

## Cases Omitted in the Reports.

CRANE *v.* KANSAS PACIFIC RAILWAY COMPANY.

## APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

No. 2. October Term, 1879. — Decided November 17, 1879.

The performance of a contract for the construction of a railroad, made by a deceased person with the railroad company, cannot be enforced by his heirs, even if the profits are partly in lands.

THE case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This decree is affirmed. The suit was in equity by the children and heirs of Samuel Hallett, deceased, to enforce a contract he made in his lifetime with the railroad company, defendant, then known by another name, for the construction of its line of railway and telegraph. By the terms of the contract he was to be paid for his work in money, United States subsidy bonds, construction bonds, land-grant bonds, and capital stock of the company, and city and county bonds. He was not to become interested in any lands except indirectly as a stockholder in a corporation owning lands, and a holder of bonds secured by mortgage. When he died, the contract formed part of his personal estate, and belonged to his personal representative and not to his heirs, except upon distribution after all debts were paid. Had the personal representative performed the contract, he, like the intestate, would be entitled to money, stocks, and bonds for what he did. In this way he might have added to the assets of the estate for distribution, but he would get nothing which could pass directly to the heirs by inheritance. It matters not that since the death of Hallett others may have taken possession of the contract and made themselves in law trustees of the profits they have realized by its performance. As such trustees they must account to the personal representative of the estate and not to the heirs. If the profits for which they account are partly in lands, these lands do not pass to the heirs of Hallett by inheritance. They go to the personal representative as part of the personal estate, and through him on distribution to the heirs.

It follows that the heirs could not bring this suit and that the demurrer to their bill was properly sustained.

*Affirmed.*

*Mr. Matthew H. Carpenter and Mr. J. B. Stewart* for appellant.  
*Mr. J. P. Usher and Mr. C. E. Bretherton* for appellees.