

the vendor so to act (that is, to retain the deposit), in my opinion there must be acts on the part of the purchaser which not only amount to delay sufficient to deprive him of the equitable remedy of specific performance, but which would make his conduct amount to a repudiation, on his part, of the contract." This statement detracts largely from the value of the decision and introduces an element of most perplexing uncertainty. If by delay the right to specific performance is gone (and consequently the right to sue for breach of the contract at law), there may still remain the right to recover the deposit, if the purchaser's conduct does not "amount to a repudiation, on his part, of the contract!" The facts of the case itself render this statement all the more perplexing, for there was no conduct on the part of the purchaser showing a repudiation other than mere delay. On the contrary, he was always anxious to carry out the contract, but being short of money was never able to do anything but apply for more time, and finally he filed a bill for specific performance. Mr. Justice Fry's decision is more satisfactory: "In a word, the purchaser has, in my opinion, been guilty of such delay, whether measured by the rules of law or equity, as deprives him of his right to specific performance, and of his right to maintain an action for damages—and, *under these circumstances*, I hold that the purchaser has no right to recover his deposit." Bowen, L. J., however, agrees with Cotton, L. J., in his statement of the application of the rule, and the result must be deemed to be uncertain and disappointing.

One other point which remains for settlement, in various other suits is, whether money expressed to be paid "as a deposit and in part payment of the purchase money," is in every case to be subject to forfeiture upon such default of the purchaser as mentioned in *Smith v. Howe*. If the purchase money be \$1,000, and \$750 be the amount paid, is this sum a deposit—a pledge for the performance of the contract; or does not its very proportion show that it was not intended to be a pledge. Of course it may be said that the parties have called it a deposit, and the law says a