

Opinion of the Court.

As the moneys advanced by J. S. Waterman to R. W. Waterman and Porter were all repaid before the commencement of this suit, and as no conveyance was demanded from R. W. Waterman within the time limited by his obligation, the plaintiff was not entitled to the relief asked.

One other point requires notice at our hands. An interlocutory decree was rendered declaring the plaintiff to be entitled to the relief asked, and the cause was referred to the master to state the accounts between the parties in respect to the use of the property, and the profits derived from it. The master made his report, and the final decree recites that each party waived the right to except to it. This waiver is relied upon as showing that the final decree was by consent, and, therefore, not to be questioned in this court. This contention is overruled. The waiving of exceptions to the master's report meant nothing more than that the appellant did not dispute its correctness in respect to the amount of the profits realized from the property. This waiver had no reference to the fundamental inquiry as to whether the plaintiff was entitled to a conveyance. But as, for the reasons stated, R. W. Waterman was not bound to convey — the time having elapsed in which a conveyance could be rightfully demanded — the entire decree falls.

The decree is reversed and the cause remanded with directions to dismiss the bill.

PORTER *v.* BANKS. Appeal from the Circuit Court of the United States for the Northern District of California. No. 191. Argued with and decided at the same time as No. 190, *ante*, 394. MR. JUSTICE HARLAN. The decree in this case required the specific execution by Porter of a written obligation to J. S. Waterman, similar in all respects to that of R. W. Waterman, referred to in the foregoing opinion, except that the interest which Porter agreed to convey was (3-100) three one-hundredths of the same property; also to pay to the original plaintiff, Abbie L. Waterman, the sum of \$5373.40 as the profits

Syllabus.

of the property agreed to be conveyed with the interest that accrued thereon prior to January 10, 1888. The facts in this case do not materially differ from those in the above case, and for the reasons stated in the above opinion the decree in this case must also be

Reversed.

Mr. George F. Edmunds for appellant.

Mr. Charles C. Bonney for appellee.

GRAND TRUNK RAILWAY COMPANY *v.* IVES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

No. 134. Argued January 4, 5, 1892. — Decided April 4, 1892.

When, in an action brought against a railroad company in Michigan by the administrator of a person killed by one of its trains, to recover damages for the killing, the record in this court fails to show that any exception was taken at the trial, based upon the lack of evidence to show that he left some one dependent upon him for support, or some one who had a reasonable expectation of receiving some benefit from him during his lifetime, as required by the laws of that State, (Howell's Ann. Stat. §§ 3391, 3392,) the objection is not before this court for consideration. The terms "ordinary care," "reasonable prudence," and similar terms have a relative significance, depending upon the special circumstances and surroundings of the particular case.

When a given state of facts is such that reasonable men may fairly differ upon the question as to whether there was negligence or not, the determination of the matter is for the jury; but where the facts are such that all reasonable men must draw the same conclusion from them, the question of negligence is one of law, for the court.

The running of a railroad train within the limits of a city at a greater speed than is permitted by the city ordinances, is a circumstance from which negligence may be inferred in case an injury is inflicted upon a person by the train.

Whether ordinary care or reasonable prudence requires a railroad company to keep a flagman stationed at a crossing that is especially dangerous is a question of fact for a jury; although in some cases it has been held to be a question of law for the court.

Where the statutes of a State make provisions in regard to flagmen at