

of the agreement; yet relief may be granted against forfeiture even of a deposit if the purchaser's default is inadvertent and not equivalent to a repudiation of the contract. Any claim to such relief should be carefully scrutinized as the deposit might have been insisted upon not merely as a guarantee for performance but as a guarantee for *punctual* performance, and to treat a deposit as something to be returned to a purchaser in default is to deprive it of its character as a deposit altogether.

The answer to this second enquiry, therefore, appears to be:—

1. Upon default by the purchaser constituting a breach of contract by him the vendor may retain any money paid by the purchaser as a deposit.

2. Whether a Court of Equity will relieve against forfeiture of a deposit when the purchaser's delay is inadvertent and not tantamount to a repudiation of the contract *quære?*

3. *The purchaser having paid some instalments of purchase money makes default. Can the vendor cancel the sale and keep the instalments?*

Many agreements for sale provide for payment of purchase money by instalments, postpone delivery of the deed until the whole or a certain number of the instalments are paid and stipulate that upon default the contract shall be no longer binding on the vendor who may retain all instalments paid as liquidated damages. This is usually made of the essence of such agreements. Under them the purchaser acquires no legal estate for some time but his equitable interest becomes increasingly valuable as his instalments are met and it becomes a serious problem: (1) whether he loses his interest in the lands by default (2) whether, if that interest is lost, he may recover his instalments paid (3) if so, whether the vendor may deduct from them any damages he has suffered through the purchaser's default.

The first of these enquiries has been dealt with in considering the purchaser's right to specific performance notwithstanding his delay and will not be further discussed.

The second enquiry deserves some consideration. We eliminate all cases of deposit as they have also been dealt with and consider only payments which do not bear such character. Logi-