

cally there should be no different treatment of the cases of forfeiture of the purchaser's equitable interest in lands after the contract is signed and forfeiture of any money he may pay and imperil by his subsequent default, but practically there is a difference. If he loses an interest in lands for which he has paid nothing he loses his bargain and the advantages, more or less problematic, to accrue from it, but if he loses the money paid and has nothing to show for it, there is nothing speculative about his loss, it is very real and definite. Consequently we find a different treatment (for instance of the time clause in agreements) according to whether it creates forfeiture merely of the equitable interest in lands or forfeiture of purchase money paid on account.

As there has been so much confusion in the cases it may be no harm to make a few distinctions even though they involve a certain amount of repetition.

First: Specific performance of a contract may sometimes be granted to a purchaser in default who has paid part of his money. In such cases the purchaser saves the money paid by paying the rest of it with interest and costs. The nature of the relief granted is really an extension of time for payment. Instances of this are *Re Dagenham*, L.R. 8 Ch. D. 1022, and *Kilmer v. British Columbia* (1913), A.C. 319; and the limits set to such relief are laid down in *Brickles v. Snell* (1916) 2 A.C. 599.

Second: Where the vendor has had judgment for specific performance under a contract containing no provision for forfeiting purchase money and a purchaser cannot pay the rest of the money a practice has developed in Chancery permitting the vendor to rescind the contract and retain his costs out of the purchase money in his hands and even to keep the deposit if the agreement so provides, but apparently he cannot keep any other purchase money in his hands: *Fry Specific Performance* 11th ed., 578 and 579, *Griffiths v. Vesey* (1906), 1 Ch. 796; *Shuttleworth v. Clews* (1910), 1 Ch. 176. These rights do not depend merely upon contract but constitute the practice of the Court whereby it seeks to assist a vendor who holds an unsatisfied judgment for specific performance against a purchaser.

3. There are cases where the following elements appear:—