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# California Garagemen's Liens--Impact and Aftermath of Adams v. Department of Motor Vehicles

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# California Garagemen's Liens—Impact And Aftermath Of Adams v. Department Of Motor Vehicles

*In 1974 the California Supreme Court abrogated the garageman's right to extrajudicially enforce his lien on a vehicle for which repair charges had not been paid. The court, however, condoned the garageman's temporary retention of the vehicle pending judicial resolution of the underlying dispute concerning the repair bill. The California Legislature has responded to the supreme court's ruling with legislation aimed at expediting the lien enforcement procedure in specified situations. The author examines this new legislation in light of procedural due process standards enunciated in a series of decisions of the United States and California Supreme Courts and suggests constitutional challenges which derive from legislative delegation of a lien foreclosure power to the Department of Motor Vehicles. The author recommends amendments to the new legislation which would cure these constitutional objections while upholding the right of the garageman to enforce his lien when based upon a valid claim.*

Prior to 1969 creditors enjoyed both legislative and judicial approval of summary prejudgment remedies. However, in that year the United States Supreme Court established in *Sniadach v. Family Finance Corp.*[1] that a debtor must be afforded, with limited exceptions, the procedural due process requisites of notice and hearing before his property may be seized. In 1974 the California Supreme Court applied the *Sniadach* principles in *Adams v. Department of Motor Vehicles*[2] to invalidate a garageman's right to enforce his statutory lien extrajudicially. The California Legislature, in the same year, enacted a new law[3] (hereinafter referred to as Senate Bill 2293) which reinstated the garageman's right to enforcement, subject to certain enumerated conditions. Thus, within a period of less than a year, the garage-

1. 395 U.S. 337 (1969).
2. 11 Cal. 3d 146, 520 P.2d 961, 113 Cal. Rptr. 145 (1974).
3. S.B. 2293, CAL. STATS. 1974, c. 1262.

man's lien has evolved from a remedy which was essentially based on private self-help to one which currently necessitates participation by the state and compliance with the precepts of due process.

This comment traces the developments foreshadowing the *Adams* decision and discusses its impact and the legislative response. It explores the safeguards now appended to the garageman's statutory enforcement rights and considers whether the procedures embodied in Senate Bill 2293 fulfill the due process mandates of the United States Supreme Court.[4] This comment also examines the legislative delegation of a lien foreclosure power to the Department of Motor Vehicles. In order to evaluate the effect of Senate Bill 2293 in perspective, a preliminary analysis of the former California garageman's lien law and the judicial response to its enforcement procedures is imperative.

## STATUTORY GARAGEMAN'S LIEN LAW PRIOR TO SENATE BILL 2293

The garageman's possessory lien, as codified in the California Civil Code,[5] is a modern example of the artisan's and mechanic's liens which were recognized at common law.[6] This codification, which remains in effect after the passage of Senate Bill 2293,[7] provides that when a garageman has possession of a vehicle for which repair charges have not been paid, he is entitled to a lien on that vehicle to enable him to secure payment for repairs and labor he has performed or for supplies or materials he has furnished for the vehicle. The garageman's lien, however, is limited to a maximum recovery of $300 for any work, service, or repairs performed, unless prior to commencing such work, the garageman gives notice in writing and obtains consent for the making of repairs from the legal owner of the automobile.[8] If the total for any repair charge authorized by the registered owner is less than $300, the lien attaches regardless of the consent or knowledge of the legal owner.[9]

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4. The due process requirements of the United States and California Constitutions have been held to be identical in scope and purpose. MCA, Inc. v. Universal Diversified Enterprises Corp., 27 Cal. App. 3d 170, 174 n.4, 103 Cal. Rptr. 522, 524 n.4 (1972); Abstract Inv. Co. v. Hutchinson, 204 Cal. App. 2d 242, 245, 22 Cal. Rptr. 309, 311 (1962); Manford v. Singh, 40 Cal. App. 700, 181 P. 844 (1919).

5. CAL. CIV. CODE §§3051, 3068(a).

6. Mortgages Securities Co. v. Pfaffman, 177 Cal. 109, 169 P. 1033 (1917); J. DARLINGTON, A TREATISE ON THE LAW OF PERSONAL PROPERTY 40-41 (1891); W. FRYER, READINGS ON PERSONAL PROPERTY 400, 418 (3d ed. 1938); J. SCHOULER, LAW OF PERSONAL PROPERTY 279-80 (1907).

7. CAL. STATS. 1974, c. 1262, *amending* CAL. CIV. CODE §§3052, 3068(b), 3071, 3072, CAL. VEHICLE CODE §§22705, 22851, *adding* CAL. CIV. CODE §3071.5.

8. CAL. CIV. CODE §§3051a, 3068(b).

9. Universal C.I.T. Credit Corp. v. Rater, 214 Cal. App. 2d 493, 29 Cal. Rptr. 631 (1963).

This codification of the garageman's lien law in California was a significant expansion of the common law.[10] At common law, the possessory lienholder had no power of sale,[11] and any sale to foreclose the lien was conversion.[12] Unless the parties had contracted otherwise, the lienholder at common law was required to obtain judgment and levy execution on the chattel.[13] In contrast, the California statutory law provided, prior to Senate Bill 2293, that if the owner of a vehicle neglected or refused to pay the garageman's bill within 10 days from when payment was due, the garageman in possession could commence proceedings to sell the vehicle at a public auction.[14] However, prior to enforcing his lien, the garageman was required to give 20 days' notice by registered mail to the registered and legal owners of the vehicle.[15] If the vehicle was worth less than $200, the required notice period was only 10 days.[16] In addition, prior to the sale of the automobile, the Department of Motor Vehicles was statutorily required to attempt notification of the owners,[17] and after the sale the Department was required to follow a procedure by which it again notified the legal and registered owners and, only after a waiting period of five days from that notification, changed the registration.[18] The legal owner of a vehicle worth more than $200 had the right to redeem it within 20 days after the sale.[19]

The lienholder's right to possession was absolute until the bill was paid or the car was sold,[20] but if the garageman surrendered possession, the lien was dissolved.[21] The garageman also had an absolute right to sell the vehicle to satisfy the debtor's obligation, and the exercise of this right was not subject to any form of judicial scrutiny; the lien was executed through self-help, and the garageman could permanently deprive the owner of his vehicle through the extrajudicial process of public sale. As this statutory scheme did not provide for an eventual

10. Quist v. Sandman, 154 Cal. 748, 755, 99 P. 204, 207 (1908).
11. J. DARLINGTON, A TREATISE ON THE LAW OF PERSONAL PROPERTY 42, 45 (1891); W. FRYER, READINGS ON PERSONAL PROPERTY 418 (3d ed. 1938); J. SCHOULER, LAW OF PERSONAL PROPERTY 292-93 (1907).
12. R. BROWN, PERSONAL PROPERTY §119 (2d ed. 1955).
13. White v. White, 11 Cal. App. 2d 570, 54 P.2d 482 (1936).
14. CAL. CIV. CODE §3052, *as amended*, CAL. STATS. 1959, c. 781, §1, at 2775; CAL. CIV. CODE §3071, *as enacted*, CAL. STATS. 1959, c. 3, §3, at 1791.
15. CAL. CIV. CODE §3052, *as amended*, CAL. STATS. 1959, c. 781, §1, at 2775; CAL. CIV. CODE §3072, *as enacted*, CAL. STATS. 1959, c. 3, §3, at 1792.
16. CAL. CIV. CODE §3073.
17. CAL. CIV. CODE §3052, *as amended*, CAL. STATS. 1959, c. 781, §1, at 2775; CAL. CIV. CODE §3072, *as enacted*, CAL. STATS. 1959, c. 3, §3, at 1792.
18. CAL. VEHICLE CODE §5909.
19. CAL. CIV. CODE §3074.
20. First Nat'l Bank v. Silva, 200 Cal. 494, 254 P. 262 (1927).
21. Lundblade v. Pierce, 95 Cal. App. 192, 194, 272 P. 329, 330 (1928); Goodman v. Anglo-California Trust Co., 62 Cal. App. 702, 707, 217 P. 1078, 1080 (1923).

hearing before an impartial magistrate, these enforcement provisions were more oppressive than the prejudgment remedies held unconstitutional in *Sniadach* and its progeny;[22] those prejudgment remedies required a claimant to eventually prove the validity of his claim in court. Thus the California Legislature had effectively installed the garageman as judge, jury, and executioner.[23]

Recent amendments to the Automotive Repair Act[24] had, even before the enactment of Senate Bill 2293, somewhat lessened the harshness of the garageman's lien law. This Act provides that the garageman can no longer bill for labor or parts without the consent and authorization of the customer. However, when the nature of the work necessary was fraudulently misrepresented by the repairman or the work was authorized at an agreed upon price but the labor was performed in an unworkmanlike manner or the parts defectively installed, the owner of the automobile was severely limited in his choice of remedies. Short of paying the alleged amount owing and then affirmatively seeking to recover the overcharge, he could not regain possession prior to the sale.[25] The owner could not resort to self-help in regaining his vehicle, since a misdemeanor penalty attaches to such action,[26] nor could he maintain an action for conversion, since retaining possession subject to a lien is a defense to such an action.[27] The owner did have, on a vehicle worth more than $200, a right of redemption which could be exercised within 20 days after sale of the vehicle,[28] but if he exercised this right, he was obligated to pay the costs of litigation, the full amount of the claim, and 12 percent interest.[29] As the debtor had little assurance that any legal action taken in an attempt to prevent the sale would be successful,[30] the potential unfairness to him was manifest. Since the debtor-owner lost the use of his vehicle and risked its permanent loss, he could be coerced into paying the full amount demanded, whether or not the claim of the garageman was just.[31]

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22. See text accompanying notes 32-62 *infra*.
23. Comment, *The Application of Sniadach to Banker's and Garageman's Liens*, 4 SW. U.L. REV. 285, 303 (1972).
24. CAL. BUS. & PROF. CODE §§9884.8, 9884.9.
25. Clark & Landers, *Sniadach, Fuentes and Beyond: The Creditor Meets the Constitution*, 59 VA. L. REV. 355, 386 (1973).
26. CAL. CIV. CODE §3075.
27. Adams v. Department of Motor Vehicles, 11 Cal. 3d 146, 155 n.15, 520 P.2d 961, 966 n.15, 113 Cal. Rptr. 145, 150 n.15; 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §144 (7th ed. 1960).
28. CAL. CIV. CODE §3074.
29. *Id.*
30. See text accompanying notes 84-91 *infra*.
31. *See* Comment, *The Application of Sniadach to Banker's and Garageman's Liens*, 4 SW. U.L. REV. 285 (1972).

PROCEDURAL DUE PROCESS

In a series of cases decided since *Sniadach v. Family Finance Corp.*,[32] the United States and California Supreme Courts have held that procedural due process requires provision to the debtor of notice and the opportunity for a hearing before the state[33] may deprive him of any significant property interest, including temporary use and enjoyment of the property.[34] Exceptions to this principle are justified only when "extraordinary circumstances"[35] require protection of the interests of the state or the creditor.[36] In *Sniadach,* a case which involved a Wisconsin wage garnishment statute, the Supreme Court ruled that garnishment of a debtor's wages before judgment and without notice and hearing constitutes a denial of procedural due process under the fourteenth amendment.[37] The opinion of the Court emphasized that one of the greatest evils of wage garnishment prior to judgment is its ability to coerce the poor into paying unconscionable or fraudulent obligations.[38] Because such garnishment could "drive a wage earning family to the wall,"[39] it was found to be an obvious violation of due process. The California Supreme Court followed the constitutional principles set forth in *Sniadach* and held that California's wage garnishment statute, although different from that of Wisconsin, exhibited the same vices and was therefore unconstitutional.[40] In 1971 the court extended the requirements of notice and hearing to other summary procedures: it declared California's claim and delivery statute unconstitutional in *Blair v. Pitchess*[41] and found prejudgment attachment of checking accounts to be violative of due process in *Randone v. Appellate Department.*[42]

In a 1972 case, *Fuentes v. Shevin,*[43] the United States Supreme Court extended the *Sniadach* rationale to the seizure of household goods under a writ of replevin. The replevin provisions permitted reposses-

32. 395 U.S. 337 (1969).
33. The due process requirements of notice and hearing are not applied to takings by private parties. Evans v. Newton, 382 U.S. 296, 299-301 (1966).
34. *See* Burke & Reber, *State Action, Congressional Power and Creditor's Rights: An Essay on the Fourteenth Amendment,* 46 S. CAL. L. REV. 1003 (1973), *continued in* 47 S. CAL. L. REV. 1 (1973); Clark & Landers, *Sniadach, Fuentes and Beyond: The Creditor Meets the Constitution,* 59 VA. L. REV. 355 (1973); Comment, *The Application of Sniadach to Banker's and Garageman's Liens,* 4 SW. U.L. REV. 285 (1972).
35. See text accompanying notes 49-60 *infra.*
36. Sniadach v. Family Finance Corp., 395 U.S. 337, 339 (1969).
37. *Id.* at 342.
38. *Id.* at 340-41.
39. *Id.* at 341-42.
40. Cline v. Credit Bureau, 1 Cal. 3d 908, 464 P.2d 125, 83 Cal. Rptr. 669 (1970); McCallop v. Carberry, 1 Cal. 3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970).
41. 5 Cal. 3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971).
42. 5 Cal. 3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971).
43. 407 U.S. 67 (1972).

sion of goods upon default of payment under conditional sales contracts. An affidavit was filed to that effect,[44] a writ was issued ex parte, without notice to the debtor, and the sheriff was then statutorily obligated to seize the property.[45] If a counter-bond, which would allow the debtor to reacquire the goods, was not posted, the sheriff would place the property in the hands of the creditor.[46] The Court emphasized that except in "extraordinary circumstances," the due process rights of notice and hearing must be accorded to the debtor before he is deprived of any significant property interest by the state.[47] The Court also stated that even "a temporary, nonfinal deprivation of property is nonetheless a 'deprivation' in terms of the Fourteenth Amendment."[48]

*Sniadach* and *Fuentes* have preserved summary deprivation in the "truly unusual" or "extraordinary" cases in which special protection is properly extended to a state or creditor interest. In *Sniadach* the Court cited examples[49] which fall into this exceptional category: attachment of a nonresident's property,[50] execution on a bank stockholder's property,[51] appointment of a conservator to take possession of a federal savings and loan association,[52] and governmental seizure of mislabeled goods.[53] In *Fuentes* the Court delineated the types of situations previously deemed to be "extraordinary":

> First . . . the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance.[54]

The *Fuentes* Court made it clear that the ordinary creditor's interest in collecting his debts, even coupled with the state's interest in ensuring that just debts are paid, does not justify denial of notice and opportunity to be heard before seizure takes place.[55] In *Mitchell v. W.T. Grant*

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44. *Id.* at 76-77.
45. *Id.*
46. *Id.* at 78.
47. *Id.* at 90.
48. *Id.* at 85.
49. 395 U.S. at 339.
50. Ownbey v. Morgan, 256 U.S. 94, 110-12 (1921).
51. Coffin Bros. v. Bennett, 277 U.S. 29, 31 (1928).
52. Fahey v. Mallonee, 332 U.S. 245, 253-54 (1947).
53. Ewing v. Mytinger & Casselberg, Inc., 339 U.S. 594, 598-600 (1950).
54. 407 U.S. at 91.
55. *Id.* at 90-93.

*Co.*,[56] decided subsequent to *Adams v. Department of Motor Vehicles* in 1974, the United States Supreme Court extended the scope of "extraordinary circumstances" to include situations in which a debtor can effectively encumber, alienate or otherwise dispose of property in his possession prior to judgment. Under facts similar to *Fuentes* the Court ruled that a writ of sequestration could be granted on the creditor's ex parte application without affording the debtor notice or an opportunity for a hearing.[57] However, the Court limited the applicability of the ex parte writ to instances in which its issuance is authorized by a judge upon a creditor's verified affidavit and after the filing of sufficient bond.[58] The debtor, in these instances, is able to regain the property by posting a counter-bond.[59] In accommodating the respective interests of the parties, the Court determined that temporary possession of the property should lie with the party who is able to furnish protection against loss or damage pending trial on the merits.[60]

Thus *Sniadach* and its progeny have established that a debtor must be afforded procedural due process protections if (1) a creditor seeks to deprive him of a substantial property interest, (2) no overriding state or creditor interest justifies the summary taking, and (3) state action is involved in the deprivation. Usually, when debts arising from private transactions are sought to be enforced, the predicative issue is whether state action exists since the extent to which the notice and hearing requirements of due process must be afforded to the debtor depends upon whether the enforcement of the creditor's claim can in some way be attributed to the state.[61] This element was readily found in *Sniadach*, *Fuentes*, and the California cases, since the deprivation in each case was accomplished by state agents.[62]

### Invalidation of California Garageman's Lien Law

A California court first considered the constitutional validity of the garageman's lien in *Quebec v. Bud's Auto Service*.[63] In that case the

56. 94 S. Ct. 1895 (1974).
57. *Id.* at 1901.
58. *Id.* at 1899.
59. *Id.* at 1900.
60. *Id.* at 1905.
61. Ever since the Civil Rights Cases, 109 U.S. 3 (1883), the Supreme Court has clearly established the principle that the fourteenth amendment does not prevent individual incursions upon constitutional rights; rather, "It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment." *Id.* at 11.
62. For recent examples of *insufficient* state participation for purposes of procedural due process see Adams v. Southern California First Nat'l Bank, 492 F.2d 324 (9th Cir. 1973) (automobile repossession); Kruger v. Wells Fargo Bank, 11 Cal. 3d 352, 521 P.2d 441, 113 Cal. Rptr. 449 (1974) (banker's lien).
63. 32 Cal. App. 3d 257 (1973), *rehearing granted*, Civ. No. 2-41502 (June 1, 1973).

owners' car had ceased to function properly after it was repaired, and the car was towed to the repairman's garage for further work. When the owners protested an additional charge, the garageman refused to release the car until the bill was paid. The court had little difficulty in extending the constitutional mandates of procedural due process to the garageman's possessory lien. Relying on *Sniadach, Fuentes, Randone,* and *Blair,* the court of appeal held that the temporary retention of the vehicle by the garageman without notice and hearing to the debtor constituted a deprivation of property without due process of law and was, therefore, unconstitutional. Almost as an afterthought, the court addressed itself to the issue of state action; however it quickly dismissed the matter by citing *Reitman v. Mulkey*[64] for the proposition that a statute which encourages an individual to violate the constitutional rights of another is treated as though the state itself violated the right. Reliance was also placed upon *Kruger v. Wells Fargo Bank,*[65] in which the court of appeal applied the *Reitman* principle to invalidate the private conduct of a bank in depriving a debtor of his property without a hearing. This first-impression interpretation of the constitutionality of the possessory garageman's lien proved to be short-lived. When the California Supreme Court granted a hearing in *Kruger,* the *Quebec* court on its own motion ordered a rehearing.[66]

One year after the *Quebec* decision, the California Supreme Court ruled upon the constitutionality of a garageman's right to enforce his lien in *Adams v. Department of Motor Vehicles.*[67] In *Adams* the owner refused to pay a bill for unauthorized work, and the garageman sought to enforce his statutory lien on the vehicle. In mandamus proceedings the court invalidated the enforcement provisions[68] of the garageman's lien law, finding them to be violative of the due process provisions of the United States and California Constitutions.[69] Furthermore, it issued a writ prohibiting the Department of Motor Vehicles from processing or otherwise acting on any application for the transfer of registration pursuant to any lien sale conducted under those statutes.[70]

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64. 387 U.S. 369 (1967).
65. 31 Cal. App. 3d 202, 107 Cal. Rptr. 133 (1973), *rev'd,* 11 Cal. 3d 352, 521 P.2d 441, 113 Cal. Rptr. 449 (1974).
66. Adams v. Department of Motor Vehicles, 11 Cal. 3d 146, 150 n.7, 520 P.2d 961, 963 n.7, 113 Cal. Rptr. 145, 147 n.7 (1974).
67. 11 Cal. 3d 146, 520 P.2d 961, 113 Cal. Rptr. 145 (1974).
68. CAL. CIV. CODE §3071, *as enacted,* CAL. STATS. 1959, c. 3, §3, at 1791; CAL. CIV. CODE §§3072-3074.
69. 11 Cal. 3d at 157, 520 P.2d at 967-68, 113 Cal. Rptr. at 151-52.
70. *Id.* at 157-58, 520 P.2d at 968, 113 Cal. Rptr. at 152.

In order to sustain its holding, it was essential for the *Adams* court to find the presence of state action. Relying on several cases decided by the United States Supreme Court,[71] the court stated, "[D]irect involvement is not necessary to a determination of state action, for private conduct may become so entwined with governmental action as to become subject to the constitutional limitations placed on state action . . . ."[72] The *Adams* court determined that the state's involvement in the imposition and enforcement of a garageman's lien through the participation of the Department of Motor Vehicles was sufficient to constitute state action.[73] This involvement, the court indicated, was more than "ministerial" in nature because the preparations for the sale were actively supervised by the Department, and the Department was statutorily required to recognize and record transfer of title.[74] In addition, the court maintained that the statutory scheme delegated the traditional function of lien enforcement to the garageman and enabled him to pass good title to a vehicle that was not his own.[75] Since the repair contract between the parties did not provide for seizure or sale, the *Adams* court found that the garageman's actions were authorized only by statute.[76] The garageman argued that the controlling decision on this point was *Moose Lodge No. 107 v. Irvis*,[77] in which it was held that the existence of state-conferred benefits and state regulations alone would not transform private conduct into state action. The court, however, found,

> *Irvis* is distinguishable . . . since there the state simply licensed the lodge to sell liquor and was not involved in and in no way encouraged the acts of discrimination complained of. Here, in contrast, the lien is expressly provided for by statute, its execution by sale is authorized by statute, and a state agency oversees the sale and records the transfer of title.[78]

Upon finding the presence of state action, the *Adams* court determined that the enforcement of the garageman's lien deprived the debtor of a substantial property interest. Finding that the garageman's lien law was not limited to those specific situations which *Fuentes* delineated as "extraordinary,"[79] the court also held that the summary pro-

71. Adickes v. Kress & Co., 398 U.S. 144 (1970); Reitman v. Mulkey, 387 U.S. 369 (1967); Evans v. Newton, 382 U.S. 296 (1966); Burton v. Parking Authority, 365 U.S. 715 (1961).
72. 11 Cal. 3d at 152, 520 P.2d at 964, 113 Cal. Rptr. at 148.
73. *Id.* at 153, 520 P.2d at 965, 113 Cal. Rptr. at 149. *See also* Horowitz & Karst, *The California Supreme Court and State Action under the Fourteenth Amendment: The Leader Beclouds the Issue*, 21 U.C.L.A.L. REV. 1421 (1974).
74. 11 Cal. 3d at 153, 520 P.2d at 965, 113 Cal. Rptr. at 149.
75. *Id.*
76. *Id.*
77. 407 U.S. 163 (1972).
78. 11 Cal. 3d at 153, 520 P.2d at 965, 113 Cal. Rptr. at 149.
79. *Id.* at 154, 520 P.2d at 965-66, 113 Cal. Rptr. at 149-50.

cedure of lien enforcement was not excepted from the requirements of notice and hearing.[80] The court next determined that the garageman's lien statutes did not afford the debtor these due process requisites.[81] As it pointed out, the 20-day period of redemption, coupled with the 30-day presale period, gave the owner of a vehicle worth more than $200 only 50 days in which to obtain a hearing.[82] If the vehicle was worth less than $200, the court emphasized, its owner could irretrievably lose the car after only 20 days.[83]

The *Adams* decision held that in light of the inadequacies in the notice requirements imposed by the garageman's lien law, none of the avenues of judicial relief available to the debtor provided him with sufficient certainty that a hearing would take place prior to his loss of all rights in the vehicle.[84] In view of the fact that California does not provide for accelerated hearings on contested lien claims,[85] the owner had little assurance that a trial could be held within the minimum period preceding transfer to the buyer. Therefore, reasoned the court, a vehicle owner had to resort to a temporary restraining order and an injunction in order to stay the sale and transfer pending adjudication.[86] However, with regard to this remedy the court stated that "[s]ince [a] temporary injunction is an extraordinary remedy and is thus discretionary . . . it lacks the certainty necessary to insure a hearing prior to permanent deprivation."[87] While a motion to specially set might be made, the court noted that this motion was also discretionary[88] and, accordingly, lacked certainty of relief.[89] If the vehicle was worth less than $500, relief could be sought in small claims court, but the *Adams* court emphasized that the owner had to act immediately[90] since his case would be heard between 10 and 30 days following the filing of the action.[91]

On the issue of interim retention of the debtor's vehicle, the California Supreme Court explicitly declared that the possessory aspect of the garageman's lien, which allows a temporary deprivation of the owner's vehicle, does not violate the principles of *Sniadach*.[92] In dis-

80. *Id.* at 155, 520 P.2d at 967, 113 Cal. Rptr. at 151.
81. *Id.* at 155-56, 520 P.2d at 967, 113 Cal. Rptr. at 151.
82. *Id.*
83. *Id.* at 156, 520 P.2d at 967, 113 Cal. Rptr. at 151.
84. *Id.*
85. CAL. RULES OF COURT, rules 220, 509.
86. 11 Cal. 3d at 156, 520 P.2d at 967, 113 Cal. Rptr. at 151.
87. *Id.*
88. CAL. RULES OF COURT, rules 225, 513.
89. 11 Cal. 3d at 156, 520 P.2d at 967, 113 Cal. Rptr. at 151.
90. *Id.*
91. CAL. CODE CIV. PROC. §117d.
92. 11 Cal. 3d at 154, 520 P.2d at 966, 113 Cal. Rptr. at 150.

tinguishing *Sniadach* and its progeny from the case at hand,[93] the *Adams* court emphasized that the possessory interest of the creditor in those previous cases, which involved temporary deprivation of the use and enjoyment of property, was markedly different from the interest of the garageman. The rationale underlying the court's finding was that the garageman supplies his own labor and materials to the vehicle,[94] and that in contrast, the *Sniadach*-type general creditor has no more than a purely pecuniary interest in the chattel which is unrelated to the property itself.[95] The *Sniadach* progeny were further distinguished by the court on the ground that in those instances

> [the] creditors . . . sought assistance of a state officer or proceeded under color of state law to alter the status quo either by dispossessing debtors or by diverting rights or benefits owed the debtors by third parties. Here, however, the creditor is in rightful possession at the time he asserts his lien. To strike down the garageman's possessory lien would be to alter the status quo in favor of an opposing claimant; the garageman would be deprived of his possessory interest precisely as were the debtors in *Shevin* and *Blair*.[96]

At first glance the *Adams* court's sanctioning of temporary deprivation of a debtor's property by the creditor seems diametrically opposed to established due process principles. In essence, however, the *Adams* rationale embodies the same balancing test which has been considered by the courts since *Sniadach*. The *Adams* court, after weighing the competing interests of the parties in the situation before it, found that the balance was in favor of the creditor. It is this finding for the creditor which constitutes a departure from *Sniadach* and those subsequent cases which found the debtor's interest to be the weightier. In *Sniadach* the majority found wages to be a type of property interest which merited special protection. The Court determined that garnishment created such creditor leverage that the debtor was forced to concede to even fraudulent claims in order to survive.[97] Similarly, in *Goldberg v. Kelley*[98] the Court held that a welfare recipient's interest in survival outweighed the government's interest in conservation of fiscal and administrative resources, which interest the government forwarded by terminating welfare benefits prior to an evidentiary hearing.

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93. Mitchell v. W.T. Grant Co., 94 S. Ct. 1895 (1974), which held constitutional the Louisiana sequestration statutes that allowed temporary deprivation of a debtor's property without notice and hearing, was decided subsequent to the *Adams* decision.
94. 11 Cal. 3d at 154-55, 520 P.2d at 966, 113 Cal. Rptr. at 150.
95. *Id.*
96. *Id.* at 155, 520 P.2d at 966, 113 Cal. Rptr. at 150.
97. 395 U.S. 337, 340-41 (1969).
98. 397 U.S. 254, 264-65 (1970).

The California Supreme Court had implied in earlier decisions that it utilized a balancing-of-the-interests analysis in determining whether satisfaction of the notice and hearing requirements of procedural due process was necessary before a temporary deprivation could take place. In *Blair v. Pitchess* the court stated, "Under the reasoning of *Sniadach* a taking such as that involved in claim and delivery procedure violates due process if it occurs prior to a hearing on the merits unless justified by weighty state or creditor interests."[99] In *Randone v. Appellate Department* this balancing test was discussed in terms of extraordinary circumstances:

> [R]ather than creating a special constitutional rule for wages, the *Sniadach* opinion returned the entire domain of prejudgment remedies to the long-standing procedural due process principle which dictates that, except in extraordinary circumstances, an individual may not be deprived of his life, liberty or property without notice and hearing.[100]

The statements in these previous cases laid the foundation for the *Adams* court to find a weighty creditor interest that justified a prejudgment taking without affording the debtor the opportunity for notice and a hearing. By establishing that the creditor's interest was indeed significant under the *Fuentes* and *Blair* definitions,[101] the court placed the proverbial shoe on the other foot and sanctioned the garageman's temporary retention of the automobile pending judicial resolution of the underlying dispute as to the repair bill.

It can be contended that the *Adams* holding on the validity of the garageman's possessory lien is specious in light of the recent *Mitchell* decision, in which the United States Supreme Court condoned prejudgment possession when a bond was posted by the creditor, a writ of sequestration was issued by a judge upon affidavits, and an opportunity for an immediate hearing was made available to the debtor to determine whether the writ should be maintained or dissolved.[102] However, the distinction can be made that these safeguards need only append to a general type of lien, and that, in contrast, the *Adams* decision was specifically predicated on the fact that the garageman held a particular lien on the vehicle since he added to it his own labor and materials. Furthermore, a broader interpretation of *Mitchell* suggests that the Court is now striving to balance the competing interests of the creditor and of the debtor.

99. 5 Cal. 3d 258, 278, 486 P.2d 1242, 1256, 96 Cal. Rptr. 42, 56 (1971).
100. 5 Cal. 3d 536, 547, 488 P.2d 13, 19, 96 Cal. Rptr. 709, 715 (1971).
101. 11 Cal. 3d at 155, 520 P.2d at 966, 113 Cal. Rptr. at 150.
102. 94 S. Ct. 1895 (1974).

In *Adams* the California Supreme Court limited its determination of unconstitutionality to the *enforcement* aspect of the garageman's lien and determined that in order for a garageman to collect his claim, he must henceforth utilize those existing remedies which are consonant with due process.[103] The court further noted that the legislature could specify additional remedies if it determined that the current avenues of relief for the debtor were inadequate or it felt that additional remedies for the garageman were necessary under the California Constitution.[104]

## SENATE BILL 2293

The *Adams* decision reflects a judicial determination that procedural due process safeguards will be adequately adhered to if the parties pursue their respective claims under existing remedies. Accordingly, any legislative response to *Adams* is, constitutionally, a superfluity. The main thrust of Senate Bill 2293 is the amendment of section 3071 of the Civil Code to permit the holder of a possessory motor vehicle lien to sell the vehicle in satisfaction of his lien if one of the following circumstances exists: (1) A judgment has been entered in favor of the lienholder on the claim which gives rise to the lien; (2) the registered and legal owners have released their interest in the vehicle; or (3) an authorization to conduct the lien sale has been issued by the Department of Motor Vehicles. With respect to the last circumstance, a lienholder must apply to the Department for authorization to conduct a lien sale. The garageman is required to submit, under penalty of perjury, a statement of the amount of the lien, the facts giving rise to the lien, and a declaration of his lack of information or belief that there is a valid defense to the claim which gives rise to the lien. Upon receipt of the application, the Department must notify the registered and legal owners by certified mail that it will authorize the lien sale unless the owners return to the Department, within 20 days, a declaration that they desire to contest the garageman's claim.

### *A. The New Role of the Department of Motor Vehicles*

The practical effect of Senate Bill 2293 is to provide an expedient procedure whereby the garageman may collect his debt if the owner

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103. 11 Cal. 3d at 157, 520 P.2d at 968, 113 Cal. Rptr. at 152.

104. *Id.* "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 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.

is willing to release his interest in the vehicle. However, by allowing the Department of Motor Vehicles to authorize a sale of the owner's vehicle upon his failure to respond to the notice sent to him by the Department, the California Legislature may have provided a major ground upon which Senate Bill 2293 can be challenged. This power of lien foreclosure which has been vested in the Department by the legislature is arguably so inherently judicial that its delegation to an administrative agency violates the separation of powers provision of the California Constitution.[105]

The propriety of a legislative delegation of judicial powers to administrative agencies has been in question since the 1936 California Supreme Court decision in *Standard Oil Co. v. State Board of Equalization,*[106] which held that state administrative agencies not vested with judicial powers under the state constitution could not be so empowered by the legislature. Professor Davis has contended that certain judicial powers cannot be delegated to any organ of government other than a court.[107] Commenting on decisions in which delegation of adjudicatory power has been upheld by the courts, Davis stated, "An examination of the cases upholding such delegation shows that the subject matter generally involves new functions of government, committed in the first instance to administrative authorities and not previously exercised by the courts."[108]

The subject matter committed to the Department of Motor Vehicles by Senate Bill 2293 is clearly not a new function of government. Though the garageman's lien is of statutory origin,[109] foreclosure of liens is a function traditionally performed by the courts. "The enforcement of liens, whether equitable or statutory, is a well-recognized function of courts of equity; and the only distinction in this respect between the different kinds of liens is, that in the case of the latter equity will interpose only where there is no other adequate remedy."[110] Moreover, the lien foreclosure procedure involves a determination of the rights of private party opponents. "The settlement of disputes between individual contestants is the very raison d'être and primary occupation of the courts of justice, and in the grant to administrative

105. "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." CAL. CONST. art. III, §3.
106. 6 Cal. 2d 557, 59 P.2d 119 (1936).
107. 1 K. DAVIS, ADMINISTRATIVE LAW TREATISE §2.13 (1958).
108. *Id.* §2.12, at 131.
109. Adams v. Department of Motor Vehicles, 11 Cal. 3d 146, 152, 520 P.2d 961, 965, 113 Cal. Rptr. 145, 149 (1974).
110. Hibernia Savings & Loan Soc'y v. London & Lancashire Fire Ins. Co., 138 Cal. 257, 259, 71 P. 334, 334 (1903).

bodies of such functions the greatest strain of all is placed upon the separation of powers."[111]

The California Supreme Court has, on at least two occasions, addressed the problem of administrative resolution of a private party's complaint against another private party. The first case, *Western Metal Supply Co. v. Pillsbury*,[112] involved a workmen's compensation award made by the Industrial Accident Commission. The court determined that the power to settle the rights of private parties was strictly judicial and upheld the delegation of power only because there was a special constitutional provision for workmen's compensation awards.[113] In *Jersey Maid Milk Products Co. v. Brock*[114] the challenged legislation authorized the Director of Agriculture to fix the amount of damages due for the failure of a distributor to pay for milk products delivered to him. The court held this to be an unconstitutional delegation of power.[115]

It could be argued that the function of the Department of Motor Vehicles in authorizing a vehicle sale is purely ministerial rather than judicial. The Department neither conducts a hearing nor exercises any discretion beyond the cursory inspection of the garageman's affidavit to determine whether the requisite averments are contained therein. This function does not fall squarely within the traditional definition of "adjudication," which concentrates on the procedure whereby an agency determines what the facts are in relation to specific private rights.[116] However, a more apt definition of "adjudication" would appear to be as follows: "The question whether judicial powers have or have not been validly conferred is determined not by the manner in which the issues are decided but by the character of the issues which are referred to the administrative body for decision."[117]

Focusing upon the character of the issue referred to the Department of Motor Vehicles for decision, it is evident that it involves private party opponents and is one which has traditionally been resolved by the

111. Brown, *Administrative Commissions and the Judicial Power*, 19 MINN. L. REV. 261, 295 (1935).
112. 172 Cal. 407, 156 P. 491 (1916).
113. *Id.* at 413, 156 P. at 494.
114. 13 Cal. 2d 620, 91 P.2d 577 (1939).
115. *Id.* at 651-52, 91 P.2d at 594.
116. "Generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts." Strumsky v. San Diego County Employees Retirement Ass'n, 11 Cal. 3d 28, 35 n.2, 520 P.2d 29, 33 n.2, 112 Cal. Rptr. 805, 809 n.2 (1974).
117. Brown, *Administrative Commissions and the Judicial Power*, 19 MINN. L. REV. 261, 275 (1935).

courts. Furthermore, the function performed by the Department of Motor Vehicles closely resembles the entry of a default judgment, both in the procedures followed and, more significantly, in the net effect conveyed. In fact, since the "judgment" of the Department is thereafter executed by the garageman, it is more drastic than default judgments, which may require the aid of a sheriff to be executed.[118] However, certain default judgments may be entered by the clerk of the court. Section 585 of the Code of Civil Procedure authorizes the clerk to enter a default judgment when personal service has been obtained and the action is solely for recovery of money or damages upon a contract. This action of the clerk has been termed strictly ministerial,[119] and his authority in these cases has been limited. "It has been held in a number of cases that a clerk has the power to enter judgment only where the proper amount appears from the terms of the contract as alleged in the complaint or follows therefrom by mere mathematical computation."[120] One California decision upheld a clerk's authority to enter a default judgment when foreclosure of a mechanic's lien was requested, but the court did so only because the complaint alleged an express contract as an alternate theory of recovery and the contract supported the clerk's action.[121] However, the judgment entered by the clerk in that case was for a money judgment rather than the requested foreclosure. Foreclosure of a garageman's lien would likewise appear to be beyond a clerk's authority and should also fall outside the authority of the Department of Motor Vehicles. Accordingly, it appears that the legislative delegation of the inherently judicial function of lien foreclosure to the Department of Motor Vehicles violates the separation of powers provision of the California Constitution and is likely to be struck by the courts if challenged.

A further challenge may lie even if the delegation of power to the Department of Motor Vehicles is upheld against the charge that the power involved is inherently judicial. In light of the recent California Supreme Court decision in *Strumsky v. San Diego County Employees Retirement Association*,[122] it is questionable whether any function of even a quasi-judicial (adjudicative) nature may be delegated to an administrative agency. The *Strumsky* court declined to draw a distinction between judicial and quasi-judicial powers in holding that the decision of a local board which determined the amount of death allowance to which a survivor was entitled constituted an exercise of "true judicial

118. CAL. CODE CIV. PROC. §§681-713½.
119. Landwher v. Gillete, 174 Cal. 654, 656, 163 P. 1018, 1019 (1917).
120. Lynch v. Bencini, 17 Cal. 2d 521, 525, 110 P.2d 662, 665 (1941).
121. Norman v. Berney, 235 Cal. App. 2d 424, 45 Cal. Rptr. 467 (1965).
122. 11 Cal. 3d 28, 520 P.2d 29, 112 Cal. Rptr. 805 (1974).

powers."[123] If the adjudicative actions of administrative agencies were to be construed as exercises of judicial power, the separation of powers provision of the state constitution would seemingly render these administrative actions nullities. It appears, however, that this literal reading of *Strumsky* was not intended by the court. The destructive effect on state and local government of such an interpretation is sufficient to support a less literal interpretation. Had the *Strumsky* court intended to absolutely bar administrative agencies from performing quasi-judicial functions, it would not have merely provided for a broader scope of judicial review of administrative determinations, but would have invalidated such determinations altogether.

However, the determination that an act is quasi-judicial rather than judicial is not enough in itself to ensure judicial approval of the delegation. As Professor Davis has stated, "Judicial opinions which pass upon the validity of delegation of the power of adjudication rather uniformly revolve around adequacy of standards, but in many cases one may surmise that the motivating force has more to do with presence or absence of procedural safeguards."[124] This conclusion is reinforced by language of the California Supreme Court: "Delegated power must be accompanied by suitable safeguards to guide its use and to protect against its misuse."[125] Thus, in order to determine the validity of the delegation of a lien foreclosure power to the Department of Motor Vehicles, an examination of potential safeguards which adhere to the exercise of this power is necessary.

The first such safeguard derives from the Department's lack of discretion under Senate Bill 2293 in authorizing a lien foreclosure. Other than the purely ministerial task of facially inspecting a garageman's affidavit to determine whether it alleges the requisite conditions for foreclosure authorization,[126] the Department lacks authority to exercise judgment on the question of whether the facts of the controversy between the garageman and the vehicle owner warrant the authorization of a lien foreclosure. This absence of discretionary author-

123. We have in this opinion avoided the use of the term "quasi-judicial"—an adjective used in some opinions and by some commentators to indicate the peculiar adjudicatory powers possessed by administrative agencies. As we have indicated, the question here is the extent to which *true judicial powers* are and can be vested in "local agencies." "The mere retreat to the qualifying 'quasi' is implicit with confession that all recognized classifications have broken down, and 'quasi' is a smooth cover which we draw over our confusion as we might use a counterpane to conceal a disordered bed."

*Id.* at 42 n.14, 520 P.2d at 38 n.14, 112 Cal. Rptr. at 814 n.14 (citation omitted).

124. 1 K. DAVIS, ADMINISTRATIVE LAW TREATISE §2.10, at 113 (1958).

125. Blumenthal v. Board of Medical Examiners, 57 Cal. 2d 228, 236, 368 P.2d 101, 105, 18 Cal. Rptr. 501, 505 (1962).

126. CAL. CIV. CODE §3071.

ity in the Department minimizes the potential for abuse by the Department in authorizing a sale of the vehicle. Senate Bill 2293 also contains a second safeguard in that it provides that the vehicle owner is entitled to a judicial, rather than departmental, determination of the enforceability of the lien if he notifies the Department of his intention to contest the garageman's claim. However, the viability of this second safeguard is dependent upon the vehicle owner's receipt of notice from the Department that the garageman desires to enforce his lien.[127]

The most effective procedural safeguard against potential misuse of the power of the Department of Motor Vehicles to foreclose upon a garageman's lien would be the availability of judicial review. Civil Code Section 3071, as amended, does not provide for judicial examination of the Department's authorization of lien foreclosures, and it remains to be considered whether a means for obtaining judicial review exists independently of Senate Bill 2293. Injunctive relief against the Department's exercise of its power of foreclosure authorization would appear to be unavailable. California cases have held that an injunction may not be used in lieu of administrative mandamus as a method of reviewing adjudicatory agency action.[128] Similarly, an action for declaratory relief to challenge the propriety of a lien foreclosure by the Department appears to be unavailable, since at least one decision has held that an action for declaratory relief may not be prosecuted, in lieu of mandamus, to review a final administrative action.[129] The critical determination thus appears to be whether mandamus will lie to review the action of the Department in authorizing a lien foreclosure.

Administrative mandamus, as set forth in section 1094.5 of the Code of Civil Procedure, is a special device used to obtain judicial review of adjudicatory decisions of state and local governmental bodies. Although the previous discussion concluded that the Department's action in authorizing a sale of the vehicle could be characterized as quasi-judicial, or adjudicatory, administrative mandamus nevertheless appears to be inappropriate for review of such action. The California Supreme Court has held that section 1094.5 is applicable only when the conditions set forth in subdivision (a) thereof (*i.e.*, the holding of a hearing required by law and the taking of evidence) are present.[130] Civil Code Section 3071, as amended by Senate Bill 2293, does not require a hearing or the taking of evidence as a condition to the Department's authorization of lien foreclosure.

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127. See text accompanying notes 142-168 *infra*.
128. Tushner v. Griesinger, 171 Cal. App. 2d 599, 341 P.2d 416 (1959); Vincent Petroleum Corp. v. Culver City, 43 Cal. App. 2d 511, 111 P.2d 433 (1941).
129. Hostetter v. Alderson, 38 Cal. 2d 499, 241 P.2d 230 (1952).
130. Keeler v. Superior Court, 46 Cal. 2d 596, 297 P.2d 967 (1956).

Similarly, a "traditional" mandamus action appears to be an inappropriate means of seeking judicial review of the Department's authorization of sale. Traditional mandamus, as set forth in sections 1084-1097 and 1107-1110b of the Code of Civil Procedure, generally lies either to correct an abuse of discretion by an administrative agency[131] or to compel performance of a mandatory administrative duty by the agency.[132] The relief sought by the vehicle owner following the Department's authorization of the foreclosure of the lien upon his vehicle does not appear to fall within either function of traditional mandamus. It could be argued that if both forms of mandamus are inappropriate for obtaining review of the foreclosure of a garageman's lien, then the previously described barriers to injunctive relief would no longer exist, since injunctive relief has been barred by the courts only when a mandamus action appeared to lie. However, as the *Adams* court indicated, the effectiveness of injunctive relief is diminished by the discretionary nature of this remedy.[133]

Despite the difficulty in identifying the appropriate method of seeking judicial review of the lien foreclosure by the Department of Motor Vehicles, it appears to be well established that this exercise of adjudicatory power cannot escape some form of judicial scrutiny. In a recent decision of the court of appeal, *Pendray v. Board of Trustees*,[134] it was held that it would be unconstitutional for the legislature to vest exclusive power in a school board to determine the sufficiency of the facts necessary to justify dismissal of a probationary teacher, since a probationary teacher's right to hold his job is a fundamental vested right. The *Pendray* court's pronouncement of the need for judicial review of administrative determinations involving fundamental vested rights appears to be fully applicable to the garageman's lien foreclosure situation since a vehicle owner's interest in his automobile fits within the California Supreme Court's articulation of a "fundamental vested right": "In determining whether the right is fundamental the courts do not alone weigh the economic aspect of it, but the effect of it in human terms and the importance of it to the individual in the life situation."[135] Certainly, in as mobile a state as California, the importance of a vehicle to its owner in both human and economic terms can be open to little dispute.

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131. Calaveras Unified School Dist. v. Leach, 258 Cal. App. 2d 281, 65 Cal. Rptr. 588 (1968).
132. Munns v. Stenman, 152 Cal. App. 2d 543, 557, 314 P.2d 67, 76 (1957).
133. See text accompanying note 87 *supra*.
134. 42 Cal. App. 3d 341, 116 Cal. Rptr. 695 (1974).
135. Bixby v. Pierno, 4 Cal. 3d 130, 144, 481 P.2d 242, 252, 93 Cal. Rptr. 234, 244 (1971).

### B. Notice and Opportunity to be Heard

Since the new law places the Department of Motor Vehicles in a position whereby it, in effect, renders a judgment in favor of the garageman in the event the debtor fails or neglects to return the declaration within the prescribed time, the law must comport with the requirements of procedural due process. Civil Code Section 3071, as amended, contains detailed provisions which require the Department of Motor Vehicles to put the debtor on notice that he is entitled to contest the claim of the garageman in court. The new law demands that the following must appear in the statement sent by the Department to the registered and legal owners of the vehicle: (1) The debtor has a legal right to a hearing in court; (2) if a hearing in court is desired, the enclosed declaration to that effect must be signed under penalty of perjury and returned to the Department; (3) if the declaration is signed, the garageman must file an action in court and will be allowed to sell the vehicle only if he obtains a judgment or release from the registered and legal owners; (4) if an action is filed, the registered and legal owners will be so notified; and (5) the owners may then appear to contest the claim of the garageman.

The nature of the hearing required for procedural due process was described by the United States Supreme Court in *Boddie v. Connecticut*:[136]

> That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest . . . . [A] state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause.[137]

To determine whether the newly enacted law complies with the constitutional mandate of an opportunity for hearing outlined in *Boddie*, it is necessary to examine two factors—the form of the hearing, to decide whether the debtor's opportunity to present his case and refute the claim of the garageman is constitutionally sufficient, and the opportunity for a hearing, to determine whether the hearing is provided before the debtor-owner loses his vehicle permanently.

The Court in *Fuentes* emphasized that "[t]he nature and form of such . . . hearings . . . are legitimately open to many potential varia-

136. 401 U.S. 371 (1971).

137. *Id.* at 378-79. As the Court maintained, the hearing required by due process is subject to waiver. National Rental v. Szukhent, 375 U.S. 311, 315-16 (1964). A waiver of constitutional rights must be made knowingly and intelligently. Brady v. United States, 397 U.S. 742 (1970); Johnson v. Zerbst, 304 U.S. 458 (1938). A waiver of constitutional rights must at the very least be clear. Fuentes v. Shevin, 407 U.S. 67, 95 (1972).

tions and are subject, at this point for legislation—not adjudication."[138] Without question, the form of the hearing provided by Senate Bill 2293 satisfies due process standards since Civil Code Section 3071 provides that if the vehicle owner signs and returns to the Department of Motor Vehicles a declaration that he desires a hearing in court concerning the repair bill, the lienholder will be allowed to sell the vehicle *only* if he obtains "a judgment in court."

Pursuant to the *Adams* court's decaration that the Department of Motor Vehicles is not obligated to conduct the actual hearing on the garageman's claim,[139] the legislature has exempted the Department from any such duty and, in Civil Code Section 3071, has instead charged the Department with the obligation to provide notice to the vehicle owner that the garageman seeks enforcement of his lien. Thus the Department's function is to afford the debtor with an opportunity to be heard. What is critical is that the hearing be conducted *before* the garageman enforces his lien by way of sale and in such a manner as to establish the probable validity of the claim in question.[140] Once the debtor has obtained his opportunity for a hearing by means of the Department's notification of the garageman's intent to enforce the lien, the debtor may seek the judicial relief which is clearly available to him in California.

If the guarantee of due process, as enunciated in *Boddie*, is to be fulfilled, it is essential that the opportunity to be heard be granted at a time when the deprivation can still be prevented. The constitutional validity of the time for hearing is predicated on the sufficiency of the notice afforded vehicle owners prior to the authorization of the sale.[141] The *Adams* court indicated that the notice requirements then provided in Civil Code Sections 3052 and 3072 were insufficient to provide the debtor ample opportunity to seek judicial relief prior to the enforcement of the lien.[142] It is only after the provision of notice which is reasonably calculated to inform the debtor of a forthcoming sale that the debtor will have been afforded an adequate opportunity to be heard. After such notice is given, the Department can leave the parties to pursue their respective rights in court unless the debtor defaults[143] or waives his right to a hearing.

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138. 407 U.S. 67, 96-97 (1972).
139. 11 Cal. 3d at 157, 520 P.2d at 968, 113 Cal. Rptr. at 152.
140. Fuentes v. Shevin, 407 U.S. at 96.
141. *See* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1950).
142. See text accompanying notes 81-91 *supra*.
143. "Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. A State, can, for example, enter a default judgment against a defendant who, after adequate notice, fails to make a timely appearance . . . ." Boddie v. Connecticut, 401 U.S. 371, 378 (1971).

Senate Bill 2293 requires notice in the form of certified mail to the registered and legal owners in the event that the debtor fails to pay his bill within 10 days and the garageman desires to sell the vehicle.[144] Without allowing for the possibility that the owners may be unreachable by mail, for whatever reason,[145] Senate Bill 2293 nevertheless enables the Department to authorize a sale if the interested parties fail to respond within 20 days from the date of mailing, rather than from the date of acknowledgment of receipt. Thus, in a given instance an authorization may be issued by the Department solely on the garageman's assertion that a debt is owing and that he is entitled to enforcement of his lien. Since Senate Bill 2293 provides that the Department's authorization of sale is to be accorded finality should the debtor fail or neglect to return the declaration within the prescribed period, which may in fact be due to his failure to receive notice at all,[146] it is imperative that the debtor be afforded sufficient notice so that his opportunity to be heard is ensured.

Since a garageman may act erroneously or even maliciously in sending his application to the Department for an authorization to conduct a lien sale, it is incumbent upon the Department to provide the vehicle owner with sufficient notice. Failure to provide such notice effectively denies the debtor the opportunity to contest the garageman's claim and enables the Department to authorize a lien foreclosure ex parte. In this sense Civil Code Section 3071 stands on the same faulty footing as the replevin statute invalidated in *Fuentes*. As the Court stated in that case,

> The constitutional right to be heard is a basic aspect of the duty of the government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property, *a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party.*[147]

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144. CAL. CIV. CODE §3071.

145. "[A] generally valid notice procedure may fail to satisfy due process because of the circumstances of the defendant . . . ." Boddie v. Connecticut, 401 U.S. 371, 380 (1971). *See also* Covey v. Town of Somers, 351 U.S. 141 (1956). *But see* Norton v. Lyon Van & Storage Co., 9 Cal. App. 2d 199, 49 P.2d 311 (1935), *cert. denied*, 298 U.S. 662 (1936).

146. The perils of mail delivery were vividly portrayed recently by a Sacramento man's experience. Due to an unexplained one-year delay in delivery of a special-delivery letter, the man abandoned a lifetime career ambition and instead spent twelve months in military service. Sacramento Bee, Sept. 19, 1974, at A1, col. 3.

147. 407 U.S. 67, 80-81 (1972) (emphasis added).

Even if *Mitchell* has limited the application of *Fuentes* with respect to temporary deprivation of possession, the Court has not deviated from its stalwart position that notice and hearing must be afforded to the debtor prior to a permanent deprivation.[148] The *Mitchell* Court, in balancing the respective interests of the creditor and debtor, has condoned an ex parte temporary deprivation only upon the authorization of a *judge.* Arguably, no lesser standard should be applied to a garageman's lien foreclosure, in which the vehicle owner may be *permanently* deprived of his vehicle solely upon the garageman's assertion that a debt is owing to him.[149] Assuming, however, that this power of lien foreclosure is a valid delegation of authority to the Department of Motor Vehicles, the notice which must be sent to the owner should provide him with an ample opportunity to cure any mistake through either private negotiation or judicial action *before* a potentially wrongful authorization is issued. As the Court in *Mullane v. Central Hanover Bank & Trust Co.*[150] stated, "This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest."[151] Thus if the right to notice is to have any meaning, it must be afforded to the debtor in such a fashion that he is assured of receiving it. It is fundamental to the requirements of due process that the right of notice and opportunity to be heard "must be granted at a meaningful time and in a meaningful manner."[152] A "meaningful time" contemplates a time when the deprivation can still be prevented;[153] a "meaningful manner" contemplates a manner in which the notice will "reasonably convey the required information."[154] Accordingly, the notice requirements of *Fuentes* and *Mullane* should be the standard, not something less.

The manner of notice required under Senate Bill 2293 is certified mail,[155] and the time period before the deprivation will be authorized is 20 days from the date of mailing. Neither provision appears to af-

148. 94 S. Ct. at 1902.
149. See text accompanying notes 105-133 *supra.*
150. 339 U.S. 306 (1950).
151. *Id.* at 314.
152. Armstrong v. Manzo, 380 U.S. 545, 552 (1965).
153. "[N]o later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred." Fuentes v. Shevin, 407 U.S. at 82.
154. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. at 314. In *Mullane* the Court pointed out that "[t]he statutory notice [by publication], to known beneficiaries is inadequate not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand." *Id.* at 319. *See also* Schroeder v. City of New York, 371 U.S. 208 (1962) (posted notice of intent to divert a river inadequate when the property owner's home and address could easily be ascertained).
155. CAL. CIV. CODE §3071.

ford the debtor his constitutionally guaranteed right to sufficient notice since it is possible that the debtor could be permanently deprived of his vehicle without receiving actual knowledge. Therefore, the same anomalous result is reached under the new law as was condemned in *Adams*. Since the Department is now so vitally involved in the lien enforcement procedure, it should be required to make every good faith effort to locate the owner and give him notice that the garageman has applied for an authorization of sale and that such authorization will be issued on the garageman's assertion if the owner fails to respond. In order to ensure that the vehicle owner will receive notice which will allow him to protect his rights in the vehicle if he has defenses against the garageman's claim, the notice should be served on the owner in the same manner and with the same formalities and safeguards required for service of process when an ordinary civil action is filed.[156] As in a civil action, once notice is served, the owner should be afforded at least 30 days in which to answer.[157]

Although personal service has not been absolutely required in civil actions since July 1, 1970,[158] the notice should, at a minimum, be accomplished by personal delivery or some form of substituted service "reasonably calculated" to apprise the owners of the sale.[159] The notice could be sent by mail with provisions for acknowledgement of receipt by the owners.[160] If service by mail is employed to notify an owner in the state, service should be deemed complete only when the addressee acknowledges receipt thereof.[161] In the event that the addressee fails to complete and return the requisite acknowledgement, another method of service should be employed to notify him.[162] Service by publication should be permitted under certain conditions, but only if "it appears . . . that the party to be served cannot with reasonable diligence be served in another manner . . . ."[163] Constructive service by publication furnishes sufficient notice to the debtor who endeavors to avoid service and to frustrate attempts by the Department to locate and directly notify him of the garageman's intention to sell the vehicle. In such an instance, the Department of Motor Vehicles should bear the burden of proving that service was made by publication only as a last resort. Under this scheme of notice the parties would be placed on a more equal footing, and any unfair advantage given to the garageman under Senate Bill 2293 would be removed.

156. *Cf.* CAL. CODE CIV. PROC. §§415.10-415.50.
157. *Cf.* CAL. CODE CIV. PROC. §412.20(3).
158. CAL. CODE CIV. PROC. §415.10.
159. *Cf.* CAL. CODE CIV. PROC. §415.20.
160. *Cf.* CAL. CODE CIV. PROC. §415.30.
161. *Cf.* CAL. CODE CIV. PROC. §415.30(c).
162. *Cf.* CAL. CODE CIV. PROC. §415.30(d).
163. *Cf.* CAL. CODE CIV. PROC. §415.50.

Since the Department of Motor Vehicle is one of the administrative agencies enumerated in Government Code Section 11501, it can be contended that the notice provisions set forth in Government Code Section 11505,[164] which are applicable to administrative adjudications, should be the minimum required of the Department.[165] However, it has been held that the legislature may enact totally new procedures for any of these enumerated agencies.[166] It should be emphasized that the adjudication procedures set forth in Government Code Section 11500 *et seq.* primarily concern those areas in which the *public* should be protected.[167] Under Senate Bill 2293, the Department of Motor Vehicles is, in effect, adjudicating private rights, and as such adjudication has traditionally been the function of the courts,[168] notice similar to that required in the Code of Civil Procedure should be afforded to the vehicle owner before any default is entered by the Department due to the owner's failure to respond.

## CONCLUSION

In the *Adams* decision the California Supreme Court drew a distinction between the enforcement aspect of a garageman's lien, which the court determined to be in contravention of the due process precepts enunciated in a series of cases beginning with *Sniadach*, and the possessory aspect of the lien, which the court condoned. With respect to the enforcement aspect, the court indicated that the vehicle owner's due process rights of notice and hearing would be satisfied if the parties pursued the common law and statutory remedies otherwise available to them. In light of this determination, a legislative response to *Adams* was not strictly necessary. Nevertheless, the California Legislature responded with the enactment of Senate Bill 2293, and in its efforts to expedite the enforcement procedure for the garageman's lien,

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164. CAL. GOV'T CODE §11505(c) provides in part, "Service by registered mail shall be effective if a statute or agency rule requires respondent to file his address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to the respondent at the latest address on file with the agency." CAL. GOV'T CODE §11505(a)(1) provides in part, "[R]espondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon him of the accusation, and . . . failure to do so will constitute a waiver of his right to a hearing . . . ."

165. Aluisi v. County of Fresno, 178 Cal. App. 2d 443, 451-52, 2 Cal. Rptr. 779, 783 (1960).

166. Bartosh v. Board of Osteopathic Examiners, 82 Cal. App. 2d 486, 494, 186 P.2d 984, 988 (1947).

167. The California Legislature has required that the Department of Motor Vehicles follow the procedures embodied in Government Code Section 11500 *et seq.* in the areas of formal hearings for motor vehicle operators concerning their licenses (CAL. VEHICLE CODE §14112) and suspension, revocation, or refusal to renew certificates, licenses, or special plates of automobile wreckers (CAL. VEHICLE CODE §11512).

168. See text accompanying note 110 *supra.*

it may have subjected the new law to the challenge that it unconstitutionally delegates an inherently judicial function to an administrative body.

Senate Bill 2293 generally appears to embody the *Adams* rationale by specifying detailed provisions in an attempt to satisfy both the notice and hearing elements of procedural due process. However, the foregoing discussion demonstrates that the new law, in certain provisions, fails to comply with procedural due process safeguards. These safeguards would be maintained if the notice provisions of the new law were more closely patterned after the notice provisions for ordinary service of process. Since the act is provisional,[169] these recommendations are offered toward the objective of striking a balance of fairness between the right of the garageman to enforce his lien based on a valid claim and the right of the vehicle owner to obtain notice and hearing before being crippled by an indiscriminate authorization of sale of his vehicle.

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169. CAL. STATS. 1974, c. 1262, §10. The new law is operative through December 31, 1976.