

the benefit of that on land. The bridge which congress has impliedly authorized the defendant to build across the Wallamet may be presumed to be equal in these respects to those which it has expressly provided for under similar circumstances.

As has been stated, the bill is indefinite as to the location of the bridge, and substantially silent as to its character. But the general facts as to both are well understood in this community, and may even be taken notice of by the court. A detailed description of the structure and location is given in the annual report of the secretary of the board of trade, published in the *Daily Oregonian* of September 25, 1883.

The location of the bridge is opposite Albina, and over a mile north of Stark-street ferry; the western end is 200 feet to the north of the intersection of Front and Sixteenth streets, and the eastern end 32 feet south of the end of the Northern Pacific Terminal Company's dock. The length of the bridge between the end piers is 1,186 feet. It consists of three fixed spans of 264 feet each in length, and a draw span, which is the third from the western shore, of 394 feet in length. These spans are of iron and steel, with a double-track railway thereon, and rest on six stone piers. The draw will be worked by steam, and when open will allow a clear channel for the passage of vessels of 174 feet in width on either side of the pier, with a depth of 25 feet therein at extreme low water. The structure will be 11.6 feet in the clear above extreme high water, or about 38 feet above extreme low water.

In general, and particularly in the width and operation of the draw, this plan compares favorably with the bridges elsewhere allowed by congress, and is more favorable to the passage of vessels than the bridge authorized at this point by the act of June 23, 1874.

The demurrer is sustained and the bill dismissed.

FOX v. PHELPS.¹

(Circuit Court, E. D. New York. June 29, 1883.)

SPECIFIC PERFORMANCE—INCOMPLETE TITLE AFTERWARDS PERFECTED.

Where a bill in equity was filed to compel the specific performance of an agreement to purchase lands, and it appeared that the complainant had not been able to give a perfect title at the time agreed, and that after an extension of 30 days he still was unable, but afterwards he brought this suit to compel the defendant to accept the title, and on the trial tendered a good title, *held*, that the defendant was justified in rejecting the title when it was tendered and that, even if the complainant were able at the time of the trial to give perfect title, it would not be doing equity to compel the defendant to accept it after nearly two years had elapsed since the day named in the contract for passing the title.

¹Reported by R. D. & Wyllys Benedict, of the New York bar.

In Equity.

This was a bill in equity to compel specific performance of an agreement to purchase certain lands. The date on which the title was to be passed was November 25, 1881. The complainant admitted that on that date he was not able to give a perfect title, but alleged various extensions of the agreement, and alleged a tender of the title on February 25, 1882, and again in July, 1882. The defendant admitted one extension of 30 days, but denied any further extensions.

Kurzman & Yeaman, for plaintiff.

W. S. Logan, for defendant.

BENEDICT, J. I am of the opinion that the defendant was justified in rejecting the title to the land described in the contract now sought to be enforced against him, which was tendered by the plaintiff previous to the commencement of this suit. If it be true that since the commencement of the suit the plaintiff has perfected his title, and the title which the plaintiff now tenders is one that the defendant would have been bound to accept if tendered within a reasonable time after the making of the contract, still I am of the opinion that, upon the facts shown, it would not be doing equity to compel the defendant at this late day, when nearly two years have elapsed since the day named in the contract for passing the title, and upon tender of title made for the first time upon the trial, and that, too, without any evidence tending to excuse the plaintiff's failure in time to procure the deeds upon which he now relies as proof of readiness and ability, to perform the contract on his part. For aught that appears, the plaintiff's only reason for the delay of nearly two years in putting himself in a position to deliver to the defendant a good title to the land he contracted to sell, was that he hoped to throw upon the defendant the risk of the existence of any outstanding interest in the land held by the parties whose deed he has acquired since the commencement of his suit, and for the first time tendered on the trial.

The bill is therefore dismissed, with costs.

Dow and others v. BERRY and others.

(Circuit Court, E. D. Wisconsin. October 16, 1883.)

1. FRAUD—CONVERSION OF TRUST PROPERTY—EFFECT OF CHANGE OF FORM.

It is a general proposition, both at law and in equity, that if the property of a party has been wrongfully converted into another species of property, if its identity can be traced, it will be held in its new form liable to the rights of the original owner or *cestui que trust*. No change of the state or form of trust property can divest it of such trust, or give the agent or trustee converting it, or those who represent him in right, (not being *bona fide* purchasers for valuable