when there is a contract.

(a.) Either with any person indefinitely who shall satisfy a certain condition or answer a certain description.

(b.) Or with the person who for the time being shall satisfy some condition or possess some attribute which may continue to subsist in a succession of different persons.

All these variations from the normal type of contract are treated as exceptional, and cannot be introduced except with certain limitations, and in certain classes of cases. This will appear by taking in order the several branches of

* *I.e.*, those who succeed to their legal existence as representing them by force of some general operation of law, independent of the particular transaction.

† Savigny, "Obligationenrecht," sec. 53, vol. 2, p. 16. The general principles being identical, I follow Savigny's arrangement, and several paragraphs are in effect free translations from him.

the rule and the exceptions which are recognised.

1. There is no doubt that in general a contract cannot be made to confer rights or impose duties on a person not a party to it. As to duties, it is clear on principle that individuals cannot be allowed at will to subject others without their assent to personal liabilities.* It is not so immediately obvious why it should not be competent for them to confer rights on third parties; and, in fact, the law was for a considerable time far from completely settled on this head. It was held sometimes that any third person for whose personal benefit such a contract was made might sue upon it;† sometimes that near relationship at all events was a ground of exception;‡ though the weight of authority seems to have been on the whole in favor of the view which ultimately prevailed.§

But (to use the words of a judgment which finally overruled the older authorities relied on for the supposed class of exceptions in favor of near relationship) "it is now established that no stranger to the consideration can take advantage of a contract although made for his benefit;" so that if one person makes a promise to another for the benefit of a third, that third person may not maintain an action upon it, even if the parties expressly

* It is true that in quasi-contracts (which we still persist in calling by the cumbrous name of contracts implied in law) the one party may be placed by acts of the other of which he is at the time wholly ignorant in a position analogous, but only analogous, to that of one who has entered into an actual agreement.

† Dictum of Buller, J., 1 B. & P., 101 n. "If one person makes a promise to another for the benefit of a third, that third may maintain an action upon it."

‡ *Dutton v. Poole*, 2 Lev. 210, Vent. 318, 322, approved by Lord Mansfield, Cowp. 443, is the type of these anomalous cases. It was not decided without much difference of opinion at the time.

§ See Evans, Appx. 4 to Poth. Obl., a short but very well considered essay; judgment of Eyre C. J., in *Company of Fellmakers v. Davis*, 1 B. & P., 98, who inclined to think B might sue on a promise made to A for his, B's, benefit by laying the promise as made to himself and giving in evidence the promise actually made to A; and note a, 3 B. & P., 149: the older authorities are collected in Vin. Ab. 1, 333-7, Assumpsit Z; two or three of these are cases of agency, which (as will presently be observed) is no real exception.