

this suit is founded on the covenants made by the company to and with the assured. The case cited from *Shepherd's Touchstone* does not apply, because there was no covenant between the obligor and the *cestui que use*. It is difficult to conceive how the case of *Burnett vs. Kensington*, 7 T. R. 207, can be brought to bear on the present case, as this suit is founded on a deed executed by *The Maryland Insurance Company* by their corporate seal.

In answer to the objections urged on the ground of the supposed variances between the declaration and the policy, it is sufficient to observe, that the instrument is declared on according to its legal effect.

In *De Ghetoff vs. London Assurance Company*, 3 Brown's P. C. 525, the policy was effected in the name of *De Conninck*, and the names of the assured did not appear on the face of the policy. And it was held that *De Conninck*, the trustee, might bring an action of covenant on the policy. If the names of the parties assured had appeared on the instrument, then the assured might have sustained an action in their own names, according to the principles established in the case cited from *Abbott*.

It has been the uniform practice in this state to institute suits in this way, and the objection has never before been suggested. In a case decided by the supreme court of the U. S. at the last term, a similar declaration was sustained. *Bigelow and Proud* effected a policy similar to the present one, for and on account of *Jacques Ruden*, with *The Maryland Insurance Company*. An action was brought in the circuit court of the U. S. held at *Baltimore*, on the policy, in the name of the assured against the company, and the plaintiff obtained a verdict and judgment. The cause was removed to the supreme court of the U. S. on bills of exceptions, and the judgment below affirmed. *Maryland Insurance Company vs. Ruden*, 6 Cranch, 338. The case of *M. Donough vs. Templeman*, 1 Harr. & Johns. 156, supports the present action. In that case *Burrows* executed the agreement for and on account of *M. Donough*, and the declaration was in covenant in the name of *M. Donough*, and was sustained; but the court held, that *The George Town Bridge Company*, and not *Templeman*, ought to have been sued, as he executed the agreement as their agent.

1810.
Maryland Insurance Company
vs.
Graham.