interveniente novo actu, the grant was subsequently confirmed.

But it can no longer be said that in law, apart from the foregoing exceptions, the existence of the subject matter of the grant is requisite to a valid grant thereof. The Courts of Common Law now are vested with the power of applying principles formerly the exclusive privilege of Courts of Equity (*Kennedy* v. *Bown*, 21 Gr. 95), and which, when so applied, prevail (*Lutscher* v. *Comptoir, &c., supra*); and so the lines once drawn between law and equity exist now only in memory.

If, then, equity has put a different construction upon assignments of after-acquired property, the old rule of law becomes practically obsolete, and a knowledge of it practically useless, except, perhaps, upon the legal effect of a *novus actus interveniens*. That equity has done this is undisputed, for universally do equitable doctrines prevail. Of England, Canada, and the States, Massachusetts, Kentucky and Wisconsin alone, continue the Common Law doctrines. (15 Am. L. Review, p. 122; *Jones* v. *Richardson*, 10 Metc. 481; *Rice* v. *Stone*, 1 Allen, 566; *Phelps* v. *Winslow*, 18 B. Monroe 431; *Hunter* v. *Bosworth*, 43 Wis. 583.)

The law (by this we mean the law as modified by equity) will now support assignments, not only of choses in action, and of contingent interest and expectancies, but also of things which have no present, actual, or potential existence whatsoever, but rest on mere possibility (Story's Eq. Juris. sec. 1040); with this proviso, however, that the assignment be "one of that class of which a Court of Equity would decree the specific performance." There yet, however, remains a distinction between things *in esse* and things *in posse*, but only in the spirit in which transfers thereof are respectively sustained. An assignment of the latter is supported, not as a present positive transfer operative *in presenti*, which can only be of things *in esse*, but as a present contract, to take effect and attach *in futuro* so soon as the thing comes into existence (15 Am. L. Review, p. 121; cases cited, note 4). That there are assignments of after-acquired property which the law will not sustain, however decided the intention of the parties may be to pass such property (and this intention must clearly appear by the instrument itself: *Mason* v. *Macdonald* 25 C. P. 439; see *Carr* v. *Allatt*, 27 L. J. Ex. 385), a consideration of the above proviso will fully establish; but whether an assignment of crops to be thereafter grown is one of such class, is now to be considered, while it brings us to the authorities pertaining to the discussion.

In considering the authorities it will not be necessary to go beyond the question, whether the assignment is one of that class of which a Court of Equity would decree the specific performance, because the numerous cases upholding grants of after-acquired property (when there has not been a *novus actus*) so establish their validity, as to make the test thereof the affirmative or negative of this question, (per Lord Westbury, *Holroyd* v. *Marshall*, 33 L.J. Ch'y, N.S. 193; *Re Thirkell, Perrin* v. *Wood*, 21 Gr. 492). Where there has been a *novus actus*, then a grant may yet be good at law, even in cases where equity would not have decreed specific performance but these cases call for no consideration here.

In *Brown* v. *Bateman*, L. R. 2 C.P. 272, Mr. Justice Smith asked whether an agreement "that all materials brought upon the premises by B., for the purpose of erecting the buildings should be considered as immediately atttached to, and belonging to the premises and should not be removed without Holledge's consent" was a contract which equity would enforce in favour of Holledge as against a seizure by the Sheriff under an execution against B., and he answered that he clearly was of opinion that it was.

In *Hope* v. *Hayley*, 5 E. & B. 830, the deed contained the words "that when and as soon as any of the dye wares, &c., &c., hereby