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Defaulting Vendee's Right to Recover Part Payment on a Contract to Purchase Real Estate - Quillen v. Kelley

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Defaulting Vendee's Right To Recover Part Payment On A Contract To Purchase Real Estate

Quillen v. Kelley[1]

Plaintiffs brought an action for the return of their part payment of the price of the "Hotel Royalton" which they had contracted to purchase together with certain chattels therein.

The plaintiffs and a Mrs. Cook as vendees and the Kelleys as vendors executed the contract September 1, 1952, the purchase price of the hotel being $257,500. The vendors were to receive a net amount of $245,000 for the property and $12,500 commission was to be paid to Mrs. Cook, a broker. At the time of signing the contract, the vendees paid the vendors $15,000 as the contract provided. A further sum of $20,000, due November 1, 1952, was paid in full at that time.[2] The plaintiffs requested that the next payment, $40,000 due in February, 1953, be reduced to $10,000, apparently because Mrs. Cook, one of the three vendees, had died insolvent. The defendants refused, and

[1] 216 Md. 396, 140 A. 2d 517 (1958).

[2] On November 1, the vendees paid the vendors $12,500 and the vendors gave vendees a credit of $7,500 for the balance due Mrs. Cook as her commission.

neither this nor any subsequent payment was ever made. The defendants have always remained in possession, but there is no evidence that they were not ready or willing to complete the contract upon plaintiffs' performance.

The lower court's dismissal of the plaintiffs' petition was affirmed by the Court of Appeals.

The plaintiffs argued, although they were in substantial default, that to allow defendants to retain their $22,500 part payments would be inequitable and result in the unjust enrichment of the defendants, especially as there was no provision in the contract for a forfeiture. They asserted that their breach was neither wilful nor deliberate. The Court referred to the common law rule which allows the vendor to retain part payments made by the defaulting vendee on the purchase price where the vendor is ready and willing to fulfill his part of the contract, even if such part payment results in a profit to the vendor by reason of the default. The Court also considered Section 357 of the RESTATEMENT OF CONTRACTS,[3] which would permit restitution in favor of a party who is himself in default on a contract where the value of his part performance exceeds the harm caused by his default. The Court held that even if, in a proper case, they were to adopt the more liberal view of the RESTATEMENT, which they did not decide, the plaintiffs could not recover because it was not shown that the defendants had failed or refused to perform, nor had

[3] 2 RESTATEMENT, CONTRACTS (1932) §357.
"*Restitution in Favor of a Plaintiff Who Is Himself In Default.*
(1) Where the defendant fails or refuses to perform his contract and is justified therein by the plaintiff's own breach of duty or non-performance of a condition, but the plaintiff has rendered a part performance under the contract that is a net benefit to the defendant, the plaintiff can get judgment, except as stated in Subsection (2), for the amount of such benefit in excess of the harm that he has caused to the defendant by his own breach, in no case exceeding a ratable proportion of the agreed compensation, if (a) the plaintiff's breach or non-performance is not wilful and deliberate; or (b) the defendant, with knowledge that the plaintiff's breach of duty or non-performance of condition has occurred or will thereafter occur, assents to the rendition of the part performance, or accepts the benefit of it, or retains property received although its return in specie is still not unreasonably difficult or injurious.
(2) The plaintiff has no right to compensation for his part performance if it is merely a payment of earnest money, or if the contract provides that it may be retained and it is not so greatly in excess of the defendant's harm that the provision is rejected as imposing a penalty.
(3) The measure of the defendant's benefit from the plaintiff's part performance is the amount by which he has been enriched as a result of such performance unless the facts are those stated in Subsection (b), in which case it is the price fixed by the contract for such part performance, or, if no price is so fixed, a ratable proportion of the total contract price."

the plaintiffs proved the amount they were entitled to recover.

The RESTATEMENT rule[4] may well be an easing of the strict "rule of forfeiture" if we view the latter as embodied in the early New York case of *Ketchum v. Evertson*,[5] which held that the defaulting vendee could not recover any payments under the contract for the sale of realty, even where the vendor had, subsequent to the vendee's default, disabled himself from performing by selling the property. The New York Court said:

> "It would be an alarming doctrine, to hold, that the plaintiffs might violate the contract, and, because they chose to do so, make their own infraction of the agreement the basis of an action for money had and received. Every man who makes a bad bargain, and has advanced money upon it, would have the same right to recover it back that the plaintiffs have. The defendant's subsequent sale of the land does not alter the case; the plaintiffs had not only abandoned the possession, but expressly refused to proceed, and renounced the contract. To say that the subsequent sale of the land gives a right to the plaintiffs to recover back the money paid on the contract, would, in effect, be saying, that the defendant could never sell it, without subjecting himself to an action by the plaintiffs. Why should he not sell? The plaintiffs renounced the contract, and peremptorily refused to fulfill it; it was in vain, therefore, to keep the land for them. The plaintiffs cannot, by their own wrongful act, impose upon the defendant the necessity of retaining property which his exigencies may require him to sell; this would be most unreasonable and unjust, and is not sanctioned by any principle of law."[6]

However, some of the later common law decisions, though often citing the *Ketchum*[7] case, perhaps relax the strict "rule of forfeiture" and would give relief where the defendant-vendor had disabled himself from performing. See, for example, the language of *Hansbrough v. Peck:*

> "And no rule in respect to the contract is better settled than this: That the party who has advanced

[4] *Loc. cit. ibid.*

[5] 13 Johns. 359, 7 Am. Dec. 384 (N.Y., 1816).

[6] *Ibid.*, 365, 387. This quote is set out in full in Great United Realty Co. v. Lewis, 203 Md. 442, 451-2, 101 A. 2d 881 (1954).

[7] *Ibid.*

> money, or done an act in part-performance of the agreement, and then stops short and refuses to proceed to its ultimate conclusion, the other party being ready and willing to proceed and fulfill all his stipulations according to the contract, will not be permitted to recover back what has thus been advanced or done."[8]

Such language seems to infer the result reached by RESTATEMENT OF CONTRACTS, Section 357. Approximately the same language has been used in Maryland cases,[9] while at the same time the Court refers to and quotes with seeming approval the strict forfeiture doctrine of the *Ketchum*[10] case.

The Maryland Court of Appeals in *Spellman v. Dundalk Co.*,[11] cited the *Hansbrough*[12] decision with approval, and recently, in *Great United Realty Co. v. Lewis*,[13] found no need in the case before it to relax the common law rule. In that case the defaulting vendee was denied recovery of $700 paid on a purchase price of $6,950 for the sale of real estate. The Court discussed the rule of Section 357 of the RESTATEMENT OF CONTRACTS but found the vendor did not profit from the vendee's default and therefore there was no unjust enrichment.[14]

The strict common law rule and its application by the courts has not escaped criticism. In England, the strict doctrine has been regarded as "unsound and intolerable,"[15] and has been modified. In the United States, the majority of the courts still follow the "rule of forfeiture," though

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[8] 5 Wall. 497, 506-7 (U.S., 1866).

[9] Great United Realty Co. v. Lewis, 203 Md. 442, 101 A. 2d 881 (1954); Quillen v. Kelley, 216 Md. 396, 140 A. 2d 517 (1958).

[10] Ketchum v. Evertson, 13 Johns. 359, 7 Am. Dec. 384 (N.Y., 1816).

[11] 164 Md. 465, 471, 165 A. 192 (1933), where the Maryland Court quotes from Davis v. Hall, 52 Md. 673, 682 (1880), quoting from Ketchum v. Evertson, 13 Johns. 359, 365, 7 Am. Dec. 384, 387 (N.Y., 1816).

[12] Hansbrough v. Peck, 5 Wall. 497, 506-7 (U.S., 1866).

[13] 203 Md. 442, 446, 101 A. 2d 881 (1954).

[14] *Ibid.*, 449. As in the Quillen case, 216 Md. 396, 406, 140 A. 2d 517 (1958), the Maryland Court, at 450, finds that the vendee had only paid about 10% of the purchase price, defaulting completely on his duty to pay the remaining 90%, as a result of which, the vendor sustained a loss on the property's resale.

[15] See Quillen v. Kelley, 216 Md. 396, 402, 140 A. 2d 517 (1958). In 31 A.L.R. 2d 8, 24, the author says:

> "The English cases, and to a great extent also the Canadian ones, establish two rules, based on the distinction between a deposit of 'earnest' money, in its nature intended as a guaranty or security that there will be no default, and money which is paid only as purchase money. Forfeiture of the former is ordinarily permitted as reasonable, forfeiture of the latter not.
>
> "The doctrine adhered to is that deposit money is ordinarily subject for forfeiture even though the contract contains no pro-

the observance of the rule has been criticized by scholars and text writers.[16]

It is not surprising, therefore, that the American Law Institute attempted to clarify the rights of a defaulting party in the RESTATEMENT OF CONTRACTS.[17] A number of thoughtful decisions have construed Section 357[18] and discussed the defaulting party's right to restitution. There are some decisions which seem to have accepted the rationale of Section 357.[19] In each of these cases the vendor has taken some affirmative action to extinguish the contract relationship, as he is privileged to do upon the breach of a constructive condition by the vendee;[20] if not by declaring the contract at an end or commencing his own action, then at least by disabling himself from performing in some way, such as selling the property to a third person.[21] None of these cases presents the situation of the *Quillen* case where the defaulting vendee is asking restitution from a vendor who apparently remains ready and willing to con-

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vision on the subject nor any language peculiarly indicative of that result, ..."

See also, Depree v. Bedrough, 4 Giff. 479, 66 Eng. Rep. 795 (1863); Collins v. Stimson, L.R. 11 Q.B. Div. 142 (1883).

At 27-30 the above author continues:

"The rule of non-forfeiture of mere purchase money clearly applies where there is no contract provision for its forfeiture, and also where the forfeiture provision present applies only to deposit money. Even an initial payment is not forfeitable under the English rule if it is not designated as a deposit, or if the designation as such is construed as not intended technically."

See also, Mayson v. Clouet, L.R. A.C. 980 (1924) where a forfeiture provision was held only to apply to deposit money; Dies v. British & International Mining and Finance Corp., Ltd., L.R. 1 K.B. 724 (1938); Brown v. Walsh, 45 Ont. L. 646 (1919).

[16] See 134 A.L.R. 1064, 1066; 3 WILLISTON, CONTRACTS (Rev. Ed. 1936) 2225, §791; 5 WILLISTON, CONTRACTS (Rev. Ed. 1936) 4118, §1473; 5 CORBIN, CONTRACTS (1951), §§1122, 1132, 1135.

[17] 2 RESTATEMENT, CONTRACTS (1932) §357.

[18] See Newcomb v. Ray, 99 N.H. 463, 114 A. 2d 882 (1955); Schwartz v. Syver, 264 Wis. 526, 59 N.W. 2d 489 (1953); Norris v. San Mateo County Title Co., 225 P. 2d 263 (D. Ct. App., Cal., 1950); Baker v. Taylor & Co., 218 Ark. 538, 237 S.W. 2d 471 (1951).

[19] Amtorg Trading Corp. v. Miehle Printing Press & Mfg. Co., 206 F. 2d 103 (2nd Cir. 1953); Schwasnick v. Blandin, 65 F. 2d 354 (2nd Cir. 1933); Schwartz v. Syver, 264 Wis. 526, 59 N.W. 2d 489 (1953); Newcomb v. Ray, 99 N.H. 463, 114 A. 2d 882 (1955).

[20] By the doctrine of constructive conditions, in cases like these, the vendor's duty of performance is discharged, and if the breach by the vendee is total, the vendor may extinguish the contract and the rights attendant thereto, thus having his remedial rights remaining. See 3 CORBIN, CONTRACTS (1951) 631, 632, §660; Patterson, *Constructive Conditions in Contracts*, 42 Col. L. Rev. 903 (1942); 1 RESTATEMENT, CONTRACTS (1932) §274(1).

[21] Amtorg Trading Corp. v. Miehle Printing Press & Mfg. Co., 206 F. 2d 103 (2nd Cir. 1953); Newcomb v. Ray, 99 N.H. 463, 114 A. 2d 882 (1955); Schwartz v. Syver, 264 Wis. 526, 59 N.W. 2d 489 (1953).

tinue with performance of the agreement, or at most, simply acquiesces in the vendee's default.

Under RESTATEMENT OF CONTRACTS, Section 357, it is clear that where the vendor refuses to perform, after the vendee's default, the vendee should have restitution of any amount by which the vendor would be unjustly enriched. However, it is clearly not the intent of Section 357 to give to the defaulting party the right to terminate the contract and accomplish the substitution of remedial rights for contractual rights where the vendor simply acquiesces in the vendee's default and retains the latter's part performance, not having exercised his right to terminate the contract.

In the *Quillen* case, the Court emphasizes the first phrase of the RESTATEMENT OF CONTRACTS, Section 357 which states: "Where the defendant fails or refuses to perform his contract and is justified therein by the plaintiff's own breach of duty . . . ."[22] and says that since the defendant has kept the contract in existence, being ready and willing to perform, there is no right to restitution by the plaintiff.

The Court's position is amply supported by a previous Maryland decision,[23] a comment to section 357 of the RESTATEMENT,[24] and by CORBIN:

> "The cases denying restitution can . . . be justified on one or more of the following grounds: (1) The defendant has not rescinded and remains ready and willing to perform, and still has a right to specific performance by the purchaser; . . . ."[25]

The contract in the *Quillen* case provided:

> "Paragraph Three. That in the event the vendees make no default in their obligation of $20,000 payable November 1, 1952, but pay the same . . . the Vendors do hereby covenant . . . to grant and convey to the Vendees the property, real and personal, which is the subject of this sale, by a good and sufficient deed . . . .

[22] Quillen v. Kelley, 216 Md. 396, *circa* 403, 140 A. 2d 517 (1958).

[23] Great United Realty Co. v. Lewis, 203 Md. 442, 446, 101 A. 2d 881 (1954).

[24] 2 RESTATEMENT, CONTRACTS (1932) §357, comment (b) to Subsection (1):

> "The rules stated in the present Section are applicable only in those cases where the defendant refuses to perform as he promised and is justified in so doing by the plaintiff's breach or non-performance. The contract may be such that the defendant still has a right to specific performance in full by the plaintiff; and if he insists thereon, remaining able and willing to perform his part, he may keep whatever he has received and maintain suit for the balance that is unpaid."

[25] 5 CORBIN, CONTRACTS (1951) 605, §1135.

> "Paragraph Eleven. That no part of the property, real or personal, . . . shall be surrendered or delivered by the Vendors to the Vendees, or either of them, before the first day of February 1953, and not then unless and until the payment in full of the obligation of the Vendees in the principal sum of forty thousand dollars ($40,000) which is due and payable on the last day of February, 1953, as hereinbefore provided."[26]

After satisfying the November installment of $20,000 the plaintiffs admittedly were unable to pay the $40,000 due in February. Therefore, the vendors rightfully failed to transfer possession. It is arguable that the case did present the situation contemplated by the first phrase of the Restatement: "Where the defendant *fails or refuses* to perform his contract and is justified therein by the plaintiff's own breach of duty . . . ."[27] On the other hand, Paragraph Eleven of the contract can just as readily be construed as making the $40,000 February payment a condition precedent of the duty of the vendor to convey. Under such a construction, of course, there was no duty on the vendor to convey and therefore no failure or refusal. The latter was the construction adopted by the Court of Appeals. Thus, while the Court of Appeals has intimated that it may adopt the somewhat more charitable attitude toward defaulting contractors which RESTATEMENT, Section 357 suggests, it apparently is content to wait for a case which presents the matter more compellingly than those which have so far arisen.[28]

Even in that event, the question would remain whether RESTATEMENT, Section 357 is an adequate rule for all cases. Suppose, in the *Quillen* case, the contract required the vendees to perform completely before receiving possession and that they defaulted after paying $100,000 or even $200,000 of the purchase price. Should the decision be the same in such a case, where the vendor simply acquiesces in the default by the vendee?

> "It is certainly true that a vendee should not become entitled to the return of purchase money merely by electing not to proceed with performance. But no court has given the vendee such a right, since the vendor may elect to have specific performance or

[26] Quillen v. Kelley, 216 Md. 396, 140 A. 2d 517 (1958), Records & Briefs, App. to Appellants Brief, E. 8, E. 12.

[27] 2 RESTATEMENT, CONTRACTS (1932) §357(1). [Emphasis supplied.]

[28] Compare J. Clark's approach in Amtorg Trading Corp. v. Miehle Printing Press & Mfg. Co., 206 F. 2d 103 (2nd Cir. 1953).

damages. If, however, the vendor acquiesces in the abandonment of performance, it is, on principle, questionable whether, in the absence of a provision for forfeiture which is deemed valid, he should be permitted to retain all purchase money, wholly without reference to the amount of his actual damages and in disregard of that construction of the contract which recognizes the distinctive nature of earnest or deposit money."[29]

It bears noting that significant statutory[30] and judicial[31] modifications have been made on the "rule of forfeiture"

[29] 134 A.L.R. 1064, 1066. In 27 Cal. L. Rev. 583, 590-1, n. 39 (1939), in a Comment, *Vendor and Purchaser: Right of Defaulting Vendee to Restitution of Installments Paid: Development and Status of the Rule of Glock v. Howard*, the author states:

"The reason given for this view is that the vendee should not be able to defeat the vendor's right to specific performance by repudiation or non-payment. But this reasoning seems to beg the question. The fundamental question is whether a party innocently in default should be allowed to recover the value of his part performance less the other party's damages. * * * If this question is answered in the affirmative, the fact that the vendor has the remedy of specific performance as well as for damages should make no difference. If this question is answered in the negative, then the defaulting purchaser cannot recover whether the vendor is entitled to specific performance or not."

[30] See NEW YORK PERSONAL PROPERTY LAW (1958 Cum. Supp.) §145a, giving the defaulting buyer of goods the right to restitution for benefits conferred under a contract of sale.

In addition, see the Uniform Sales Act, §44 [7 MD. CODE (1957), Art. 83, §62] and the proposed Uniform Commercial Code (1957), Art. 2, §2-720.

In Maryland, see 7 MD. CODE (1957), Art. 83, §134 (1957) "Retail Installment Sales Act", "Refunds of Deposits", which allows the buyer of goods to cancel the agreement before the seller delivers or tenders the goods where the buyer is required to make one or more payments in addition to any down payment to the seller who, upon such cancellation, is obligated to refund to the buyer 90% at least of all payments made, including the down payment.

2 MD. CODE (1957), Art. 21, §110, "Land Installment Contracts", applies only to purchases not exceeding $15,000 and to agreements where the vendee agrees to pay the purchase price in five or more installments exclusive of any down payment. While it does not provide restitutionary remedies on the vendee's deafult, it prevents the undue hardship of the common law forfeiture.

A State providing broad legislation in this troubled area has been California. See CALIF. CIVIL CODE (Deering, 1949), §3275:

"Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty."

For recent California decisions construing and granting relief under CALIF. CIVIL CODE §3275, see: Baffa v. Johnson, 35 Cal. 2d 36, 216 P. 2d 13 (1950); Freedman v. Rector, Etc., of St. Mathias Parish, 37 Cal. 2d 16, 230 P. 2d 629 (1951); Lucientes v. Bliss, 157 Cal. App. 2d 565, 321 P. 2d 526 (1958); Baxter v. Prescott, 158 Cal. App. 2d 531, 322 P. 2d 1008 (1958).

[31] For an enlightening survey of these areas, including sales of chattels, construction and personal service contracts, as well as sales of realty, see

in a number of jurisdictions and with respect to a number of kinds of contracts. It appears that in some states the old "rule" has been eliminated entirely.[32]

In the case at hand, the second reason for denying relief, sufficient for the result under the most liberal doctrine, was that the plaintiffs failed to prove any unjust enrichment.[33] CORBIN and the RESTATEMENT emphasize that the vendee-plaintiff has the burden of proving the amount of the vendor's unjust enrichment.[34] The *Quillen* case would fall under CORBIN's rule of thumb that where the down payment is no more than ten percent of the purchase price, proof of unjust enrichment is impossible.[35]

> "In very many of these installment cases, the amount actually paid by the plaintiff for the restitution of which he sues, is a small amount in comparison with the entire price. * * * In such cases, it is unlikely that the amount retained by the vendor is greater than the injury suffered by the plaintiff's breach."[36]

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note, Patterson, *Restitution For Benefits Conferred by Party In Default Under Contract*, 1942 Report of the New York Law Revision Commission, 195. In the article, Professor Patterson, at 204 notes that:

> "The doctrine of constructive conditions, with its admirable method of indirectly sanctioning the performance of promises by giving one or both parties a privilege of refusing performance unless the other performed or tendered, worked harshly as applied to cases where the defaulting party had partly performed. Several mitigating doctrines have been developed to counteract these effects. * * * The three principal mitigating doctrines are: *Substantial performance, severability and quasi-contract.* The first two are particular rules for the 'construction' of the contract in a way which will avoid a penalty or forfeiture; the third is a more direct attack upon the problem of unjust enrichment."

[32] See California Statute, CALIF. CIVIL CODE (Deering, 1949), §3275, *supra* n. 30. In Bird v. Kenworthy, 265 P. 2d 943, 948 (Cal. App. 1954), reversed on different grounds in 43 Cal. 2d 656, 277 P. 2d 1 (1954), a case involving the sale of chattels, the California Court said it felt §3275 of the CIVIL CODE should apply to sales of personalty as well as realty; that the primary consideration is the avoidance of unjust enrichment at the expense of the breaching party and therefore technical distinctions as to the types of contracts or property should not be considered to obtain different results.

[33] Quillen v. Kelley, 216 Md. 396, 405, 140 A. 2d 517 (1958).

[34] 2 RESTATEMENT, CONTRACTS (1932) §357, comment (g) to Subsection (1), p. 627, places the burden of proof upon the defaulting vendee to show "the excess of the benefit received over the harm suffered." Also see 5 CORBIN, CONTRACTS (1951) §§1124, 1132.

[35] 5 CORBIN, *op. cit. ibid.* 581, §1130, n. 63.

[36] *Ibid.*, 590-1, §1132. CORBIN, at 591, fn. 74, cites Mintle v. Sylvester, 202 Iowa 1128, 211 N.W. 367 (1926), where the Iowa court allowed the vendor to retain $35,000 paid under a contract to purchase realty for $140,000. But see, Schwartz v. Syver, 264 Wis. 526, 59 N.W. 2d 489 (1953), *dis. op.* 494, where plaintiff paid $500 (designated as "earnest money") on a contract to purchase realty for a total price of $9,500, further payments by installments not being made. Vendor resold for $11,000 and plaintiff vendee sues for return of $500 which the majority of the Wisconsin court disallowed, saying they were in accord with the modern trend against

The conclusion is inescapable that in this state one who contracts to purchase real property and, having partly performed his promise to pay, finds that he is unable to go through with the purchase, is in a vulnerable position. Even assuming that the Court of Appeals will ultimately adopt the view of RESTATEMENT, Section 357,[37] that restitution will be allowed in some circumstances, the *Quillen* case points out a sizable gap in the relief this section[38] purports to offer; precisely, that restitution is not available to the vendee where the vendor still has a right to specific performance, remaining ready and willing to perform. As indicated above unbending application of such a limitation could result in many cases in the "forfeiture" which the RESTATEMENT seeks to avoid.

Undoubtedly, there is need of clarifying legislation to define the rights of the parties in this area, for all claims of defaulting vendees cannot be decided alike.[39] Over twenty years ago, Professor Simpson, after careful analysis of the problem in a law review article, concluded:

> "[T]he real need is for carefully drafted statutes, the effect of which the courts will be unable to evade, and which will compel them to deal with installment contracts for the sale of land on the same equitable prin-

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unjust enrichment to the vendor, but that the vendee here did not prove the money paid exceeded just compensation to the vendor for damages, feeling a showing of a resale by the vendor at an advance was not by itself sufficient to establish unjust enrichment.

The dissent, p. 494, citing CORBIN'S article in 40 Yale L.J. 1013 [*infra* n. 39], says that the plaintiff, by showing the defendant sold premises two months later for $1,500 in excess of the original contract price, prima facie established that the defendant had sustained no loss and it then devolved upon the defendant to prove special damages in order for him to claim a forfeiture of the plaintiff's down payment.

Commenting on the practice of setting a percentage that would be allowed to be forfeited, the dissent, 494 said: "I see no reason why the principle of unjust enrichment should not be applied to a $500 down payment as well as to one of $5,000 in amount."

[37] 2 RESTATEMENT, CONTRACTS (1932) §357.

[38] *Ibid.*

[39] See note, Corbin, *The Right of a Defaulting Vendee to the Restitution of Installments Paid*, 40 Yale L.J. 1013, 1014 (1931), where he says:

> "Cases granting restitution and cases denying it can frequently be reconciled on reasonable grounds. In statements of the law, however, this is generally disregarded, the assumption being that all claims by a defaulting vendee should be decided alike. On such an assumption as this, it may be said that a very great majority of the cases have refused restitution."

See also, Levin, *Maryland Rule on Forfeiture Under Land Installment Contracts . . . A Suggested Reform*, 9 Md. L. Rev. 99, 129 (1948), where the author proposes a statute for Maryland, entitled: "*An Act to Regulate Installment Contracts for the Purchase of Land.*"

ciples which they apply without hesitation in the case of transactions essentially similar in economic substance . . . ."[40]

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[40] Simpson, *Legislative Changes in the Law of Equitable Conversion by Contracts: II;* 44 Yale L.J. 754, 779 (1935).