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FORFEITURE UNDER CONTRACTS FOR SALE OF LANDS.

SOME OBSERVATIONS ON ARTICLE BY MR. SHIRLEY DENISON, K.C.,
ANTE P. 82.

The third question discussed by Mr. Denison's able and timely article is: "The purchaser, having paid some of the instalments of purchase money, makes default; can the vendor cancel the sale and keep the instalments?" From the Privy Council decision in the Saskatchewan case of *Drinkle v Steedman* (1916), 1 A.C. 275, Mr. Denison comes to the conclusion that "relief against forfeiture of the purchase money will be granted even in cases where specific performance cannot be had."

The judgment itself lays down no broad general rule in the above terms; and as the circumstances of that case were somewhat unusual, the applicability of the judgment should, it is submitted, be limited to the special circumstances of that case.

These special circumstances were as follows: The vendor had given notice of forfeiture of both lands and moneys pursuant to a special clause in the contract, and then brought action for a declaration, that the forfeiture claimed to have been thus extrajudicially effected was effective and valid. Furthermore the defendant not only pleaded being ready, willing and able to pay and offered to bring the balance of the money into Court, but also claimed and insisted upon specific performance by the vendor. Finally the vendor by his pleadings rejected this offer and refused to accept the balance of the purchase moneys and resisted specific performance.

These three features distinguish the case from the one ordinarily arising, i.e., where (a) the vendor comes into Court asking