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CONDITIONAL SALES —
Applications of Automobile Sales Statute,
Civil Code Section 2982

By NORMAN LEW*

ONE OF THE great phenomena of the business world in the past two decades, has been the purchase of commodities on credit plans. Unfortunately, many of these business transactions have been unsavory and legislatures have been called upon to aid the sometimes naïve purchaser. The purpose of this article is to examine the California statute¹ governing the conditional sale contract for the purchase of motor vehicles; its requirements and purpose;² and the effect on the contract and parties where there has been a violation of the statute.

Requirements of the Statute

The California statute governing the conditional sale of a motor vehicle was first enacted in 1945³ and since that date has been amended four times.⁴ Subdivision (a) of section 2982 recites the necessary provisions the conditional sale contract must contain.⁵ Subdivision (b) requires the issuance of the necessary policies within thirty days after the execution of the contract where the contract balance includes any charge for insurance. These two subdivisions constitute the formal requirements of the statute. Subdivision (c) limits the amount of the time price differential.⁶ Subdivision (d) allows the

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¹ CAL. CIV. CODE § 2982.

² See a comparison of purposes of § 2982 and the Unruh Act CAL. CIV. CODE §§ 1801-12.9, Note, *Installment Sales: Purpose of Unruh Act; Comparison With Automobile Sales Legislation*, p. 312 *infra*. The Unruh Act does not apply to the conditional sale of automobiles.

³ Cal. Stat. 1945, ch. 1030, § 2, p. 1992.

⁴ Cal. Stat. 1949, ch. 1594, § 1, p. 2842; Cal. Stat. 1951, ch. 342, § 2, p. 776; Cal. Stat. 1957, ch. 613, § 1, p. 1822; and Cal. Stat. 1959, ch. 1466, § 2, p. 3763.

⁵ Subd. (a) requires the conditional sale contract to be in writing and signed by the parties. The contract itself must recite the following items; 1) the cash price; 2) amount of the buyer's down payment; 3) amount unpaid on the cash price; 4) the cost to the buyer of any insurance where the premium is included in the contract balance; 5) itemization of any amounts paid to any public officer as fees by the seller or his assignee; 6) amount of unpaid balance; 7) amount of the time price differential; 8) the contract balance owed; 9) the number, amount, and date of paying the installments remaining on the contract balance; 10) the names and addresses of all persons to whom the notice as required under subd. (g) of the section is to be sent.

⁶ The amount of the time price differential cannot exceed one per cent of the unpaid balance multiplied by the number of months elapsing between the date of the contract and the due date of the last installment, or twenty-five dollars, whichever is greater. For a discussion as to why the time price differential is not within the common law usury laws, see Warren, *Regulation of Finance Charges in Retail Installment Sales*, 68 YALE L.J. 839, 867 (1958). See also, *Milana v. Credit Discount Co.*, 27 Cal. 2d 335, 163 P.2d 869 (1945); *Wilson v. J. E. French Co.*, 214 Cal. 188, 4 P.2d 537 (1931); *Rice v.*

buyer a refund credit where he satisfies the indebtedness in full prior to maturity. The refund credit is allowed notwithstanding any provision in the conditional sale contract. The seller, however, is entitled to a minimum "finance charge" of a sum not exceeding twenty-five dollars. No refund credit amounting to less than one dollar need be made. These two subdivisions constitute the substantive requirements of the statute.

Subdivision (e) provides that if the seller, except as the result of an accidental or bona fide error in computation, violates any provision of subdivisions (c) or (d) (time price and refund credit provisions), the contract shall be unenforceable, except by a bona fide purchaser for value, and the buyer may recover from the seller in a civil action the total amount paid on the contract balance by him to the seller or his assignee.

Subdivision (f) also gives the buyer a civil action where the holder of the contract violates (d) (refund credit provision) for the recovery of the total amount paid on the contract balance. Subdivision (g) requires the giving of five days written notice of an intent to resell a repossessed motor vehicle. It further provides that if persons liable on the contract do not satisfy their indebtedness during this five day period, they will also be liable for any deficiency realized after the sale of the repossessed motor vehicle. Subdivision (h) prohibits any provision in the contract which will enable the seller to accelerate the maturity of any part of or all of the amount owing, or to repossess the motor vehicle. The only exception is where the buyer has defaulted in the performance of any of his obligations under the contract.

The decision of *Carter v. Seaboard Finance Co.*,⁷ the pioneer case after the enactment of the statute in 1945, held that the language of the statute was mandatory.⁸ This has been affirmed in subsequent decisions⁹ and there is no doubt there must be compliance without discretion on the seller's part. The statute sets forth seven subdivisions, but is basically divided into two major areas. The requirements of (c) and (d) are "substantive" (time price differential and refund credit respectively), while (a) and (b) are merely "formal." Thus, where the seller violates the "substantive" requirements, it is a "substantive" violation and non-compliance with the "formal" requirements is a "formal" violation. The effect of one or the other is not without differing implications.

The *Carter* case not only decided that the language of the statute

Dunlap, 205 Cal. 133, 270 Pac. 196 (1928).

⁷ 33 Cal. 2d 564, 203 P.2d 758 (1949).

⁸ As to what statutory language usually is mandatory, see 45 CAL. JUR. 2d *Statutes* §§ 156-7; 50 AM. JUR. *Statutes* §§ 18-32.

⁹ *Bratta v. Caruso Car Co.*, 166 Cal. App. 2d 661, 333 P.2d 807 (1958); *Foster v. Masters Pontiac Co.*, 158 Cal. App. 2d 481, 322 P.2d 592 (1958).

was mandatory, but that the “. . . obvious purpose of the statute is to protect purchasers of motor vehicles against excessive charges by requiring full disclosure of all items of cost.”¹⁰ The purpose, thus, is directed at the philosophy of disclosure and to aid the unaware buyer.

Hazards and Solutions

The hazards facing the conditional buyer are numerous.¹¹ A common pitfall is the “balloon note,” where the first few installments are relatively small and the final installment large. The buyer, in this situation, is at the mercy of the seller if he is unable to pay this last installment. The seller, if a chattel mortgage was given as security, may foreclose, or he may choose to repossess and resell. This is a hardship on the buyer who has paid all the installments except the large last one. The California statute attempts to alleviate this hardship. Subdivision (a) requires the disclosure of the number, amount, and date of paying the installments remaining on the contract balance be recited in the contract. Thus, the buyer is aware of this large installment as the last payment.

Another common pitfall that has plagued the conditional buyer is the acceleration provision. The theory behind this type of provision is that the seller feels “insecure” as to whether or not future payments will be forthcoming. Thus, if he feels insecure, he may accelerate the maturity date and demand the full price. Whether or not a seller is insecure has, at times, been left to the seller's discretion. Some cases leave the seller as the sole judge of the facts and so long as he acts in good faith, he need not even show reasonable grounds for this insecure feeling.¹² Other courts allow acceleration only where the creditor had good reason to think and in good faith thinks he is insecure.¹³ Still other courts have decided that the creditor must act in good faith and upon the facts, actually find his position insecure.¹⁴ These results exemplify the predicament of a conditional buyer. One must not, however, lose sight of the legal characteristics of the conditional sale contract.¹⁵ Without legislative limitations, parties are free to contract respecting the sale of property on any terms and the conditional seller may even demand a greater amount with deferred payments than the cash price.¹⁶

¹⁰ Carter v. Seaboard Finance Co., *supra* note 7, at 573, 203 P.2d at 764.

¹¹ See Hogan, *A Survey of State Retail Instalment Sales Legislation*, 44 CORNELL L.Q. 38 (1958).

¹² Thorp v. Fleming, 78 Kan. 237, 96 Pac. 470 (1908), Johnson v. Thayer, 53 Ohio App. 25, 4 N.E.2d 172 (1936).

¹³ Parks v. Phillips, 71 Nev. 313, 289 P.2d 1053 (1955); Woodruff v. Stahl, 126 Wash. 184, 217 Pac. 1013 (1923).

¹⁴ Flinn v. Fredrickson, 89 Neb. 563, 131 N.W. 934 (1911).

¹⁵ See *e.g.*, VOLD, SALES 281 (2d ed. 1959).

¹⁶ Imperial Thrift & Loan v. Ferguson, 155 Cal. App. 2d Supp. 866, 318 P.2d 566 (1957).

But, California has placed limitations with respect to acceleration provisions in the conditional sale of a motor vehicle contract. Through subdivision (h), the hazard of acceleration is eliminated. This subdivision expressly forbids any acceleration provision regardless of the terms the parties agreed on. The only exception to this is where the buyer has defaulted.

Where the seller repossesses and resells because of the buyer's default, the seller must apply the proceeds to the balance due.¹⁷ He must account to the buyer for any excess that may be available.

The case of *Hill v. Dominquez*¹⁸ illustrates another type of hazard confronting the buyer with respect to a resale after repossession by the seller. The seller and the buyer contracted for the conditional sale of an automobile. The contract was then assigned by the seller. The assignee then assigned to a second assignee who repossessed the automobile upon the buyer's default. It was then delivered to the first assignee and sold to still another party for 1400 dollars. It was ultimately sold again for the total cash price of 2,834 dollars. An action by the seller was then instituted for the balance due from the original buyer, which was only 2,310 dollars. Plaintiff contended that the value of the automobile was only 1400 dollars, and therefore he was entitled to the deficiency from the original buyer. Yet, through a series of assignments and a "resale," the seller had actually sold the automobile for more than was to be paid had the buyer not defaulted.

The appellate department of the superior court held it was error to have excluded evidence of the amount of the last sale, which indicated the market value to be more than twice the amount for which it was sold to the party paying 1400 dollars. It was held to be persuasive proof that the seller failed to exercise ordinary care to obtain the best price available and thus, did not discharge a legal duty to the buyer. It should be noted that the party which paid 1400 dollars was a corporation associated with the seller, and all the "assignees" outside of the repossessing corporation were doing business at the same location.

Effect of the Contract Where Seller Violates Statute

Subdivision (e) expressly provides that where the seller violates either (c) or (d) (time price differential and refund credit provisions), the contract will be unenforceable by the seller and the buyer shall have a civil action against him for the total amount paid on the contract balance. There is no mention in the statute on its enforceability where the seller violates subdivisions (a) or (b). In the *Carter* case, it was decided that "formal" violations of the statute will also render the conditional sale contract unenforceable and the buyer may recover all payments made under the contract. With the exception

¹⁷ VOLD, *supra* note 15, at 295.

¹⁸ 138 Cal. App. 2d Supp. 891, 291 P.2d 203 (1955).

of a single case¹⁹ which has since been repudiated,²⁰ California has shown consistency in holding that a violation of the statute by the seller renders the contract unenforceable.

When the statute governing the conditional sale of motor vehicles was first enacted, the question of what was considered "unenforceable"²¹ was asked. The answer to this query is all important for it holds the key to the parties' rights. Where there has been a violation and the seller cannot enforce the contract, should he be allowed the right to repossess the motor vehicle upon the buyer's default? Or, in spite of the buyer's default, should there be a forfeiture to the buyer?²² Keeping in mind the nature of the conditional sale, where the seller retains legal title as security for the purchase price, should the courts disregard this right and allow the buyer to retain the motor vehicle without further installment payments?

Forfeiture has been looked upon with disfavor in the California courts.²³ Granted neither party will forfeit their consideration, but what is meant by "unenforceable," remains to be answered. In the most recent case in point, *General Motors Acceptance Corp. v. Kyle*,²⁴ the court decided that although the seller "formally" violated the statute, he could nevertheless enforce the legal provision for the return of the automobile upon a buyer's default, in part overruling *Williams v. Caruso Enterprises*.²⁵ In the latter case, it was decided that the party causing the contract to become illegal may not maintain an action on it even though the other party had received and retained everything he was to receive under the contract. "Unenforceable" thus, only refers to the seller's inability to demand further installment payments from the buyer. It does not, however, interfere with the seller's right to enforce the legal provision for return of the automobile where the buyer refuses to continue payments and refuses also to give up possession.

Parties' Rights and Liability Upon Seller's Violation

To say the contract is unenforceable does not, in itself, resolve who is entitled to what. The court in the *Kyle* case not only concurred in the interpretation of the legislative intent first expounded

¹⁹ *Millick v. Peer*, 130 Cal. App. 2d Supp. 894, 279 P.2d 212 (1955) holding that a violation of subd. (a) or (b) of CAL. CIV. CODE § 2982 does not render the conditional sale contract unenforceable.

²⁰ *Baum v. Aleman*, 139 Cal. App. 2d Supp. 929, 293 P.2d 162 (1956).

²¹ See York and Wicks, *Personal Property; Conditional Sale Contracts: Automobiles*, 23 So. CAL. L. REV. 39 (1949).

²² See Note, 2 STAN. L. REV. 362 (1950).

²³ See *Redd v. Garford Motor Truck Co.*, 205 Cal. 245, 270 Pac. 447 (1928); *Knaston v. Manhattan Life Ins. Co.*, 124 Cal. 74, 56 Pac. 773 (1899); *Miller v. Modern Motor Co. of Glendale*, 107 Cal. App. 38, 290 Pac. 122 (1930).

²⁴ 54 Cal. 2d —, 351 P.2d 768, 4 Cal. Rptr. 496 (1960).

²⁵ 140 Cal. App. 2d Supp. 973, 295 P.2d 592 (1956).

in the *Carter* case, but added to it. The statute is for the protection of the buyer²⁶ who may be unaware of excessive charges. But this is not to be interpreted in such a way as to give the buyer a windfall. This immediately indicates that even though the seller violates the statute, he is not to suffer forfeiture of the motor vehicle.

While there has been confusion as to whether or not the seller should be allowed an action for return of the vehicle, no such confusion exists with respect to the buyer's right. He is not considered *in pari delicto* with the seller and may rescind the conditional sale contract.²⁷ He cannot, however, both simultaneously avoid the conditional sale contract and assert rights in the conditionally sold vehicle.²⁸ Thus, although the purchaser is entitled to recover what he has parted with, he cannot at the same time retain the vehicle. The *Williams* case even went so far as to say that the buyer could not maintain an action to recover money he had given up unless the vehicle was repossessed or he had offered to return it. There is little dispute that a person who receives money from another under a void contract has been unjustly enriched and for that reason, the latter is permitted to recover from the former.²⁹ The seller, then who fails to comply with the statute is required to return whatever consideration the buyer has given to him. In return, the purchaser must give up the vehicle.

The problem becomes complicated where the conditional seller assigns the contract after receiving the buyer's down payment. This raises the question of whether the innocent holder is liable for the down payment to the buyer. It has been held that where the holder, which is usually a finance company, does not receive a benefit from the down payment, it is under no duty to restore it.³⁰ The buyer must look to the seller for its recovery.

Formal and Substantive Violations

Whether the conditional seller violates the statute "formally" or "substantively," is of great importance and leads to different legal results. If the seller merely violates the statute "formally," there is no penalty imposed against him. The contract becomes unenforceable

²⁶ This purpose differs from that in the Unruh Act CAL. CIV. CODE §§ 1801-12.9, Note, *Installment Sales: Purpose of Unruh Act; Comparison With Automobile Sales Legislation*, p. 312 *infra*.

²⁷ *Carter v. Seaboard Finance Co.*, 33 Cal. 2d 564, 574, 203 P.2d 758, 765 (1949); *Foster v. Masters Pontiac Co.*, 158 Cal. App. 2d 481, 488, 322 P.2d 592, 595 (1958); *Williams v. Caruso Enterprises*, 140 Cal. App. 2d Supp. 973, 978, 295 P.2d 592, 596 (1956).

²⁸ *General Motors Acceptance Corp. v. Kyle supra* note 24, at —, 351 P.2d at 774, 4 Cal. Rptr. at 502.

²⁹ *Baum v. Aleman*, 139 Cal. App. 2d. Supp. 929, 933, 293 P.2d 162, 164.

³⁰ *United States Credit Bureau v. Sanders*, 103 Cal. App. 2d 806, 230 P.2d 849 (1951).

and each party is required to return the other's consideration. Theoretically, an equitable result is thus attained. But, the depreciation of the motor vehicle while in the buyer's possession and use disrupts the supposed equity. The courts' recognition of this factor has led to the allowance of an offset in favor of the seller.³¹ They have shown consistency in so holding, although the proper method of computing the offset has been a source of uncertainty.

The statute has been interpreted not to be punitive in nature.³² This would, of course, be correct where the seller merely violates the statute "formally." But, it does become punitive where the seller violates the statute "substantively." If the seller violates either (c) or (d) (time price differential and refund credit provisions) making it an intentional "substantive" violation, then (e) has been held to impose a penalty by refusal of an offset.³³ The rights of the buyer are then, the recovery of whatever consideration he has given up to the seller.

The penalty, however, is not extended against the innocent holder of the contract.³⁴ This necessitates an action against the original seller. It should be noted, that although the seller is entitled to an offset because of the buyer's use, the buyer is not allowed a similar set-off for the use of the automobile traded in by him.³⁵ A buyer is, however, given full protection under subdivision (b) where the seller charges as part of the consideration an amount supposedly for insurance. The subdivision makes it implicit upon him to secure insurance within thirty days.³⁶ Where there has been such a recitation in the contract and the seller assigns the contract, the duty may fall on the assignee to secure the insurance. This is based on the theory of constructive notice of the seller's failure to secure the insurance. Thus, should the buyer become involved in an accident, he has a cause of

³¹ *General Motors Acceptance Corp. v. Kyle*, 54 Cal. 2d —, 351 P.2d 768, 4 Cal. Rptr. 496 (1960); *City Lincoln-Mercury Co. v. Lindsey* 52 Cal. 2d 267, 339 P.2d 851 (1959).

³² *General Motors Acceptance Corp. v. Kyle*, *supra* note 31 at —, 351 P.2d at 774, 4 Cal. Rptr. at 502.

³³ *Lewis v. Muntz Car Co.*, 50 Cal. 2d 681, 328 P.2d 968 (1958). In the 1945 version of CAL. CIV. CODE § 2982, Cal. Stat. 1945, ch. 1030, § 2, p. 1992, subd. (c) provided that, except for an accidental or bona fide error in computation, should the seller violate the restriction on the amount of the time price differential, the contract was unenforceable and the buyer could recover three times the total amount paid on the contract balance. Since 1949, however, subd. (e), the successor of the original subd. (c), merely gives the buyer a civil action to recover the total amount paid on the contract balance where the seller violates either the time price differential or refund credit provisions.

³⁴ *United States Credit Bureau v. Sanders*, *supra* note 30 at 816, 230 P.2d at 855. See also Hogan, *A Survey of State Retail Instalment Sales Legislation*, 44 CORNELL L.Q. 38, 69 (1958).

³⁵ *Williams v. Caruso Enterprises*, 140 Cal. App. 2d Supp. 973, 981, 295 P.2d 592, 597.

³⁶ CAL. CIV. CODE § 2982(b).

action against the assignee for damages for failure to secure insurance where a charge had been made as part of the consideration.³⁷

The seller who has violated the statute can enforce the legal provision for return of the vehicle upon the buyer's default, although he may not enforce the contract as a whole. This right to enforce repossession passes to an assignee based on the rules of non-negotiable instruments and is, therefore, subject to the buyer's defenses and counterclaims.³⁸ Thus, a seller or assignee who seeks to repossess because of the buyer's default, is subject to the latter's counterclaim for return of whatever consideration the buyer has given up where the seller has violated the statute.

Computing the Adjustment

The great problem, then, is not the enforceability of the contract, nor the rights and liability of the buyer, seller, or assignee, but the method of computing an equitable adjustment figure. Several theories have been suggested by the courts as to what is the proper method to compute the offset. An early case,³⁹ held that the seller is entitled to damages for the buyer's use of a truck while in the latter's possession. The amount was to be based on the circumstances under which the truck was used, the cost of operation, and the customary rental charge for the use of trucks of similar character. The rental theory has received little support.⁴⁰ Another method of computing the offset is the "reasonable use"⁴¹ of the vehicle idea. This differs from the rental theory in that the seller cannot expect to realize any profit in the offset. But, a recovery for "reasonable use" is a catch-all phrase which fails to tell "how much" the seller is entitled to. The *Kyle* case followed the method of offset first expounded in the *Williams* case. In refusing to follow the rental basis the court said that ". . . such measure would improperly allow the seller a profit, and the seller can in no event recover on the theory of offset more than an amount equal to that which the buyer is entitled to recover."⁴² The computation in the *Williams* case was based on an amount representing the depreciation in value of the vehicle through use by the buyer while in his possession. Furthermore, the offset is not to exceed that to which the buyer is entitled. Prior to the *Kyle* case, but

³⁷ *King v. Curtis*, 133 Cal. App. 2d Supp. 806, 284 P.2d 983 (1955).

³⁸ *General Motors Acceptance Corp. v. Kyle*, 54 Cal. 2d —, —, 351 P.2d 768, 775, 4 Cal. Rptr. 496, 503.

³⁹ *Pendell v. Warren*, 101 Cal. App. 407, 281 Pac. 658 (1929).

⁴⁰ *Adams v. Caruso Enterprises Inc.*, 134 Cal. App. 2d 403, 285 P.2d 1022 (1955), is the only recent case holding the rental theory to be the proper method to determine the seller's offset.

⁴¹ *United States Credit Bureau v. Sanders*, 103 Cal. App. 2d 806, 816, 230 P.2d 849, 855; *Baum v. Aleman*, 139 Cal. App. 2d Supp. 929, 933, 293 P.2d 162, 164.

⁴² *General Motors Acceptance Corp. v. Kyle*, 54 Cal. 2d —, —, 351 P.2d 768, 774, 4 Cal. Rptr. 496, 502.

after the *Williams* case, it was suggested that perhaps there can be no proper method of ascertaining a proper offset figure.⁴³ This observation may prove to be practically accurate. Nevertheless with the *Kyle*, *Lewis v. Muntz Car Co.*⁴⁴ and *City Lincoln-Mercury v. Lindsey*⁴⁵ employing the depreciation theory, this appears to be the California method of adjusting the offset.

On the other hand, the buyer's recovery is limited to the amount of cash payments made and if an automobile was traded in, he is entitled to the actual retail value of the automobile.⁴⁶ He is not entitled to the amount the contract allowed in trade. This adds to the adjustment problem in that the actual retail value of the traded-in automobile must be found.

Conclusion

From a practical view point, the California statute governing the conditional sale of a motor vehicle waves but a "small stick." Although directed toward the philosophy of disclosure, because of the hazards a conditional buyer may encounter there is no significant provision to compel disclosure. Starting with the premise that California abhors forfeiture, it follows that the solution is based on the theory of placing the parties in their respective positions prior to the execution of the unenforceable contract. Thus, the seller, by returning the consideration of the buyer less an offset, may recover the motor vehicle. With the exception of an intentional "substantive" violation where an offset is refused, how can these legal results "force" a seller to disclose all items required in the conditional contract?

It cannot be denied that the statute has merit. But, the seller who does violate the statute "formally" by not disclosing all items required suffers no great loss in having the contract declared unenforceable. He merely returns the buyer's consideration, less an offset. Since the courts will probably follow the *Kyle* decision in basing the offset on depreciation of the vehicle through use, and since depreciation is such a variable, the innocent purchaser may possibly recover but a fraction of his payments. With this result, the buyer may actually be penalized where the offset is allowed. By requiring him to return the vehicle, the seller loses nothing but prospective profit. But, in allowing an offset, the buyer actually loses that portion of his money payments. Yet, the purpose of the statute was for his benefit. On the other hand, the seller has the repossessed vehicle and upon a resale, may be able to recover his prospective loss of profit. Even though he cannot recover a deficiency from the buyer where he has violated the statute, it would seem that such legal results will not deter non-disclosure.

⁴³ *Dube v. Kelley Kar Co.*, 171 Cal. App. 2d 862, 341 P.2d 774 (1959).

⁴⁴ 50 Cal. 2d 681, 328 P.2d 968 (1958).

⁴⁵ 52 Cal. 2d 267, 339 P.2d 851 (1959).

⁴⁶ *Id.* at 275, 339 P.2d at 856.

Thus, it is apparent some definite rule ought to be established to guide the courts in carrying out the purpose of this statute. Enacted to protect the buyer, the statute could be interpreted so that it will refuse an offset whether the violation is "formal" or "substantive." This is not an unreasonable solution, for there is nothing in the statute that restricts the refusal of an offset to "substantive" violations. It was only through the courts' interpretation that an offset was refused in a "substantive" violation of the statute by the seller. The statute itself makes no mention of an offset.

It might be argued that the legislature did not intend to penalize the seller for merely "formal" violations. This argument would be based on the amendment of the statute in 1949.⁴⁷ This amendment eliminated the buyer's right to triple recovery of the total amount paid on the contract balance. This might indicate a reluctance to penalize for either type of violation. But, the courts have gone ahead and imposed a penalty where there has been a "substantive" violation. Thus, even in the light of the amendment, if the courts have refused to allow an offset in the cases of "substantive" violations, it is conceivable to refuse it also in "formal" violations. With the legislature silent as to when an offset should be allowed, the courts might possibly interpret the statute so that it will be refused in either type of violation. And if "formal" violation cases continue to command most of the courts' time, the refusal of an offset might curb much of the litigation.

⁴⁷ Cal. Stat. 1949, ch. 1594, § 1, p. 2842 amended the 1945 version of CAL. CIV. CODE § 2982 so that buyer was no longer entitled to recover three times the total amount paid on the contract balance when the seller violated the time price differential provision.