

not for rescission but for performance by the purchaser within a time to be set by the Court and, in default, cancellation of the contract and forfeiture of the moneys paid out, and (b) the purchaser does not express willingness and ability to pay and the vendor does not refuse to accept the money. This common everyday case is not dealt with at all by the *Drinkle* judgment, and on account of its commonness it deserves special attention and enquiry.

The case of *Re Dagenham Docks*, L.R. 8 Ch. 1022, is also cited in several cases as an authority for some such broad, general proposition as Mr. Denison has based upon the *Drinkle* case. But the circumstances there were similar to those in the *Drinkle* case in this essential respect that the purchaser was ready, willing and able to pay and complete his contract although the fixed time for payment was past. The judgment, in relieving the purchaser from the forfeiture provided by the contract, does so upon the express condition of the purchaser paying the balance of the purchase money with interest as compensation for his default. In *Barton v. Capewell*, 68 L.T.R. 857, cited by Mr. Denison in this connection, the vendor had rescinded or cancelled extra-judicially as in the *Drinkle* case, and the validity of such rescission was assumed by the Court.

I. Does the presence or absence in the contract of a clause providing for forfeiture upon notice effect such a case? How can it? Such a clause prescribes an extra-judicial procedure and surely can have no application whatever when forfeiture (if that indeed is an appropriate expression) is sought by another procedure, viz., by a suit not based on any such notice or clause but upon other considerations.

II. If not, then how can there be jurisdiction to relieve against forfeiture of purchase-moneys paid? Is not the jurisdiction to relieve against forfeiture limited to and founded upon penal clauses in contracts?: 13 Halsbury, 150-154.

III. It may be answered, however, that the Court can reach the same result or relief by exercising another and distinct jurisdiction, i.e., the jurisdiction to impose equitable terms on a plaintiff seeking equity. This raises the question as to what is the