

- (1) Default after payment of part of the purchase money other than the deposit by the purchaser.
- (2) Rescission by the vendor.
- (3) Forfeiture of the moneys paid.
- (4) Claim by purchaser for return of his money but no demand for specific performance.

It is this kind of case which now calls for some consideration. Leaving aside the minor questions of interpreting contracts which continually arise and are different in each contract, there are two broad classes (a) those where there is no forfeiture clause; (b) those containing a forfeiture clause.

(a) *Where there is no forfeiture clause:*—If more than a deposit has been paid and there is no forfeiture clause it would appear by analogy from the cases where judgment has been given for specific performance against a purchaser that if the vendor tries to rescind the contract he must return the purchase money other than the deposit. This was the course adopted even as to the deposit in *Mackreth v. Marlar* (1786), 1 Cox Equity Reports 259, but there the question was not distinctly raised whether the deposit would have to be returned. Apparently the vendor conceded the purchaser's right to the deposit as otherwise deposits need not be returned if the purchaser is in default. The case is authority, however, for the proposition that the vendor must return everything but the deposit; see also *Williams Vendor and Purchaser* 1051, note M, and 1120. It naturally follows also from the attempt to rescind the contract; the contract being put an end to both parties must be remitted to their original position. If the vendor is not satisfied with that he should not try to rescind; he should bring an action based upon the contract claiming damages for breach by the purchaser. We may assume, therefore, that if the vendor rescinds a contract which contains no provision for forfeiting the purchase money he must give back any purchase money paid except the deposit.

(b) *Where there is a forfeiture clause:*—Where agreements are entered into for payment of purchase money by instalments, they almost always provide for cancellation and retention of all purchase money paid as liquidated damages for default. Where