

There is not in the agreement for sale any express provision as to forfeiture of all moneys in case of default. It certainly would not be equitable to permit vendors to irrevocably declare a forfeiture, after all but a comparatively small sum of the purchase money had been paid. That is not the present case as to payment, but that apparently is what the plaintiffs claim as their right under the agreement now being considered. The agreement for sale provides for resale in case of default, and that the purchaser shall be liable for deficiency, if any, together with all costs attending resale, and that all loss may be recovered by the vendors from the purchaser as liquidated damages. It also provides that the whole amount of the purchase money shall at once become due and payable. By the agreement also a monthly tenancy is created, the purchaser attorning to the vendors as a tenant, at the monthly rent equal to the monthly payments, calling the payments rent, and only rent, in so far as there has been an actual appropriation in that way. If that is the true meaning of the agreement, there might be in case of default a forfeiture of money paid as rent, while the purchaser remained in possession. The agreement is not clear, and in a case where not even the month's notice to give up possession was given, the Court should relieve against any forfeiture declared or attempted by the plaintiffs.

The action is for possession and for mesne profits.

The statement of defence alleges an express agreement between plaintiffs and defendant under which defendant should be allowed to continue in possession and carry out Bunting's purchase. The defendant further says, as an alternative defence, that the repairs were made under such circumstances that an agreement to pay for them should be implied. As I have said, in my opinion the defendant Longley is entitled to a lien upon the land for a sum of money by which the value of the land is enhanced by such improvements. Having regard to R. S. O. 1897 ch. 119, sec. 30, I think that the defendant Longley is entitled to, and may be required to retain the land, making compensation therefor, as I think this, under all the circumstances of the case, to be most just. The compensation shall be as follows: The defendant Longley shall, within 30 days after this decision shall be absolute, if it becomes so in the absence of or upon appeal, pay to the plaintiffs all arrears of instalments and interest, and interest