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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 divested 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 of the church. *Mack v. Kime*, 129 Ga. 1, 58 S. E. 184, 24 L. R. A. (N. S.) 688. Where property of a Lutheran church was in dispute 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 established." *Lundstrom v. Tell*, 131 Minn. 203, 154 N. W. 969. In accord, *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 departure by it from the accepted practices and beliefs of the church.

—C. P. H.

**CONTRACTS—MADE FOR BENEFIT OF THIRD PARTY—CONSTRUCTION OF STATUTE**—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 corporate indebtedness of the railroad company. A holder of overdue 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 beneficiary contract. *Hamilton v. Wheeling Public Service Co. 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 benefit." 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.