

the contract is at an end, and he holds the property as though it had never been made. He can sell the land for his own benefit, or he may, if he choose, keep it.

Then, does the special agreement in this case make any difference? May not the vendor's position be affected by a clause which provides that in case of default the vendor may sell, and, if there be a deficiency on re-sale, the vendee is to make it good. In such a case it may, very well, be urged that, in case of default, the contract was not to be at an end at all, that the agreement provides for the *continuation* of the relationship of vendor and purchaser, and that the vendor is given a power of sale over property that by the contract belongs to the purchaser. In other words, that the parties placed themselves in the relationship of mortgagor and mortgagee, the equitable estate being in the purchaser and the legal, with a power of sale, in the vendor.

This seems to be a very reasonable view to take of the matter, but it does not appear to have been presented upon the argument of the case, and we have not the benefit of the opinion of the judges upon it. The court held that when the vendor sold he did so as owner of the property; that the contract not having been performed by the purchaser, but on the contrary, by long delay, having been, in effect, repudiated by him, was at an end; and that the vendor did not require the assistance of the power contained in the contract in order to effect a sale. This view gives no effect to the special clause at all; in fact, one of the judges disposes of it summarily by saying: "we may pass by that special clause, for I think it does not really deprive the deposit in this case of the character which it would bear if there were no special clause."

If there be no provision in the contract governing the relationship of the parties after default, the law terminates the agreement, but *Expressum facit cessare tacitum*; and where the contract does provide for the continuation of the relationship of the parties after default, why should that clause be struck out of the agreement?