

April 1936

Contracts--Third Party Creditor-Beneficiary Contract Enforced at Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Contracts Commons](#)

Recommended Citation

Contracts--Third Party Creditor-Beneficiary Contract Enforced at Law, 42 W. Va. L. Rev. (1936).

Available at: <https://researchrepository.wvu.edu/wvlr/vol42/iss3/9>

This Recent Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

wills and statutes of descent in the light of this equitable concept. This technique, while attaining a desirable result, has been criticized as unjustifiable judicial legislation.¹⁰

Other courts while recognizing the impossibility of contravening of the statutes of descent and distribution, impose a constructive trust upon the wrongdoer in favor of the next of kin or the heirs at law of the deceased, exclusive of the murderer.¹¹ Such reasoning has met with much approval among legal writers¹² since it achieves a sound result without sacrifice of the policy of the statutes of descent and distribution. This doctrine has been applied in a New York case¹³ involving a joint-survivorship bank account and in analogous cases of tenancy by entirety.¹⁴ In the present case it was argued that a constructive trust could not be imposed because the defendant's rights were not enhanced by the death of his codepositor. It is believed that such reasoning ignores the true facts.¹⁵ Before his crime the defendant had only a contingent right based on his withdrawal of the deposit before the other depositor removed the money. Afterwards he acquired an absolute and exclusive right to the deposit. Technical reasoning to the contrary notwithstanding, it seems clear that the defendant will reap a substantial benefit from his wrongful act.

CONTRACTS — THIRD PARTY CREDITOR-BENEFICIARY CONTRACT ENFORCED AT LAW. — Action on a life insurance policy issued by *A* company to *B*, naming *C* as beneficiary. *A* company was adjudged insolvent and title to its assets vested in *X* with power to sell the same. *X* contracted with *Y* company who agreed to

¹⁰ Note (1894) 8 HARV. L. REV. 170.

¹¹ Courts have applied the doctrine of a constructive trust in the following cases: *Ellerson v. Westcott*, 148 N. Y. 149, 42 N. E. 540; *Barnett v. Couey*, 224 Mo. App. 913, 27 S. W. (2d) 757 (1930); *Bryant v. Bryant*, 193 N. C. 372, 137 S. E. 188 (1927); *Sherman v. Weber*, 113 N. J. Eq. 451, 167 Atl. 517 (1933); *In re Santourian's Estate*, 125 Misc. Rep. 668, 212 N. Y. Supp. 116 (1925).

¹² For discussion of the doctrine of constructive trust, see: Ames, *Can a Murderer Acquire Title by His Crime and Keep It?* (1897) 36 AM. L. REG. (N. S.) 225; Notes (1897) 8 HARV. L. REV. 170; (1895) 9 HARV. L. REV. 474; (1931) 44 HARV. L. REV. 125

¹³ *In re Santourian's Estate*, *supra* n. 11.

¹⁴ *Bryant v. Bryant*, *supra* n. 11; *Barnett v. Couey*, *supra* n. 11; *Sherman v. Weber*, *supra* n. 11; *Van Alstyne v. Tuffy*, 103 Misc. Rep. 455, 169 N. Y. Supp. 173 (1918).

¹⁵ It has been held that for the purpose of taxation the court will recognize the enhancement of one party's rights by the death of the cotenant. See *Tyler v. United States*, 281 U. S. 497, 50 S. Ct. 356 (1930); *Gwinn v. Commissioner of Internal Revenue*, 54 F. (2d) 728 (C. C. A. 9th, 1932).

pay any loss which might accrue on the policies issued by A company. C, the beneficiary, brings action against Y company on insurance policy issued to B. Held, that A reinsurer, assuming the obligations of the reinsured to the policy holders, is directly liable to the policy holders. *Delp v. Missouri State Life Ins. Co.*¹

At the present time most American jurisdictions follow the so-called *Lawrence v. Fox*² rule that one for whose benefit a contract is made may maintain an action thereon against the promisor,³ although not a party to the agreement and not furnishing the consideration therefor. In these jurisdictions it is held that a reinsurer who promises to assume and pay the losses under policies issued by another company may be directly proceeded against by the policy holder.⁴ The principal case is in accord with the authorities in this respect.

The remarkable feature of the instant decision is that apparently for the first time a third party beneficiary contract, other than one of the "sole" or "donee" type, was enforced in a court of law in West Virginia. A resort to equity⁵ was necessary in order to enforce such creditor-beneficiary contracts in the past. By statute in West Virginia⁶, if a covenant or promise is made, for the sole benefit of a person with whom it is not made, such person may maintain any action thereon the same as if the covenant or promise had been made directly to him. Our court has expressly held that the creditor-beneficiary type of contract, where the promisee seeks indirectly to discharge his obligation to

¹ 182 S. E. 580 (W. Va. 1936).

² *Lawrence v. Fox*, 20 N. Y. 268 (1859).

³ The following cases are selected from representative jurisdictions: *Hendrick v. Lindsay*, 93 U. S. 143, 23 L. Ed. 855 (1876); *Calhoun v. Downs*, 211 Cal. 766, 297 Pac. 548 (1931); *Byram Lumber & Supply Co. v. Page*, 109 Conn. 256, 146 Atl. 293 (1929); *Ransdel v. Moore*, 153 Ind. 393, 53 N. E. 767 (1899); *Coffin v. Bradbury*, 89 Me. 476, 36 Atl. 988 (1897); *Lawrence v. Fox*, 20 N. Y. 268 (1859); *Wood v. Moriarty*, 15 R. I. 518, 9 Atl. 427 (1887); *Casselman v. Gordon & Lightfoot*, 118 Va. 553, 88 S. E. 58 (1916).

⁴ *Whitney v. American Ins. Co.*, 127 Cal. 464, 59 Pac. 897 (1899); *Weil v. Federal Life Ins. Co.*, 264 Ill. 425, 106 N. E. 246 (1914); *Barnes v. Hekla Fire Ins. Co.*, 56 Minn. 38, 57 N. W. 314 (1893); *Meyer v. National Surety Co.*, 90 N. J. L. 126, 100 Atl. 164 (1917); *Fisher v. Hope Mut. Life Ins. Co.*, 69 N. Y. 161 (1877); *Cosmopolitan Life Ins. Ass'n v. Koegel*, 104 Va. 619, 52 S. E. 166 (1905); *Johannes v. Phoenix Ins. Co.*, 66 Wis. 50, 27 N. W. 414 (1886); 7 COOLEY, BRIEFS ON INSURANCE (2d ed. 1928) 6758. But where the reinsurance contract is merely to indemnify the original insurer, the insured may not proceed directly against the reinsurer. *American Bonding Co. of Baltimore v. American Surety Co of New York*, 127 Va. 209, 103 S. E. 599 (1920); 7 COOLEY, BRIEFS ON INSURANCE 6757.

⁵ *Johnson v. McClung*, 26 W. Va. 659 (1885); *Petty v. Warren*, 90 W. Va. 397, 110 S. E. 826 (1922); *State v. Royal Indemnity Co.*, 99 W. Va. 277, 128 S. E. 439 (1925).

⁶ W. VA. REV. CODE (1931) c. 55, art. 8, § 12.

a third person by securing a promise from the promisor to pay the promisee's creditor, does not come within the meaning of "sole" in the statute⁷ and that such contract must be enforced in a suit in equity.⁸ Some of the cases permit recovery under the doctrine of subrogation.⁹ Since in the principal case the distinction between the two types of beneficiary contracts was not called directly to the attention of the court, no attempt being made to distinguish between them, it is doubtful whether the court would follow the principal case where such distinction would be called directly to their attention.¹⁰ But the principal case may be said to stand, on its facts, for the proposition that the creditor-beneficiary type of contract may now be enforced in an action at law in West Virginia.

EASEMENTS — WAY OF NECESSITY WHERE OTHER MODE OF ACCESS — CREATION OF EASEMENT BY IMPLIED GRANT. — The plaintiff, owner of part of the dominant estate and an appurtenant easement in a private alley separated therefrom by the servient estate, seeks to enjoin the defendant from obstructing its alleged way of necessity over the servient estate. *Held*, that no way of necessity existed since another mode of ingress and egress was available to the plaintiff. Decree denying injunction affirmed. *Beckley National Exchange Bank v. Lilly*.¹

The right to a way of necessity over the servient estate has been generally denied where there are other modes of ingress and egress.² This rule is consistently followed in some jurisdictions

⁷ *Nutter v. Sydenstricker*, 11 W. Va. 535 (1877); *King v. Scott*, 76 W. Va. 59, 84 S. E. 454 (1915); *Hamilton v. Wheeling Public Service Co.*, 88 W. Va. 573, 107 S. E. 401 (1921).

⁸ *Supra* n. 5.

⁹ *Petty v. Warren*, *supra* n. 5.

¹⁰ Judge Hatcher stated the policy of the court: "It is true that the practice pursued by claimants was followed in the case of . . . But no objection was raised in that case to the manner of bringing the suit, and its violation of equity procedure was not brought to our attention. Our inadvertence in that case must not be taken as approval of that practice." *State v. Arthur*, 106 W. Va. 559, 561, 146 S. E. 619 (1928).

¹ 182 S. E. 767 (1935).

² *Dorsey v. Dorsey*, 109 W. Va. 111, 153 S. E. 146 (1930); *Whitehouse v. Cummings*, 83 Me. 91, 21 Atl. 743 (1890); *Wills v. Reid*, 86 Miss. 446, 38 So. 793 (1905); *Feoffees of Grammar School v. Proprietors of Jeffreys' Neck Pasture*, 174 Mass. 572, 55 N. E. 462 (1899); *Vossen v. Dautel*, 116 Mo. 379, 22 S. W. 734 (1893); *Batchelder v. National State Capital Bank*, 66 N. H. 386, 22 Atl. 592 (1891); *Staples v. Cornwall*, 190 N. Y. 506, 83 N. E. 1132 (1907).