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Contracts--Made for Benefit of Third Party--Construction of Statute

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continue to hold the property? In Venable v. Coffman, 2 W. Va. 310, the court held that, "An unorganized church cannot be dis-
vested of its property even though a majority of its members enter
into a new organization." By the weight of authority, custody of
property is awarded to the faction adhering to the original tenets
(N. S.) 688. Where property of a Lutheran church was in dis-
pute it was held that, "No majority even though it embraces all
members but one can use the corporate property for advancement
of a faith antagonistic to that for which the church was estab-
lished." Lundstrom v. Tell, 131 Minn. 203, 154 N. W. 969. In ac-
cord, Stallings v. Finney, supra; Mt. Helm Baptist Church v.
Jones, 79 Miss. 488, 30 So. 714. In the principal case custody of
the property was awarded to the majority faction primarily on
the ground that the evidence was insufficient to establish a depa-
ture by it from the accepted practices and beliefs of the church.
—C. P. H.

Contracts—Made for Benefit of Third Party—Construction of Statu-
tte—The City & Elm Grove Railroad Co. sold corporation
property to the Wheeling Public Service Co., which company
as part consideration for the transfer assumed liability for the cor-
porate indebtedness of the railroad company. A holder of over-
due interest coupons on bonds of the railroad company secured by
mortgage of property, sues the public service company at law for
interest. Held, plaintiff cannot recover from the public service
company at law. Only sole beneficiary can sue on third party
et al., Caldwell v. Wheeling Public Service Co., 107 S. E. 401
(W. Va. 1921).

The court in the principal case, following the syllabus of King
v. Scott, 76 W. Va. 58, 84 S. E. 954, holds in paragraph two of the
syllabus, "Section 2, Chapter 71, Code 1913, does not authorize
one not a party to a contract made for his benefit to sue thereon
in a court of law, unless such contract was made for his sole bene-
fit." This section of the Code so far as material reads: "and if
a covenant or promise be made for the sole benefit of a person with
whom it is not made, or with whom it is made jointly with others,
such person may maintain, in his own name, any action thereon
which he might maintain in case it had been made with him only, and the consideration had moved from him to the party making such covenant or promise."

The word "sole" is construed to mean that only the person primarily benefited by the covenant or promise may sue on it. *Johnson v. McClung*, 26 W. Va. 659; *King v. Scott*, supra. This is correct, but the principal case in paragraph two, *supra*, substitutes the word "contract" for "covenant" or "promise" in the statute. Are the terms contract, covenant, and promise synonymous, and therefore interchangeable? It would seem that a literal interpretation of the statute, as framed, containing the terms "covenant" and "promise," would permit suit on a mere promise for the sole benefit of a third party inserted in a contract between other parties. Suppose: A sells oil rights in Blackacre to B Co., which covenants *inter alia* in case of production to pay a part of royalty to C, a gift beneficiary. C is the sole beneficiary of the covenant, yet he is not the sole beneficiary of the contract. It is submitted that he should be permitted to sue at law under the statute for failure of B Co. to pay the royalty. But would not the statute as construed by the court in paragraph two of the syllabus, *supra*, preclude a recovery on the part of the beneficiary of a covenant or promise in all cases where the entire contract is not made for the sole benefit of the third party?

—R. J. R.