

after default the vendor cancels pursuant to his agreement he is not rescinding it, in the sense that the parties are in the same position as though no bargain had been made. He is performing the contract and at common law he would be entitled to whatever remedies that situation gives him. One of those remedies is the right to retain all purchase money paid, and the purchaser having agreed to it, cannot object at common law.

A comparison, therefore, of cases (a) and (b) will shew the importance of provisions for cancellation and forfeiture in all contracts for payment of purchase money by instalments

The main question, therefore, under this general heading is whether if the purchaser cannot obtain or does not wish to obtain specific performance, he is entitled to ask for relief against this forfeiture. At common law he was helpless and so his appeal is necessarily to equity and the problem is whether this is one of those penalties and forfeitures from which the Court of Chancery grants relief. In Ontario it was not so treated. The case of *Fraser v. Ryan*, 24 A.R., p. 441, already quoted, while a decision upon another point declares that where the purchaser has not complied with his agreement he cannot recover any part of the money which he paid; see also *Gibbons v. Cozens*, 29 O.R. 306, and *McCammond v. Govenlock*, 2 O.W.N. 563.

In Manitoba and the North West Provinces the matter has received a good deal of consideration and apparently it was the practice in Alberta for vendors holding agreements of this kind and having part of the purchase money in their hands to sue after default for rescission and for a declaration that the purchase money was forfeited; see *Great West Lumber Company v. Wilkins*, 1 A.L.R. 155; *Merriam v. Paisch*, *ibid*, 262; *C.P.R. v. Meadows*, *ibid*, 344, and *Schurman v. Ewing*, 2 A.L.R. 168, and even though the defendant did not appear some of the Judges refused to rescind and forfeit the purchase money. Instead they appeared to mould the practice governing cases where a vendor's judgment for specific performance against the purchaser remained unsatisfied, and instead of declaring a forfeiture they gave the purchaser time to redeem and directed a sale of the lands after the time limited, authorising the vendor to retain the amount of his principal, interest and costs, and ordering him to pay the balance