

1-1964

The Constitutionality of Section 1193 of the Code of Civil Procedure

Thomas A. Campbell

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



Part of the [Law Commons](#)

Recommended Citation

Thomas A. Campbell, *The Constitutionality of Section 1193 of the Code of Civil Procedure*, 16 HASTINGS L.J. 259 (1964).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol16/iss2/10

This Note 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.

There is certainly a reason for eliminating the distinction between the assignment of perfected and inchoate liens. Prominent among modern business techniques is the practice of assigning the right to payments under a contract to a banking facility. In this way the assignor obtains capital necessary to meet current requirements which would not otherwise be available to him. A secured debt is more valuable because the risk assumed by the assignee is reduced. The very essence of mechanics' lien laws is to afford the suppliers of labor or material security for the debt owed them for their contribution.²⁷ Yet the beneficiaries of the law are often unable to realize an important advantage of this security—its value on assignment of the debt.

Code of Civil Procedure section 1193.1(a) allows a claim of lien to be filed only when all work is completed or all material furnished. Thus, one who requires cash to continue or complete his contribution to an improvement on real property is unable to file a lien and must assign his unsecured right for a less advantageous discount rate. If the entire purpose of mechanics' lien laws is to assure payment to the laborer or materialman, would not this end be more fully attained if the intended beneficiary of the law were able to receive from his assignee more nearly the amount to which he would be entitled if no assignment were necessary?

The constitution²⁸ specifies certain classes for whom mechanics' liens must be made available. It does not abridge the right of the legislature to exercise its power to broaden the field of recipients beyond those named.²⁹ There is then no reason why the legislature may not extend the right to file a lien to the assignee of a debt, when the assignor had such a right.

The mechanics' lien law of California should be amended to include a section dealing with assignment of liens. This section should specifically allow the assignment of a right to a lien as well as a perfected lien. Adoption of such a provision would also necessitate an amendment of Code of Civil Procedure section 1193.1(j) to allow the assignee to file such a lien.

*Timothy McFarland**

²⁷ Cases cited note 21 *supra*.

²⁸ "Mechanics, materialmen, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens." CAL. CONST. art. XX, § 15.

²⁹ "The court is of the opinion that the constitutional provision designating the persons entitled to liens does not give a lien to contractors or subcontractors, as such . . . His right to a lien under the contract is given solely by the statutory provisions in his behalf. The constitution does not provide for him as contractor or subcontractor." *Miltimore v. Nofziger Bros. Lumber Co.*, 150 Cal. 790, 792, 90 Pac. 114, 115 (1907).

* Member, Second Year Class.

THE CONSTITUTIONALITY OF SECTION 1193 OF THE CODE OF CIVIL PROCEDURE

Until recently there has been a conflict in the California cases as to the constitutionality of section 1193 of the Code of Civil Procedure. This section requires subcontractors and materialmen to give property owners and contractors a notice fifteen days prior to filing a mechanics' lien, but excludes from the requirement

laborers and persons under direct contract with the owner.¹ This is one of a series² of statutes providing for the enforcement of mechanics' liens pursuant to the constitutional mandate that creates the right to liens on property for "mechanics, materialmen, artisans and laborers."³ The statute was declared unconstitutional in *Reliable Steel Supply Co. v. Croom*⁴ and *Hellen v. Stephenson*,⁵ but was upheld in *Alta Bldg. Material Co. v. Cameron*.⁶ The holding of the last named case was followed, and the previous cases specifically disapproved, by the California Supreme Court in *Borchers Bros. v. Buckeye Incubator Co.*⁷

Two difficult legal questions arose under these conflicting cases. First, in establishing enforcement procedures for mechanics' liens, is it within the legislature's power to discriminate between two classes that are granted equal standing by the California constitution? Second, if this is a proper exercise of legislative power, is section 1193 unconstitutional as an arbitrary and unreasonable classification violating the equal protection clause of the federal constitution⁸ and provisions of the California constitution guaranteeing uniform operation of laws?⁹

Legislative Power

Reliable Steel Supply Co. and *Hellen* were based primarily on *Miltimore v. Nofziger Bros. Lumber Co.*¹⁰ The latter case was concerned with Code of Civil Procedure section 1194 which then provided¹¹ that proceeds of the lien foreclosure sales should be applied to each class of liens in order of its rank, and gave preference to laborers over materialmen. The court, with three justices dissenting, held that the statute was unconstitutional in that it impaired the materialman's right to a lien and destroyed the equal standing between laborers and materialmen. It declared that "the constitution is self-executing to the extent that it confers upon these classes of persons a lien, and makes them equal in point of rank with regard to each other,"¹² and it laid down the rule that the legislature cannot dis-

¹ CAL. CODE CIV. PROC. § 1193(a) provides in part: "Except one under direct contract with the owner or one performing actual labor for wages, every person who furnishes labor, service, equipment or material for which a lien otherwise can be claimed under this chapter, must, as a necessary prerequisite to the validity of any claim of lien subsequently filed, cause to be given not later than 15 days prior to the filing of a claim of lien a written notice as prescribed by this section, to the owner or reputed owner and to the original contractor. . . ."

² CAL. CODE CIV. PROC. §§ 1181-1203.1.

³ CAL. CONST. art. XX, § 15.

⁴ 181 Cal. App. 2d Supp. 831, 5 Cal. Rptr. 310 (1960).

⁵ 197 Cal. App. 2d Supp. 863, 18 Cal. Rptr. 361 (1961).

⁶ 202 Cal. App. 2d 299, 20 Cal. Rptr. 713 (1962).

⁷ 59 Cal. 2d 234, 379 P.2d 1, 28 Cal. Rptr. 697 (1963).

⁸ U.S. CONST. amend. XIV, § 1.

⁹ CAL. CONST. art. I, § 11, art. IV, § 25.

¹⁰ 150 Cal. 790, 90 Pac. 114 (1907).

¹¹ The preferences provided in CAL. CODE CIV. PROC. § 1194 were excluded by amendment, Cal. Stat. 1911, ch. 681, § 8, at 1318; this section was repealed by Cal. Stat. 1951, ch. 1159, § 4, at 2558.

¹² 150 Cal. at 792, 90 Pac. at 115.

criminate between classes to the extent of preferring one right to another when the classes are given equal standing by the constitution.

The *Miltimore* rule does not prohibit procedural legislation which discriminates between classes established as equals by the constitution. The court in *Reliable Steel Supply Co.* found that *Miltimore* established the rule against discrimination in respect to substantive matters. *Alta Bldg. Material Co.* recognized the fundamental difference between the statute considered in *Miltimore* and section 1193. *Miltimore* was concerned with a statute which created a preference for laborers over materialmen and clearly impaired the materialman's lien.¹³ Section 1193 established a procedural requirement which did not impair the substantive rights created by the constitution.

Clearly the function of the legislature is to obey the constitutional mandate by providing for the "speedy and efficient" enforcement of liens.¹⁴ In an early leading case it was declared that article XX, section 15 is not self-executing and is inoperative except as supplemented by legislation.¹⁵ *Miltimore* does not contravene this rule.¹⁶ The legislature, within the limits of reasonable discretion, must provide for the exercise of the right to a mechanics' lien, the manner of its exercise, the time at which it attaches, and the time within which it can be enforced.¹⁷ Thus, the court in *Borchers Bros.* disapproved *Reliable Steel Supply Co.* and *Hellen* and stated that there is "no constitutional compulsion for uniform treatment"¹⁸ and that the legislature can adopt one procedure for enforcement of liens of materialmen, and another for laborers, if it so chooses.

Whether the *Miltimore* rule is called a substantive or procedural rule, however, it cannot be ignored. It still prohibits the legislature from discriminating between materialmen and laborers to the extent that their substantive rights to a lien are rendered unequal, even if that is done by procedural requirements. Material suppliers' primary objection to section 1193 is that it imposes burdens which impair their right to a lien under practical circumstances.¹⁹ They complain that the short time required for notice and the difficulty of obtaining the necessary information required for giving notice make protection of their rights to liens very difficult in practice. Thus they raise the question as to whether section 1193 burdens the materialman to such an extent that his right to a lien is rendered inferior to that of a laborer.

The purpose of section 1193 was to establish a simple procedure which would protect all the interests affected by mechanics' liens.²⁰ It requires that subcon-

¹³ 202 Cal. App. 2d at 302, 20 Cal. Rptr. at 715, where the court says in construing the *Miltimore* decision: "It is evident that the court had in mind the constitutional requirement that special laws shall not be passed authorizing the impairing of liens. . . ."

¹⁴ *Nofzinger Lumber Co. v. Soloman*, 13 Cal. App. 621, 110 Pac. 474 (1910).

¹⁵ *Spinney v. Griffith*, 98 Cal. 149, 32 Pac. 974 (1893). See also *Chesney v. Byram*, 15 Cal. 2d 460, 101 P.2d 1106 (1940), which defines a self-executing constitutional provision as one which supplies a sufficient rule by means of which the right given may be enjoyed and protected.

¹⁶ *Ferger v. Gearhart*, 44 Cal. App. 245, 186 Pac. 376 (1919).

¹⁷ *Barr Lumber Co. v. Shaffer*, 108 Cal. App. 2d 14, 20, 238 P.2d 99, 103 (1951).

¹⁸ 59 Cal. 2d at 238, 379 P.2d at 3, 28 Cal. Rptr. at 699.

¹⁹ SENATE JUDICIARY COMM. FOR INTERIM 1957-1959, FIFTH PROGRESS REPORT TO THE LEGISLATURE 33-34 [hereinafter cited as FIFTH PROGRESS REPORT].

²⁰ FIFTH PROGRESS REPORT 88.

tractors and materialmen give notice of their intention to file a claim of lien within fifteen days after the owner files notice of completion.²¹ The notice must give information as to the general nature of material, labor or equipment supplied, the name and address of the claimant, and the name of the party who contracted for the material. The requirement can be satisfied by simple invoice in most cases, and it seems that most responsible firms would have such information. The notice must be sent to the owner and general contractor, whose addresses can be found from the building permit. If no building permit is available the notice can be sent to the job site.²² The net effect is to require the materialman to initiate proceedings to perfect his claim of lien fifteen days prior to the time a laborer must take such steps. Also, to secure his lien, the materialman must spend more time, greater effort, and greater expense than the laborer. The requirements do not seem to be impractical or unreasonable. The materialman has sufficient time to give notice, and the additional expense can be shifted to the owner as a general operating expense. The substantive right to a lien is not impaired, nor is the materialman's right rendered inferior to that of the laborer.

The material suppliers also protest that section 1193 aids the general contractors and home owners at the expense of materialmen and subcontractors.²³ But that objection has no bearing on the constitutionality of section 1193 and should be directed to the legislature. The *Borchers Bros.* and the *Alta Bldg. Material Co.* cases recognize that implicit in the constitutional mandate is the requirement that the legislature protect the interests affected by mechanics' liens.²⁴ It was said in *Borchers Bros.* that the "constitutional mandate of article XX, section 15, is a two-way street, requiring a balancing of the interests of both lien claimants and property owners."²⁵ The court construed the words "speedy and efficient"²⁶ in the constitutional provision to mean that the legislature should provide for a speedy remedy for payment of liens, but that it should also provide that the property owners' title should be cleared as soon as possible, to protect its marketability.

Thus, not only is the legislature empowered to create a different classification from that specified in the California constitution, but the classification it did create was one which carried out the objectives of the constitutional mandate.

Reasonable Classification

Generally, laws must operate equally upon all who are similarly situated in respect to such laws.²⁷ The fourteenth amendment to the United States Constitu-

²¹ CAL. CODE CIV. PROC. § 1193.1(b) requires all claimants other than general contractors to file their claims for liens within thirty days after the owner files notice of completion. CAL. CODE CIV. PROC. 1193(a) requires notice of intention to file claims of liens fifteen days before the claim is filed. Therefore the pre-lien notice *must* be given within fifteen days after notice of completion in order to protect the claimant's right to a lien.

²² CAL. CODE CIV. PROC. § 1193(c).

²³ FIFTH PROGRESS REPORT 97.

²⁴ See also *Diamond Match Co. v. Sanitary Fruit Co.*, 70 Cal. App. 695, 701, 234 Pac. 322, 325 (1925).

²⁵ 59 Cal. 2d at 238, 379 Pac. at 3, 28 Cal. Rptr. at 699.

²⁶ CAL. CONST. art. XX, § 15.

²⁷ *Western Indemnity v. Pillsbury*, 170 Cal. 686, 698, 151 Pac. 398, 403 (1915).

tion provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."²⁸ The California constitution contains various provisions which provide similar, but not identical, guarantees of equal protection and conformity of legislation.²⁹ Despite the variance in language of the provisions of the California constitution, where the charge is that equal protection is denied, the effect of both constitutions is the same.³⁰

Both constitutions prohibit unreasonable discrimination between persons who are similarly situated with respect to the law.³¹ However, they do not prohibit reasonable classification for the purpose of meeting different conditions naturally requiring different legislation.³² Any discrimination between classes must be based on some real difference between classes,³³ and the differences must have substantial relation to the purpose for which the classification was designed.³⁴

The legislature has wide discretion in making a classification, and its decision will not be overthrown by the courts unless "palpably arbitrary and beyond rational doubt erroneous."³⁵ When a legislative classification is questioned, if any state of facts can be conceived that would sustain it, there is a presumption of the existence of that state of facts, and the burden of showing arbitrary action rests upon the one who assails the classification.³⁶

Reliable Steel Supply Co. found that there were insufficient grounds for discrimination between laborers and materialmen, and held the statute to be an arbitrary and unreasonable discrimination against materialmen. *Hellen* approved *Reliable Steel Supply Co.* and also observed that subcontractors' claims generally are composed primarily of labor costs, yet they must act to protect their liens in fifteen days, while laborers are still allowed thirty days. Thus, the court found that the exemption of laborers from the statute's requirements was unreasonable and arbitrary.

The two courts failed to recognize the important differences between the classes designated in section 1193 and the relation of the classification to the purpose of the statute. In order to be proven arbitrary and unreasonable, any classification must be shown to have no substantial relation to the reasonable

²⁸ U.S. CONST. amend. XIV, § 1.

²⁹ "All laws of a general nature shall have uniform operation." CAL. CONST. art. 1, § 11. "The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: . . . (33) In all other cases where a general law can be made applicable." CAL. CONST. art. IV, § 25.

³⁰ *Los Angeles County v. Southern Cal. Tel. Co.*, 32 Cal. 2d 378, 390, 196 P.2d 773, 781 (1948), *appeal denied*, 336 U.S. 929 (1948); *People v. Western Fruit Growers*, 22 Cal. 2d 494, 506, 140 P.2d 13, 20 (1943).

³¹ *Los Angeles County v. Southern Cal. Tel. Co.*, *supra* note 30, at 393, 196 P.2d at 783.

³² *Pacific Gas & Elec. Co. v. Moore*, 37 Cal. App. 2d 91, 98 P.2d 819 (1940).

³³ *Serve Yourself Gas Stations Ass'n v. Brock*, 39 Cal. 2d 813, 249 P.2d 545 (1952); *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 754, 329 P.2d 689, 695 (1958).

³⁴ *Frost v. Corporation Comm'n of Oklahoma*, 278 U.S. 515 (1929); *Walnut Creek v. Silveira*, 47 Cal. 2d 804, 811, 306 P.2d 453, 456 (1957).

³⁵ *Sacramento Municipal Util. Dist. v. Pacific Gas & Elec. Co.*, 20 Cal. 2d 684, 693, 128 P.2d 529, 535 (1942).

³⁶ Cases cited note 30 *supra*.

purpose of the legislation,³⁷ and *not* to be founded on a natural, intrinsic, and constitutional distinction.³⁸

The specific purpose for which section 1193 was enacted was to eliminate double payments which had been plaguing property owners in Southern California.³⁹ Considerable controversy arose as to the solution to this problem, and section 1193 was a compromise bill. Essentially the plan was that homeowners and contractors were to be informed of claims of which they had no direct source of information. These were claims of subcontractors and materialmen, with the most acute problem presented by claims of material suppliers of subcontractors.⁴⁰ The double payment problem arose when either general contractors or subcontractors became insolvent and were unable to pay for materials, equipment, or labor supplied to construction. Contractors often paid their subcontractors and then discovered that there were unknown claims which resulted in liens on the property. The solution was to require these unknown claimants to give notice of their intention to file a lien. Homeowners and contractors could then work out some arrangement with claimants before the lien attached, thus avoiding double payment or a cloud on the owner's title.

The court in *Alta Bldg. Material Co.* points out that section 1193 creates two classes of lien claimants: (1) those who are either under direct contract with the owner or performing actual labor for wages, and (2) all others. This classification was based on the purpose of the statute, and the two classes stand in a different position with respect to the statute. The owner usually would be aware of the potential claims of those who perform actual labor for wages on the property and those with whom he contracts directly, but he is not likely to be aware of those who furnish materials or supply the labor of others.

Furthermore, materialmen's and subcontractors' claims were the primary cause of the double payment problem. Laborers are given protection under the Labor Code which provides penalties for non-payment of laborers.⁴¹ Also the average uninformed laborer would have much less opportunity than materialmen or subcontractors to comply with the statute.

It seems that the *Alta Bldg. Material Co.* and *Borchers Bros.* cases properly hold that section 1193 does not make an unreasonable discrimination between classes. The classification it creates is based on differences in the classes that are reasonably related to the purpose of the legislation. A statute is presumed to be constitutional, and section 1193 is by no means palpably arbitrary and erroneous beyond a reasonable doubt. Whether it is a practical solution to the problem of double payments is a question not for the courts, but for the legislature.

Thomas A. Campbell*

³⁷ *Sacramento Municipal Util. Dist. v. Pacific Gas & Elec. Co.*, 20 Cal. 2d 684, 693, 128 P.2d 529, 534-35 (1942), *cert. denied*, 318 U.S. 759 (1942). See Tussman & ten Broek, *Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 345-46 (1949).

³⁸ Cases cited note 30 *supra*.

³⁹ FIFTH PROGRESS REPORT 24.

⁴⁰ *Id.* at 57, 96.

⁴¹ CAL. LABOR CODE § 215.

* Member, Second Year Class.