

refused to execute it. The case turned upon whether there had been such a part performance as to take the case out of the Statute of Frauds. The plaintiff's marriage does not seem too have been any part of the consideration for the defendant's agreement to convey, and so it may be left out of view. The point was, whether the discontinuing of these four actions by the plaintiff, and his allowing the defendant to have the money involved in the fifth one, was such part performance as to take the case out of the Act. The court held that it was. It was suggested that one remedy open to the plaintiff was to bring an action for damages for the loss sustained by reason of the dismissal of the former actions, and the court thought that though such an action would be novel, it might be maintained, but the difficulties in the way of successfully prosecuting would be very great. It was held that an action for damages could not afford adequate relief. The dismissals were not made on a money consideration, nor did the parties intend the value of the actions to be measured by a money standard. In no way could the loss of the advantage in having the actions tried at the earlier, instead of the later, date be estimated in damages, nor any recovery be had for it.

INJURY TO TRESPASSING CHILD.—The Supreme Court of Minnesota, in *Twist v. Winona & St. Paul Railway Co.*, has also given us a decision on the liability of a railway company for damage sustained by a trespasser. A boy ten or eleven years old, of average intelligence, who had often seen, and had a general knowledge of the structure and working of a railway turn-table, and had often been warned by his father that it was dangerous to play upon it, and that he must not do so, and who knew, too, that the railway company prohibited children from playing upon the table, and that he had no right to do so, was swinging upon it while in motion, and was injured. In an action for damages it was held that, though the boy might not understand the full extent of his danger, yet his conduct amounted to contributory negligence. The plaintiff cited *Keeffe v. Railroad Co.*, 21 Minn. 287, and *Railroad Co. v. Stout*, 17 Wall. 657, in which it is held that the owner of dangerous machinery, who leaves it in an open place, though on his own land, where he has reason to suppose that young children will be attracted to and play with it, and be injured, is bound to use reasonable care to protect such children from the danger to which they are exposed. In the *Keeffe* case, the attractiveness of such machinery as a plaything for children, and the danger of its alluring them into perils of which, for their lack of judgment and discretion, they cannot be aware, and against which they cannot protect themselves, was dwelt on; and that such children, it was reasoned, may be said to be induced by the owner's own conduct to come upon the premises; and that what an express invention is to an adult, such an allurements is to a child. In the present case, however, it was held, that when a child of such tender years as not to be capable exercising judgment and discretion cannot be charged with contributory negligence, this rule cannot be applied to all children, without regard to their age or capacity. Children may be liable for their torts or crimes, and may be guilty of negligence.