

The statute, therefore, is obliging the court to assume a task that courts have traditionally refused to undertake.

It is suggested that an amendment to the statute will eliminate this undesirable result. The legislature could adopt a statute similar to the arbitration statute of Illinois which expressly provides for retention of equitable jurisdiction by the court in the enforcement of awards.⁹ A less drastic approach would be to exempt awards directing personal service from the requirement of obligatory confirmation. Such amendments would allow the courts to use discretion in cases similar to the main case and thereby avoid the problems that arise when a court is obliged to confirm such awards.¹⁰

PAUL V. KENNEALLY

Conditional Sales—Rescission by Purchaser Allowed Where Contract Did Not Precisely Conform to Statutory Standard.—*Bratta v. Caruso Car Co.*¹—The plaintiff purchased a car from the defendant pursuant to a conditional sales contract purporting to be executed under the provisions of the California Civil Code, § 2982.² The contract recited a \$300 cash down payment. In reality, the plaintiff had insufficient funds to meet the down payment and a promissory note for the amount was then executed in favor of the defendant. The defendant referred the plaintiff to a finance company where he could obtain a \$300 loan and make the specified cash down payment. The plaintiff upon learning of the terms required by the finance company³ refused to negotiate the loan. He, thereupon, gave notice of rescission to the defendant who refused to agree to a rescission, and who, thereafter, repossessed the car upon the plaintiff's failure to make the specified payments. In a suit by the plaintiff for rescission the Superior Court, Los Angeles County, held for the defendant. On the plaintiff's appeal the District Court of Appeals, Second District of California, reversed, holding that since the purchaser did not make a cash payment of \$300 "in cash" as recited in the contract, but executed a note in such amount, the conditional sale contract was invalid under the California Civil Code, § 2982, and the purchaser was entitled to rescind.

The decision is in accord with recent California cases holding that the statute was enacted for the benefit of purchasers for the reason that they are not *in pari delicto* with sellers, and, therefore, conditional sale contracts which do not strictly conform with the statutory provisions are unen-

⁹ Ill. Rev. Stat. ch. 10, § 13 (1957).

¹⁰ See 34 N.Y.U.L. Rev. 961 for a comment on the main case.

¹ 333 P.2d 807 (Cal. Ct. App. 1958).

² The California Civil Code, § 2982, provides in effect that an exact copy of every conditional sales contract shall be delivered by the seller to the buyer at the time of execution and that certain items such as cash price, down payment, balance due, etc., shall be recited in the contract; moreover, the statute provides the exact order in which each item is to appear.

³ In addition to having a lien imposed on his household furniture, the plaintiff would have had to make 19 monthly payments of \$25 each. In other words, he would have had to pay \$475 for the privilege of borrowing \$300.

forceable by the seller.⁴ The Uniform Conditional Sales Act, also, was enacted with the intent to protect buyers from unscrupulous sellers;⁵ however, the Act contains no comparable provisions requiring that the conditional sale contract contain recitals of price, payment, and balance due in a specified order, all of which is necessary under the California statute. Sections 2 and 3 of the Uniform Conditional Sales Act afford relief to either a buyer or seller who is not in default, and the cases are numerous granting such relief,⁶ but no case has been found awarding relief to a party who is himself in default—even though he be a purchaser. In contrast with the California statute and the Uniform Conditional Sales Act, the Uniform Commercial Code is more concerned with the continued expansion of commercial dealings⁷ than with any overprotection of conditional sales vendees. The Code also has no stringent requirements comparable to those of § 2982 of the California Civil Code and requires only a financing statement signed by the parties containing their addresses and a description of the item of collateral.⁸

The fact that the California Courts regard the provisions of the California Civil Code as mandatory seems to lead to rather harsh and inequitable results; for example, a conditional sales contract has been held to be unenforceable by the seller for failure to deliver a copy thereof to the buyer *at the time* of execution.⁹ Any such statutory construction leads one to infer that a contract would be unenforceable by the seller if any items therein appearing are not in the sequence prescribed by the statute.¹⁰ The instant decision seems to place the seller in a most undesirable position. A conditional sales contract could conceivably be executed in full compliance with the statute, and, in the exigencies of the particular situation, a shrewd buyer could rescind merely by showing that a particular item deviates from the original agreement of the parties. For example, where buyer and seller execute a valid conditional sales contract, and buyer later claims inability to fulfill a particular provision, and seller agrees upon some alternative. If a new contract indicating the change is not executed, the seller has left himself vulnerable to rescission. Such a result as this would not occur under the Uniform Conditional Sales Act where reasonable errors are not fatal and relief is usually granted according to equitable principles of substantive law.¹¹

⁴ Carter v. Seaboard Finance Co., 33 Cal. 2d 564, 203 P.2d 758 (1949); Estrada v. Alvarez, 38 Cal. 2d 386, 240 P.2d 278 (1952); Williams v. Caruso Enterprises, 140 Cal. App. 2d 973, 295 P.2d 592 (Super. Ct. L.A. App. Div. 1956).

⁵ Plainfield Motor Co. v. Salamon, 12 N.J. Misc. 570, 180 Atl. 429 (D.C.N.J. 1935); Street v. Commercial Credit Co., 35 Ariz. 479, 281 Pac. 46 (1929).

⁶ Capitol Refrigerator Co. v. Schmidt, 121 N.J.L. 581, 3 A.2d 603 (Err. & App. 1939); Ench Equipment Corp. v. Lorenzo, 23 N.J. Super. 63, 92 A.2d 480 (Super. Ct. App. Div. 1952).

⁷ UCC § 1-102(2)(b).

⁸ UCC § 9-402.

⁹ Williams v. Caruso Enterprises, *supra* note 4. See also note 2 *supra*.

¹⁰ California Civil Code, § 2982, provides in part that: "(a) . . . It shall recite the following *separate* items as such, in the *following order* . . ." [Emphasis added].

¹¹ Capitol Refrigerator Co. v. Schmidt, *supra* note 6; Ench Equipment Corp. v. Lorenzo, *supra* note 6.

The Uniform Commercial Code draftsmen apparently were aware that conditional sales statutes in many states were outmoded and that business practices were changing so rapidly it seemed more desirable to draft laws having the free flow of commercial transactions as an objective. The Code provisions reducing formalities to a minimum¹² seems to be sound practice, in that courts will be free to interpret and apply flexible rather than rigid standards to conditional sales contracts.

BRUCE N. SACHAR

Constitutional Law—Export-Import Clause—State's Power to Tax Exports—Sales Tax.—*Gough Industries, Inc. v. State Board of Equalization*.¹—The defendant, a California manufacturer of electrical supplies, sold goods in California to a purchaser for direct export to Saudi Arabia. Because the defendant could not meet the specified packaging requirements, the agreement provided that the defendant should deliver the goods to a California export packer to be designated by the purchaser. When the goods were ready for packaging, the defendant delivered them to the packer who specially packed and crated them for shipment overseas. The packer then delivered them to an ocean carrier for transportation to Saudi Arabia. Pursuant to the sales contract title passed from the defendant to the purchaser upon delivery of the goods to the packer. Under the California sales tax statute, the state levied an assessment on the defendant as the seller of these goods. The tax was paid under protest and proceedings were brought to recover the payment. The Superior Court of Sacramento County, California, held the tax to have been improperly assessed because the goods were in foreign commerce immediately upon leaving the defendant's hands and, therefore, constitutionally could not be taxed by California. The District Court of Appeal, for the Third District reversed,² holding that nothing had occurred prior to or at the time of assessment to take the goods out of the general mass of property in the state and that they were not in export until after the packer had completed his packaging pursuant to the purchaser's orders and had turned them over to the motor carrier for delivery to the ocean carrier. On appeal the Supreme Court of California affirmed the judgment of the Superior Court and reversed that of the District Court of Appeal.³

The decision of the California Supreme Court seems at variance with the authorities establishing the rule that goods do not cease to be part of the general mass of property within the state subject to nondiscriminatory state taxation until they have been shipped, or "entered" with a common carrier for transportation to another state, or have been started upon such transportation in a continuous route or journey.⁴ This rule, although for-

¹² UCC §§ 9-110, 9-402.

¹ 51 Cal. 2d 746, 336 P.2d 161 (1959), cert. den. 359 U.S. 1011 (1959).

² 332 P.2d 378 (1958).

³ Note 1 *supra*.

⁴ *Coe v. Eroll*, 116 U.S. 517 (1886); *Turpin v. Burges*, 117 U.S. 504 (1886);