

paid or tendered. The answer alleges a tender, but there is no proof of it, and it cannot of course be assumed without proof.

The complainant is not suing at law for the recovery of the land, but in equity for the payment of the money, upon the ground, that the payment cannot be enforced at law, in consequence of the insolvency of the company. He has forborne to institute these proceedings until the road is finished, and valuable and expensive improvements are made upon the property; and I, therefore, am of opinion; that in equity, he is entitled to no more than a decree for a payment of the sums awarded him by the jury, with interest from the period of the confirmation of the inquisitions by the court. A decree will be signed for that purpose, payable out of the revenues of the company, within some reasonable time, and in default thereof, the revenues will be sequestered until the claim is paid. The complainant is, also, I think, entitled to his costs.

It may be further observed in reference to the prayer of the bill, that the complainant may be restored to a possession of a part of the land condemned, that if any such right exists, under the circumstances of this case, his remedy is by action of ejectment, and not by bill in equity.

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CHARLES A. WATERS,

vs.

CHARLES HOWARD AND WIFE ET AL. }

DECEMBER TERM, 1847.

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[SPECIFIC PERFORMANCE—ELECTION.]

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UPON a bill for the specific performance of a contract, the court must entertain no reasonable doubt of the existence of the contract, and be satisfied that it is one, which, looking to what is just and reasonable, ought to be enforced.

The specific performance of contracts in equity, is not a matter of absolute right in the party, but of sound discretion in the court; and unless the court is satisfied that the application is fair, just and reasonable in every respect, it will refuse to interfere, but leave the party to his remedy at law for compensation in damages.

In contracts relating to personal property, unless it can be clearly shown, that adequate compensation cannot be given by an action at law, chancery will not interfere.