

essential nature of the kind of suit now under consideration. Mr. Denison says: "It [the proposition that the vendor must return everything but the deposit] naturally follows also from the attempt to rescind the contract: the contract being put an end to both the parties must be remitted to their original positions."

It is true that such an action is commonly called a "rescission" suit but the name seems inappropriate. A true rescission suit would seem to be where the plaintiff alleges that no contract has in reality ever been entered into between the parties but a certain document purporting to be such contract was entered into through fraud or mistake and the Court is asked to set aside the document in the sense of declaring that it never was originally binding upon the parties. In such cases, restitution by the plaintiff would be a natural or logical term or condition to be imposed upon him by the Court in granting relief, and in fact is invariably a term. On the other hand, in the kind of suit now under consideration the vendor comes into Court declaring that the contract *was* really entered into and that it remained in full force and effect for some time and he asks for a declaration that by reason of the purchaser's repudiation, he, the vendor, is and always will be discharged, absolved, and relieved from performance of his part of the contract, so that the contract is at an end in so far at least as the land is concerned. The proper term to describe the result thus sought would seem to be the word "determination" rather than the word "rescission."

Halsbury (vol. 7, at p. 438), speaking of contracts in general, says: "Where a contract is to be performed on a future day or the performance is dependent on a contingency and one of the parties repudiates the contract and shews that he does not intend to perform it, the other party is absolved from further performance of his part of the contract and, if he elects to do this, the party in default is not entitled to an opportunity of changing his mind. In such a case the contract is completely determined and the party who is in default cannot insist upon the performance by the other party." Mr. McCaul's valuable work on Vendors and Purchasers, 2nd ed., ch. 5, applies this general principle of contracts to the sale of land: