

p. 444. The Chancellor says: "The contract has been ended by mutual action of the parties and the law leaves them where they have put themselves. Whatever money has passed from one to another cannot be recovered . . . The contract is at an end and all rights thereunder and remedies thereon end therewith except that damages for the breach of it may be sought by the vendor." If this language refers to more than the deposit it may require explanation in the light of later cases but as to the deposit, it is submitted that it accurately states the law for Ontario. The purchaser being in default and the vendor rescinding, it may be taken as law that as a rule the Court will not relieve against forfeiture of the deposit.

There may be some exceptions to this, though it is hard to find a decision expressly in point. In *Hove v. Smith*, 20 Chy. Div. 89, at p. 95, Cotton, L.J., says: "I do not say that in all cases where this Court would refuse specific performance, the vendor ought to be entitled to retain the deposit. It may be that there may be circumstances which would justify this Court in declining and which would require the Court according to its ordinary rules to refuse to order specific performance in which it could not be said that the purchaser had repudiated the contract or that he had entirely put an end to it so as to enable the vendor to retain the deposit." Perhaps *Snell v. Brichles* would have fallen within this suggested exception had the pleadings been so framed. In the Supreme Court, 49 S.C.R. 360, at page 383, Mr. Justice Anglin, who there dissented, says that part of the deposit remaining with the vendor should be returned. His judgment rests upon the ground suggested in *Hove v. Smith* that, having regard to the very short default—three days—and to the fact that the purchaser's conduct did not amount to repudiation, though he neglected to comply strictly with the terms of the contract, the deposit or part of it should be returned; and in the Privy Council (1916), 2 A.C., at page 604, it is said that it was unfortunate that the pleadings did not ask for a return of the deposit so that further litigation should be avoided. It may be, therefore, that where specific performance cannot be granted because of delay and because time has been made of the essence