

1-1955

Position of Lienholders under California's Narcotic Laws

David Matthew Dooley

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

David Matthew Dooley, *Position of Lienholders under California's Narcotic Laws*, 6 HASTINGS L.J. 218 (1955).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol6/iss2/6

This Comment is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.

POSITION OF LIENHOLDERS UNDER CALIFORNIA'S NARCOTIC LAWS

By DAVID MATTHEW DOOLEY

For the past two decades, vehicles used in violation of the state narcotic laws have been subjected to forfeiture to the State of California.¹ The usual litigation concerning the vehicle includes not only a trial of the rights of the culpable user, but as it is the general business practice for many of these vehicles to be purchased on conditional sales contracts, the California courts are forced to determine the rights of the conditional sales vendor, or of some bank or finance company who has taken an assignment of the contract.

Under Section 11620 of the California Health and Safety Code, such forfeiture proceedings may be mitigated when the "claimant of any right, title, or interest in the vehicle may prove his lien, mortgage, or conditional sales contract to be bona fide, and that his right, title, or interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser, and without any knowledge that the vehicle was being, or was to be used for the purpose charged."²

In the Health and Safety Code, Section 11611, which provides for the forfeiture of vehicles used in the illicit transportation of narcotics, and Section 11620, which conditionally grants a right of remission to the innocent lienholder, is found an illustration of the need (1) to prevent automobiles from being used in the distribution of narcotics, and (2) the protection of the interests of innocent lienholders.

Divergent Approaches of Other Legislative Bodies

Confronted with the facts that the dope racket is a multi-million dollar business,³ and statistics that though since 1930 the number of addicts has been cut in half, yet in 1950 there were still 50,000 addicts,⁴ and that automobiles are being used in facilitating the distribution of drugs, legislative bodies have taken two approaches.

The less stringent method of control is found more commonly on the state level. The Uniform Narcotic Drug Act, which, by 1943, was enacted in some 43 states, provides in Section 13 that a vehicle which is "resorted to by narcotic drug addicts for the purpose of using narcotic drugs, or which is used for the illegal keeping or selling or the same, shall be deemed a common nuisance. And no one shall maintain a common nuisance."⁵ There is no specific provision in this statute for abatement of the nuisance.

Several states, though they have substantially adopted the Uniform

¹ CALIF. HEALTH AND SAFETY CODE § 11611 (Deering 1953).

² CALIF. HEALTH AND SAFETY CODE § 11620 (Deering 1953).

³ M. J. Pescor, *Problem of Narcotic Drug Addiction*, 43 J. CRIM. L. 471-481.

⁴ W. PROSSER, *Narcotic Problem*, 1 U.C.L.A. L. REV. 405-546.

⁵ UNIFORM NARCOTIC DRUG ACT § 13.

Narcotic Drug Act, have repealed Section 13, and have followed the remedial position taken by the Federal Government as to forfeiture. New York provides for a forfeiture of vehicles, where by a preponderance of the evidence, there is shown an intentional use by the owner in violation of the narcotic laws.⁶ Iowa levies a forfeiture on any vehicle used in the transportation of narcotics, or transportation by an occupant wherein the owner has knowledge of such use.⁷ Nebraska has a similar statute.⁸ North Carolina confiscates vehicles in the same manner that they are forfeited under the state liquor laws.⁹ And finally, under the provisions of the federal contraband laws (which include narcotics), any automobile which transports, or facilitates the transportation of, or finally is used to conceal any contraband article, is made subject to forfeiture.¹⁰

California, as above noted, takes the more severe approach. By an enactment in 1929, the legislature of California stated that vehicles used to convey, carry, or transport illicit drugs, should be seized by any peace officer and forfeited to the state.¹¹

Forfeiture and Problems Peculiar to the Confiscation of Automobiles

Instances are not uncommon, wherein the governing body of a society finds need to enforce the view that all property is held under an implied limitation that the owner's use shall not be injurious to the community. Under the Common Law, the property of a felon was forfeited upon conviction. In contemporary law, the Federal Government has provided that adulterated or misbranded food and items of property which violate the Custom laws are to be forfeited. Vehicles and other modes of transportation are confiscated when their use transgresses the laws governing liquor, contraband articles, and counterfeit coins.¹²

So, though the imposition of penalizing forfeitures is not novel, yet, with the particular problem of confiscating automobiles, complications arise. Since, as above stated, it is the general practice for many of the vehicles to be purchased on conditional sales contracts, which are frequently, in commercial practice, assigned to a bank or finance company, the forfeiture proceedings affect the rights of these lienholders.

Protection of the Interests of Innocent Third Parties

Though there are numerous laws levying penalizing forfeitures, yet there are fewer statutes whereby the innocent lienholder can mitigate the

⁶ MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED, NEW YORK PUBLIC HEALTH LAWS, Bk. 44 § 3353 (1949).

⁷ CODE OF IOWA, VOL. 1, c.204, § 14 (1950).

⁸ NEBRASKA REISSUE REVISED STATUTES OF 1943, c.28, § 472.01.

⁹ NORTH CAROLINA SESSION LAWS, 1953, c.903, § 5, p.815.

¹⁰ 53 STAT. 1291 (1939), 64 STAT. 427 (1950), 49 U.S.C.A. 781-782.

¹¹ CALIF. HEALTH AND SAFETY CODE § 11611 (Deering 1953).

¹² 37 C.J.S. §3, p.6-7.

forfeiture proceedings.

On the federal level, statutory provisions of remission are provided the innocent lienholder who claims an interest in a vehicle forfeited because of its use in violation of the federal liquor laws. If such claimant can show compliance with the conditions set out in the act, he may modify the proceeding in his favor¹³

Where the use of an automobile transgresses the federal contraband laws, which include narcotics, the vehicle is subject to confiscation, and the third party claimant has no right to judicial hearing.¹⁴ In this instance, the lienholder must pursue his interest by petitioning the Secretary of the Treasury. This administrative officer has the right to mitigate the forfeiture proceedings on conditions that he finds are reasonable and just, if he finds that the sale of the vehicle was incurred without willful negligence, or any intention to defraud or violate the law.¹⁵ These exclusive powers of remission are not open to judicial review.¹⁶

The state legislatures have been similarly remiss in taking cognizance of the need to enact laws by which the innocent lienholder can adequately follow a course of mitigation when an automobile is forfeited. Arizona has a statute like California.¹⁷ Under the Oregon Code, to make the confiscation action subject to his claim, the lienholder must prove that he is an owner in good faith, and without knowledge of the use or intended use.¹⁸ Georgia uses the terms "lack of knowledge, consent, or connivance, expressed or implied" in allowing remission to the innocent third party.¹⁹ Pennsylvania permits modification of the forfeiture action only when the lienholder can show illicit use of the vehicle was without his consent or knowledge.²⁰ Finally, though Nebraska provides for confiscation, no statutory rights of mitigation are provided.²¹

California's Approach to the Problem

That the California legislature has been aware of the rights of third party claimants is evidenced by the legislative history of the laws relating to such parties under forfeitures for the violation of the state narcotic laws. In 1929, though vehicles were subjected to forfeiture, no provisions were made for the innocent lienholder.²² It was not until four years later that the conditions of mitigation, which now appear as Section 11620 of the Health and Safety Code, were enacted.²³

¹³ 49 STAT. 878 (1935), 18 U.S.C.A. 3617

¹⁴ See note 10 *supra*.

¹⁵ 46 STAT. 757 (1930), 19 U.S.C.A. 1618.

¹⁶ U.S. v. One 1946 Plymouth Sedan, Motor # P-116329, Serial # 11569665, 73 F.Supp. 88, 89 (D.C.N.Y. 1946).

¹⁷ ARIZONA CODE, CUM. SUPP., c.68, § 834a-h (1952).

¹⁸ OREGON REVISED STATUTES, vol. 3, § 471.655 at p.877

¹⁹ GEORGIA ACTS, 1952, pp.201-204.

²⁰ PENNSYLVANIA LAWS, 1941, c.121, pp.263-266.

²¹ See note 8 *supra*.

²² See note 11 *supra*.

²³ CALIF. STAT., 1933, c.253, § 3, p.788.

In reviewing the cases involving Section 11620, the California courts have construed its elements as imposing an affirmative duty with which the lienholder must show compliance; and the requirement of a reasonable investigation of the purchaser's moral responsibility, character, and reputation has been judicially deemed a condition precedent to any right to remission. This construction, the courts have said, followed from the statutory phrasing, that ". . . the claimant of any . . . interest *may prove . . .* [his interest] . . . to be bona fide and that such interest . . . was created after a reasonable investigation . . . and without any knowledge of the use, or intended use . . ." and, "*In the event of such proof, the Court shall order the automobile released . . .*"²⁴

The conclusion that compliance with the statutory conditions is paramount to any third party's claim has been strengthened by a recent California Supreme Court ruling in which the rights of a lienholder were denied. The case was decided in a five-to-two decision. The majority held that even though the evidence proved that at the time of the sale of the automobile, the purchaser's moral character and reputation were good, and that the investigation would have gained nothing of a derogatory nature concerning him, still the investigation had to be made.²⁵ A strong dissenting opinion was written by Justice Carter, in which the reasoning of the District Court of Appeal was followed.²⁶ Justice Carter reasoned that since the burden of an investigation was placed on the claimant only to keep automobiles from possible use by violators of the narcotics laws, those persons of ill repute in the community, it would be imposing a useless act to require an investigation, where such an investigation would give forth nothing to place the claimant on notice. Indeed, it would be requiring an idle act, which flouts the opinion that the law does not require idle acts. This latter conclusion finds sympathy in several federal decisions relating to violations of the federal liquor law, which law also requires a statutory investigation.²⁷

When any statute is so broad and embodies such terms as "reasonable investigation," "moral responsibility," and "character and reputation," it is necessarily open to wide judicial interpretation, when reviewing the particular facts of each case.

In a case of first impression, the Supreme Court of California in *People v. One Harley-Davidson Motorcycle*²⁸ ruled that the mere verification by the employer of the purchaser's employment without checking any of the other references was insufficient. The courts then went on to determine

²⁴ *People v. One Pontiac 8 Sedan*, Eng. # 8-73976, 22 Cal.App.2d 503, 71 P.2d 302 (1937), accord: *People v. One La Salle Sedan*, 23 Cal.App.2d 273, 72 P.2d 766 (1937); *People v. One 1938 Ford Sedan*, 98 Cal.App.2d 333, 219 P.2d 839 (1950), *People v. One 1949 Ford V-8 Coupe*, Eng. # 98BA871412, 41 A.C. 124, 257 P.2d 641 (1953).

²⁵ *People v. One 1940 Ford V-8 Coupe*, 36 Cal.2d 471, 224 P.2d 677 (1950).

²⁶ *People v. One Ford V-8 Coupe*, 217 P.2d 458 (1950).

²⁷ *U.S. v. One 1939 Model DeSoto Coupe, Motor # S6-27,687*, 119 F.2d 516, 519 (10th Cir. 1941). *U.S. v. One 1935 Ford Standard Coach, Auto Motor # 18-179962*, 13 F.Supp. 104 (D.C. Tenn. 1935).

²⁸ *People v. One Harley-Davidson Motorcycle*, 5 Cal.2d 188, 53 P.2d 970 (1936).

that mere financial inquiries were not sufficient. In *People v. One Lincoln Eight*,²⁹ such an investigation as the aforementioned was not bolstered by statements of the personal references that the prospect "was a good ole soak."

In 1937, an Appellate Court ruled that a financial investigation coupled with information received from the employer of the purchaser as to his occupation, length of service, and recommendations of a favorable character and reputation, was sufficient to sustain the burden imposed by the statute on the lienholder.³⁰ In the same year, the condemnation of a purely financial investigation was modified, when the court in *People v. One Ford V8 Coach*,³¹ ruled in favor of the claimant, who based his inquiry on a Dun & Bradstreet report, which also gave the marital status, business address, previous employment, type of present trade, and general favorable recommendations as to character. Personal acquaintances and knowledge of the vendee and his family over an extended period have been held sufficient as meeting the statutory requirements as to investigation.³²

In 1941, the District Court of Appeal, Third District, decided what has since become the leading case on the minimum elements required by the statutory inquiry. Writing the opinion, Judge Pullen stated that a bona fide investigation should reveal "the home address of the prospect, his employer, past or present, his source of income, his family and social connections, and in the case of a stranger, some inquiry as to his prior location and standing in the community."³³

That the investigation must be reasonable and bona fide was emphasized in *People v. One 1940 Buick 8, Eng No 74019475*,³⁴ wherein the statements by the purchaser as to his home address and employment were contradicted by a subsequent credit association's information. With this discrepancy, the court held that the investigation could not be deemed reasonable when viewed by a prudent man. But in another case, the reasonableness and good faith of the investigation rendered were not insufficient, nor was the claimant placed on notice of moral irresponsibility because of information that the prospect had been a card dealer.³⁵

So, with the aforementioned decisions, the California courts have given Section 11620 of the Health and Safety Code a more limited construction

²⁹ *People v. One 1939 Buick 8 Coupe, Eng. # 43787923*, 43 Cal.App.2d 411, 110 P.2d 1013 (1941). *Beverly Finance Co. v. Superior Court*, 112 Cal.App.2d 381, 246 P.2d 142 (1952). *People v. One Packard 6 Touring Sedan*, 26 Cal.App.2d 150, 79 P.2d 130 (1938). *People v. One Lincoln Eight*, 12 Cal.App.2d 662, 55 P.2d 925 (1936).

³⁰ *People v. One Plymouth Sedan, Eng. # PG 45999*, 21 Cal.App.2d 715, 69 P.2d 1011 (1937).

³¹ *People v. One Ford V-8 Coach, Eng. # 18-2187132*, 21 Cal.App.2d 445, 69 P.2d 473 (1937).

³² *People v. One 1939 Plymouth 6 Coupe*, 41 Cal.App.2d 559, 107 P.2d 266 (1940).

³³ *People v. One 1939 Buick 8 Coupe*, *supra* note 29.

³⁴ *People v. One 1940 Buick 8 Sedan, Eng. # 74019475*, 70 Cal.App.2d 542, 161 P.2d 264 (1945).

³⁵ *People v. One 1933 Buick Sedan*, 43 Cal.App.2d 482, 111 P.2d 378 (1941).

than was found in the rather broad original statutory language. The courts have decided that the investigation has to be made prior to the creation of any interest, and have laid the essential elements of what a reasonable inquiry should be.

At the time of the writing of this article, the Supreme Court of California has not as yet resolved the conflicting decisions of the Appellate Courts on another important question that arises in the forfeiture proceedings. The question presents itself when the claimant is the subsequent assignee of the conditional sales contract, or, in more common parlance, the bank or finance company that "picks up" the vehicle ownership certificate. In 1940, the Appellate Court decided that the subsequent lienholder could not rely on the previous investigation made by the original vendor, because this would lead to sellers assigning their interests to relieve themselves of liability³⁶ In a later case involving the same point, *People v. One 1949 Ford Tudor Sedan*,³⁷ the court criticized the earlier case, stating that the fearful consequences of relieving liability after an insufficient investigation by assigning away the contract did not exist. Justice Peters, who wrote the opinion, said:

. . . assuming the investigation of [the assignor] was sufficient to protect it, such investigation would protect [the assignee] either because the results of such investigation were in fact communicated to it by [the assignor] or, if not so communicated, then such communication was not necessary."³⁸

Some Practical Aspects

It thus appears that the courts have given a construction to Section 11620 of the Health and Safety Code, which places an affirmative duty on the vendors of automobiles and on their assignees, banks and finance companies. This duty is a heavy burden. When viewed in the light of a sound public policy, in which the legislature and the courts must find an equilibrium between the resultant benefits to the public and the hardship to relatively fewer innocent parties, the attributes of the penal provisions of such a statute are questionable.

Since the language of Section 11620 gave the judiciary such broad and initially blunt instruments, the courts were obliged to hone them with their own thinking; and beginning with the leading decision written by Judge Pullen,³⁹ they have given the statute definite sharpness. The result has been that the reasonable investigation as judicially determined, requires the questioning of the prospect's friends, neighbors, and business associates. People have an innate aversion to answering personal questions, involving the determination of the moral conduct of one whom they know. Hence, it

³⁶ *People v. One 1938 Buick Sedan*, Eng. # 43502146, 39 Cal.App.2d 42, 102 P.2d 447 (1940).

³⁷ *People v. One 1949 Ford Tudor Sedan*, 115 Cal.App.2d 157, 251 P.2d 776 (1952).

³⁸ *Ibid.*, 115 Cal.App.2d 157 at 165, 251 P.2d 776 at 781.

³⁹ *People v. One 1939 Buick 8 Coupe*, *supra* note 29.

is common knowledge that great difficulty is encountered in making such inquiries. Ordinarily the most that an investigator will glean will be replies in the negative—that the person being questioned knows nothing of a derogatory nature concerning the purchaser. Although such statements have been ruled upon as being sufficient to constitute a reasonable investigation,⁴⁰ can they be valued a true determination of the person's moral responsibility, character, and reputation? Is not such an investigation merely a perfunctory compliance with the letter of the statute and a disregard of its intent, to-wit, the prevention of the transportation, or keeping of narcotics in vehicles.

Moreover, the good will of the vendor making the investigation might be seriously impaired when the purchaser learns he is being subject to such an investigation. To say the least, a purchaser would be concerned, if not outright insulted, to know that an investigation was being conducted to determine from his friends and associates whether he was stigmatized as a person of ill reputation, and a possible dope addict or peddler. This is not too far-fetched, if one considers that people generally dislike even a routine financial investigation.

Again, the duty of an investigation weighs heavily, because some of the narcotic enforcement agencies deny any right of access to the records of drug violations on the basis that such information is of a confidential nature.⁴¹

Statistically speaking, the imposition of a duty of inquiry is disproportionately burdensome. For those automobile dealers, banks, and finance companies which operate in the larger metropolitan areas, it is more probable that the purchaser will use the vehicle in violation of the narcotic laws because of the more intensified use of drugs in these highly populated regions.

Notice should also be taken of the financial imposition of the statute that is presently required in making the reasonable investigation. Furthermore, it cannot be gainsaid that in the usual course of business the finance companies or banks practically never see the purchaser. They deal solely with their assignor, the vendor of the automobile, and therefore do not have the opportunity of making a personal appraisal of the purchaser.

In summary, the elements of Section 11620 of the California Health and Safety Code are highly penal and impose a burden of an extraordinary nature on a highly useful and lawful business transaction.⁴²

The consequence of the statute as it is now applied, are that the vendors, banks, and automobile finance companies in many instances do not make the required investigation, and simply take the risk that the vehicle will not

⁴⁰ *People v. One 1941 Cadillac Club Coupe*, 63 Cal.App.2d 418, 147 P.2d 49 (1944).

⁴¹ *Supra* note 34. Here records were denied because of wartime regulations of the Merchant Marine. Today, the California State Narcotic Enforcement Bureau refuses information on the basis that it is of a confidential nature.

⁴² *People v. One 1941 Cadillac Club Coupe*, *supra* note 40.

be used in violation of the narcotic laws. The nature of the transaction demands speed in closing and if delay is encountered, the business is usually lost.

It is readily understandable that in its never ending struggle to control the unauthorized use of narcotics, it is the relentless policy of the law to forfeit vehicles used in the transportation of narcotics,⁴³ yet contrary to that doctrine, is the statement that sweeping forfeiture statutes fail to establish a standard of conduct that will save the rights of an innocent claimant. Under such statutes, the bona fide attempts to avoid penalty may also result in the curtailment of socially desirable activities.⁴⁴ It appears that the present construction given Section 11620 falls within the condemnation of this last statement.

Since this is so, the statutory rights given to the innocent lienholder should undergo a major revision. The basis for this proposal lies in the foregoing statements and on certain facts as determined by the Federal Bureau of Investigation. This agency found that it could be definitely concluded that the narcotic addict is more than twice as likely to have a *criminal record* prior to the first infraction of the narcotic laws; and that the addiction to drugs shows up as a *later phase of criminal career*, rather than as a predisposing factor; and that in the procession of events, it is from criminality to addiction, or from a defective personality to criminality to addiction.⁴⁵

The revision of Section 11620 along lines similar to those found under the rights to remission of the lienholder, when vehicles are used in violation of the federal liquor laws appears to be highly desirable. Under this statute, mitigation of forfeitures is allowed when the claimant can show he made an investigation, prior to the creation of his interest, to the federal, state, or local law enforcement officers concerning the character and reputation of the prospect, and particularly as to any record concerning violations of the liquor laws.⁴⁶ If the California statute so provided for inquiries to be made of the federal and state law enforcement agencies concerning the record of any criminal activity, and particularly narcotic violations, the duty of investigation would not be penalizing; and since lienholders "usually make a financial investigation, it would be no hardship for them to make a check to see if the purchaser had a criminal record so far as it [is] a matter of public record."⁴⁷

⁴³ *People v. One 1949 Cadillac 4-Door Sedan*,Cal.App.2d....., 272 P.2d 873 (1954).

⁴⁴ 50 COL. L. REV. 375-379.

⁴⁵ See note 4 *supra*.

⁴⁶ *Supra* note 13, and the courts have decided that the general character and reputation of the prospect is to be determined by the agencies as set out in the Act, rather than as determined by the general community—*U.S. v. One 1940 Ford Coach Automobile, Motor # 18-5885613*, 43 F.Supp. 593 (D.C. Ky. 1942).

⁴⁷ Note, 33 ILL. L. REV. 233-236.