projected, and not completed. The change therein referred to is a change of plan before the plan has been executed. The change is a change of proposed lines and proposed termini, not an extension of a completed railroad. That is covered by section 3306, already mentioned and discussed. Section 3274 (the section referring to the line covered by the mortgage) was a section intended to enable a corporation that had issued a mortgage upon a road to be constructed to change its plants without the necessity of issuing a new mortgage. It will be observed that section 3272 forbids any change which will involve the abandonment of any part of the road either partly or completely constructed; re-enforcing the view that the act refers only to a projected line in process of construction, but which has not been completed. It is evident that the officers of the inclined-plane company did not suppose that this section had any application, because they did not obtain the written consent of three-fourths in interest of the stockholders of the company to change the line or to change the termini. They proceeded under section 3306, which applies to a completed line, and which requires for the change of termini only a vote of the majority of the stock.

For the reasons given, I am clearly of opinion that the statutes of Ohio have no bearing upon the construction of the mortgage to Goodman, trustee, and that within its four corners there is no language to be found which justifies the view that it covers anything more than the road which was owned and in operation at the time the mortgage was given, together with the fixtures, rails, poles, and wires since added thereto, the new equipment of the inclined plane, and such proportion of the rolling stock which has since been substituted for the rolling stock then in use as may properly be said to have been necessary to produce the income from the three miles of road which was mortgaged. The decree for sale under the amended bill of the complainant and the intervening petition of Goodman, trustee, may be prepared in accordance with the views herein expressed.

CAMP MFG. CO. v. PARKER.

(Circuit Court of Appeals, Fourth Circuit. February 7, 1899.)

No. 273.

1. SPECIFIC PERFORMANCE — EFFECT OF FAILURE TO STRICTLY PERFORM CONTRACT—FORFEITURE.
   Even when time is made of the essence of a contract, the failure of a party to comply with a condition within the particular time limited will not work a forfeiture nor defeat the right to enforce specific performance, where such condition is complied with within a reasonable time, and no circumstances have intervened to render it unjust or inequitable to grant such relief, but, on the contrary, it would be inequitable to withhold it.

2. CONTRACTS—ENFORCEMENT OF FORFEITURE—NOTICE.
   Forfeitures not being favored in equity, where one party to a contract is required by its terms to give notice to work a forfeiture, he will be held to a literal compliance with such provision, or a forfeiture will not be enforced.

8. SAME—SUFFICIENCY OF NOTICE.

Defendant contracted for the sale of standing timber, and subsequently entered into a supplemental agreement with plaintiff, which had become the owner of the contract, extending the time for the removal of timber which had been paid for, in consideration of certain annual payments, to be made by plaintiff "at the beginning of each year" in advance, the agreement providing that, on a failure to make any payment when due, plaintiff should be given a notice of 10 days, and, if the payment was not made within that time, the agreement should terminate. Early in January, defendant wrote plaintiff, requesting it to ascertain the amount of a payment due, and to send a check for the same, and a few days later again wrote to the same effect. Neither letter contained any reference to a termination of the agreement, but they asked information in regard to the number of acres of the timber as shown by a survey, and upon which the amount of the payment depended. Plaintiff was unable at the time to ascertain the amount as shown by the survey, and delayed answering, but on February 7th sent a check for an amount slightly in excess of the amount due. After receipt of the check, defendant determined to insist on a forfeiture of the contract, and returned the check. *Held*, that the letters of defendant were insufficient as notice to work a forfeiture, under the terms of the contract.

Appeal from the Circuit Court of the United States for the Eastern District of North Carolina.

This was a suit in equity by the Camp Manufacturing Company against Henry Parker to enforce the specific performance of a contract. From a decree dismissing the bill, plaintiff appeals.

B. B. Winborne, for appellant.

Francis D. Winston, for appellee.

Before GOFF, Circuit Judge, and PAUL and WADDILL, District Judges.

PAUL, District Judge. This cause is here on appeal from the circuit court for the Eastern district of North Carolina. The appellant was the plaintiff, and the appellee the defendant, in the court below. The record shows that on the 9th day of January, 1889, the defendant, Henry Parker, Frusa, his wife, A. W. Early and Eugenia, his wife, entered into a contract with W. P. Taylor and James T. Brinkley, by which they sold and conveyed to said Taylor and Brinkley all their right, title, and interest in and to all pine trees growing and being upon a certain tract of land in Bertie county, N. C., containing 240 acres, more or less. On the same day, the said Henry Parker and wife entered into two contracts with the said Taylor and Brinkley, by which said Parker and wife sold their right, title, and interest in the trees on two other separate and distinct tracts of land. The three contracts were the same in substance and form, and all contained the following provision: "To have and to hold the same unto W. P. Taylor and Jas. T. Brinkley, the said parties of the second part or their assigns, for the term of five years from the date hereof," with the exclusive privilege of entering upon the land for the purpose of removing the trees. Subsequently, the plaintiff, the Camp Manufacturing Company, became the owner of all the interests and privileges of Taylor and Brinkley held by them under the three contracts above mentioned.

On the 30th day of May, 1893, after the plaintiff had acquired the