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Perfection of a California Tax Lien.

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these factors against the cost and inconvenience the landowner would incur in remedying the situation.⁷² The issue would be whether the landowner acted in a reasonably prudent manner in view of the likelihood of foreseeable harm. Although the technical status of the entrant is a factor to be considered in determining liability—it should not be conclusive.

There is no valid reason why the court should not adopt a uniform standard of due care. The common law distinctions are at best an antiquity, at worse an indication of a failure within the system.⁷³ Perhaps it is summed up best in the words of Oliver Wendell Holmes:

It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.⁷⁴

A. Chris Heinrichs.

TAX LIENS—Bankruptcy—Perfection Of A California Tax Lien

In re Perry, — F.2d — (9th Cir. 1973).

The bankrupt, Mr. Perry, incurred a California personal income tax liability for 1962 which was never satisfied. The California Franchise Tax Board (FTB) recorded a certificate of tax delinquency with the county

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- (2) the express making of a communication to him of the condition;
 - (3) the reputation in the neighborhood on the subject; and
 - (4) the intrinsic quality of the occurrence.

2 J. WIGMORE, EVIDENCE § 245, at 42-43 (3d ed. 1940).

72. *Rowland v. Christian*, 70 Cal. Rptr. 97, 103 (1968) enumerates some of the factors to be considered in determining a landowner's liability. They include the closeness of the connection between the injury and the defendant's conduct, the moral blame attached to the defendant's conduct, the policy of preventing future harm, and the prevalence and availability of insurance.

73. *Smith v. Arbaugh's Restaurant, Inc.*, 469 F.2d 97, 105 (D.C. Cir. 1972), emphasizes the adaptability of the common law:

It is the genius of the common law that it recognizes changes in our social, economic, and moral life. Legal classifications such as trespasser and licensee are judicial creations which should be cast aside when they are no longer useful as controlling tools for the jury. The principle of stare decisis was not meant to keep a stranglehold on developments which are responsive to our new values, experiences, and circumstances. In our opinion, the time has come to put an end to our total reliance on these common law labels and to allow the finder of fact to focus on whether the landowner has exercised "reasonable care under all circumstances."

74. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).

recorder on December 15, 1966.¹ Some 2½ months later, a petition in bankruptcy was filed which identified the bankrupt's remaining estate as consisting solely of personal property. The FTB had not effected an execution on Mr. Perry's property prior to bankruptcy. Section 18882 of the California Revenue and Taxation Code provides for the creation, upon the recording of a tax certificate, of a lien upon "all property" of the taxpayer in the county where recorded, which lien has the "force, effect, and priority of a judgment lien."² The referee in bankruptcy held that such a lien attached only to real property of the taxpayer, and that the FTB had no tax lien against the bankrupt's personal property.³ The district court summarily affirmed the referee's decision and the FTB appealed. Held—*Affirmed on other grounds.* Section 18882 of the California Revenue and Taxation Code provides for a lien that binds both real and personal property of the delinquent taxpayer; this lien, however, is not perfected or enforceable against a bona fide purchaser of personal property without execution and levy, and therefore will be invalid against the trustee in bankruptcy.⁴

Distribution of a bankrupt's estate among creditors is governed ultimately by the Federal Bankruptcy Act.⁵ While secured claims are generally entitled to satisfaction before the claims of unsecured creditors, the Bankruptcy Act postpones the payment of valid tax liens on personal property that are not accompanied by possession until there has been complete payment of certain administrative expenses and wage claims.⁶ Unsecured tax

1. The FTB was acting in accordance with CAL. REV. & TAX. CODE § 18881 (Deering 1958) which provided:

If any tax, interest, or penalty imposed under this part is not paid when due, the Franchise Tax Board may file in the office of any county recorder a certificate specifying the amount of the tax, interest, and penalty due, the name and last known address of the taxpayer liable for the amount, and the fact that the Franchise Tax Board has complied with all provisions of this part in the computation and levy of the tax.

CAL. REV. & TAX. CODE § 18882 (Deering 1958) provided:

From the time of the filing for recording the amount of the tax, interest, and penalty set forth constitutes a lien upon all property of the taxpayer in the county, owned by him or afterward and before the lien expires acquired by him. The lien has the force, effect, and priority of a judgment lien and continues for 10 years from the date of the recording unless sooner released or otherwise discharged.

These statutes have since been amended as indicated in CAL. REV. & TAX. CODE §§ 18881-82 (Deering Supp. 1972). These changes, however, are not material to the issues of the instant case.

2. CAL. REV. & TAX. CODE § 18882 (Deering Supp. 1972).

3. *In re Perry*, — F.2d —, — (9th Cir. 1973).

4. *Id.* at —.

5. 11 U.S.C. §§ 1 to 1255 (1970).

6. 11 U.S.C. § 107c(3) (1970) provides in part:

Every tax lien on personal property not accompanied by possession shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision (a) of section 104 of this title

11 U.S.C. § 104(a) (1970) provides in part:

(a) The debts to have priority . . . and the order of payment, shall be (1) the costs and expenses of administration . . . (2) wages and commissions, not to exceed \$600 to each claimant, which have been earned within three months before

claims not released by a discharge in bankruptcy are also entitled to priority over other claims, but are further subordinated to costs incurred by creditors in successful opposition to acts in contravention of the Bankruptcy Act.⁷

A discharge⁸ releases the bankrupt from tax claims incurred more than 3 years prior to bankruptcy, unless secured by a valid lien.⁹ To have a tax lien valid against the trustee in bankruptcy, and entitled to the priority of a secured creditor, the lien must have been perfected or enforceable against one acquiring the rights of a bona fide purchaser on the date of bankruptcy, whether or not such a purchaser actually exists.¹⁰ Whether or not a given state tax lien is sufficiently perfected against a bona fide purchaser depends upon the requirements of applicable state law.¹¹

A judgment lien is generally understood to constitute a legal claim or charge on property of the judgment debtor as security for the payment of the debt or obligation created by the rendition of a valid judgment.¹² At common law judgments were not liens.¹³ Judgment liens initially arose from the right granted by early statutes to subject property to seizure and sale on an execution.¹⁴ Today almost every state has enacted statutes giving lien status to a judgment.¹⁵ Since judgment liens are creatures of statute, the procedure required to perfect a judgment lien as against bona fide purchasers varies from state to state. The majority, including California,¹⁶ require some form of recording of the judgment to perfect it so as to make

the date of commencement of the proceeding . . . (3) where the confirmation of an arrangement or wage earner plan or the bankrupt's discharge has been refused . . . upon the objection . . . and at the cost and expense of one or more creditors . . . (4) taxes which have become legally due and owing by the bankrupt to the United States or to any State or subdivision thereof which are not released by a discharge in bankruptcy . . . and (5) debts other than for taxes

7. 11 U.S.C. § 104a (1970).

8. 11 U.S.C. § 1(15) (1970) defines discharge: "'Discharge' shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this title."

9. 11 U.S.C. § 35a(1) (1970).

10. 11 U.S.C. § 107c(1)(B) (1970). The Bankruptcy Act defines bona fide purchaser to include "a bona fide encumbrancer or pledgee and the transferee, immediate or mediate, of any of them." 11 U.S.C. § 1(15) (1970).

11. *General Motors Acpt. Corp. v. Smith*, 377 F.2d 271, 272 (4th Cir. 1967); see 4 W. COLLIER, *BANKRUPTCY*, ¶ 67.20, at 237-39 (14th ed. 1971).

12. See *Massingill v. Downs*, 48 U.S. (7 How.) 760, 767 (1849); *Shirk v. Thomas*, 22 N.E. 976, 977 (Ind. 1889); *Jones v. Hall*, 15 S.E.2d 108, 110 (Va. 1941); 46 AM. JUR. 2d *Judgments* § 239 (1969).

13. *Baker v. Morton*, 79 U.S. (12 Wall.) 150, 158 (1870); *Taylor v. McGrew*, 64 N.E. 651 (Ind. Ct. App. 1902); *Jones v. Hall*, 15 S.E.2d 108, 109 (Va. 1941); 46 AM. JUR. 2d *Judgments* § 238 (1969).

14. *Coombs v. Jordan*, 37 Md. Rep. (3 Bland. Ch.) 284, 298 (1831); *Jones v. Hall*, 15 S.E.2d 108, 110 (Va. 1941); 46 AM. JUR. 2d *Judgments* § 238 (1969).

15. Only Kentucky, Maine, Massachusetts, Michigan, New Hampshire, Rhode Island and Vermont do not provide for statutory judgment liens.

16. CAL. CIV. PROC. CODE § 674 (Deering 1973); *Yager v. Yager*, 60 P.2d 422, 424 (Cal. 1936).

it a matter of public record.¹⁷ By recording, constructive notice is given to all purchasers of the existence of a lien against the judgment debtor in the county where it is recorded.¹⁸

While recording is generally sufficient to perfect a lien against real property, personalty poses a different problem. Since personal property is by its very nature transitory, to allow perfection of a lien on such property by mere recording would impose an impossible burden on purchasers to check the records of every county in the state for liens against the owner, and furthermore for liens against every predecessor in title. Because of this impracticality, most states restrict the effect of judgment liens to real property.¹⁹ For example, California makes a judgment a lien "upon all the real property of the judgment debtor, not exempt from execution," in the county where an abstract of the judgment is recorded.²⁰

At common law, personal property of a judgment debtor was subjected to a lien based, not upon the judgment itself, but upon the execution of that judgment.²¹ The judgment creditor obtained a lien of execution by a writ of *fiery facias* which directed the sheriff to seize and sell the debtor's personal property in satisfaction of the debt.²² An execution lien then commenced at the time of the issuance of this writ to the sheriff.²³

Most states have statutorily adopted execution procedures similar to the common law enforcement of judgments. Most of these statutes, including California's,²⁴ provide for execution liens binding upon both real and personal property.²⁵ These statutes differ, however, as to when such a lien arises. In many states an execution lien commences upon delivery of the writ to the sheriff or other officer authorized to execute it;²⁶ other states, as

17. *E.g.*, ALA. CODE tit. 7, §§ 584-85 (1960); IND. ANN. STAT. § 34-1-45-2 (1973); MD. ANN. CODE art. 26, § 20 (1973); MISS. CODE ANN. §§ 1554-55 (1942); PA. STAT. ANN. tit. 12, § 878 (1953).

18. *South v. Wishard*, 303 P.2d 805, 812 (Cal. Dist. Ct. App. 1956); *Stout v. Gill*, 294 P. 446, 448 (Cal. Dist. Ct. App. 1930).

19. *E.g.*, IND. ANN. STAT. § 34-1-45-2 (1973); MD. ANN. CODE art. 26, § 20 (1973); PA. STAT. ANN. tit. 12, § 878 (1953). *But see* ALA. CODE tit. 7, §§ 584-85 (1960); GA. CODE ANN. § 110-507 (1935); MISS. CODE ANN. §§ 1554-55 (1942).

20. CAL. CIV. PROC. CODE § 674 (Deering 1973).

21. *See Rock Island Plow Co. v. Reardon*, 222 U.S. 354, 363 (1912); *Coombs v. Jordan*, 37 Md. Rep. (3 Bland. Ch.) 284, 300 (1831); 46 AM. JUR. 2d *Judgments* § 249 (1969).

22. *Coombs v. Jordan*, 37 Md. Rep. (3 Bland. Ch.) 284, 315 (1831); 30 AM. JUR. 2d *Executions* § 28 (1967).

23. *Rock Island Plow Co. v. Reardon*, 222 U.S. 534, 363 (1912); 33 C.J.S. *Executions* § 124 (1942).

24. CAL. CIV. PROC. CODE § 688 (Deering 1973).

25. *E.g.*, ALA. CODE tit. 7, § 521 (1960); IND. ANN. STAT. §§ 34-1-34-9, 34-1-45-5 (1973); MICH. STAT. ANN. § 27A.6012 (1962); PA. STAT. ANN. tit. 12, §§ 2311, 2381 (1967). *See* 46 AM. JUR. 2d *Judgments* §§ 246, 249 (1969).

26. *E.g.*, *Rothchild v. State*, 165 N.E. 60 (Ind. 1929); *Harris v. Max Kohner, Inc.*, 187 A.2d 97, 99 (Md. Ct. App. 1963); *Commonwealth v. Lombardo*, 52 A.2d 657, 659 (Pa. 1947); *see* 33 C.J.S. *Executions* § 124 (1942).

in California,²⁷ require actual levy before an execution lien is perfected.²⁸ The levy of an execution refers to the actual seizure or appropriation of property by the sheriff for the purpose of satisfying the writ.²⁹

Consequently, California follows the general rule that personal property of a judgment debtor is subject to a lien based upon an execution,³⁰ but not upon rendition of judgment.³¹ This position was affirmed in *Miller v. Bank of America*³² wherein the Court of Appeals for the Ninth Circuit held that for a judgment creditor to obtain a lien on personal property under a judgment, it is necessary that a writ of execution issued on the judgment be levied on the property.³³

Section 18882 of the California Revenue and Taxation Code, which was involved in the instant case, provides that the recording of a certificate of income tax delinquency by the California Franchise Tax Board (FTB) creates a lien on "all property of the taxpayer in the county," which lien has the "force, effect, and priority of a judgment lien."³⁴ The majority in *Perry* determined with little dispute that a lien on "all property" includes both real and personal.³⁵ Given then that a section 18882 tax lien attaches to both real and personal property, how is such a lien with the "force, effect, and priority of a judgment lien" perfected as to a taxpayer's personalty?

The California Court of Appeals for the Third District in *Wayland v. State*³⁶ interpreted the meaning of the phrase "force, effect, and priority" as used in Section 1703 of the California Unemployment Insurance Code:³⁷

The term "force and effect" is of common, everyday usage. Certainly, then, such words must be read in their common, accepted meaning; that is, by giving to something the force and effect of something else is to give equality to each.³⁸

In *Wayland*, the state had acquired a lien for delinquent contributions on certain real property of an employer pursuant to section 1703. The prop-

27. *Miller v. Bank of America*, 166 F.2d 415, 419 (9th Cir. 1948); *Summerville v. Stockton Milling Co.*, 76 P. 243, 246 (Cal. 1904).

28. *E.g.*, *McKay v. Trusco Fin. Co.*, 198 F.2d 431, 433 (5th Cir. 1952); *Tallahatchee Fin. Co. v. Matthews*, 116 So. 2d 121, 123 (La. Ct. App. 1959). See 33 C.J.S. *Executions* § 124 (1942).

29. *Dutertre v. Driard*, 7 Cal. 549, 551 (1857); *Bent v. H.W. Weaver, Inc.*, 145 S.E. 594, 595 (W. Va. 1928).

30. CAL. CIV. PROC. CODE § 688 (Deering 1973).

31. *Id.* § 674.

32. *Miller v. Bank of America*, 166 F.2d 415 (9th Cir. 1948).

33. *Id.* at 419, following *Summerville v. Stockton Milling Co.*, 76 P. 243, 246 (Cal. 1904) (holding an estate for years to be personal property and to require levy of execution to perfect a lien thereon).

34. CAL. REV. & TAX. CODE § 18882 (Deering Supp. 1972) (emphasis added).

35. *In re Perry*, — F.2d —, — (9th Cir. 1973).

36. 326 P.2d 954 (Cal. Dist. Ct. App. 1958).

37. CAL. UNEMP. INS. CODE § 1703 (Deering Supp. 1973).

38. *Wayland v. State*, 326 P.2d 954, 956 (Cal. Dist. Ct. App. 1958).

erty was subsequently sold to the plaintiffs under a power of sale contained in a deed of trust on the property. In holding that the state's lien was extinguished by sale of the property under the power of sale in the deed of trust, the court held that a section 1703 lien with the "force, effect, and priority of a judgment lien" was identical in all respects to a judgment lien, and as such could be reached by a sale under a power.³⁹

The majority in *Perry* similarly interpreted Section 18882 of the California Revenue and Taxation Code.⁴⁰ Although not expressly relied upon, the decision followed *Wayland* by holding that a section 18882 tax lien with the "force, effect, and priority of a judgment lien" was identical to a lien of judgment. Hence, by recording a tax certificate, the FTB perfected a lien on the taxpayer's real property. Because in California the levy of a writ of execution is necessary to bind personal property under a judgment,⁴¹ likewise levy of execution was required for the FTB to perfect its lien on the taxpayer's personalty.⁴²

In the instant case Judge Zirpoli's dissent argued that Section 18882 of the California Revenue and Taxation Code defines the scope of the lien by attaching it to "all property of the taxpayer in the county" and hence is broader than the ordinary judgment lien, which in California binds only real property.⁴³ Accordingly, the phrase "force, effect, and priority of a judgment lien" does not limit the lien's scope but merely defines its characteristics. Since one characteristic of a judgment lien is its perfection by recording, a section 18882 lien on both real and personal property, in Judge Zirpoli's view, is likewise perfected by recording, and levy of execution is not necessary.⁴⁴

There is validity to this theory. California judgment and execution liens are separate and distinct.⁴⁵ The judgment lien is dependent upon the rendition of judgment, binds only real property, and once perfected by recording is valid for 10 years;⁴⁶ the execution lien, valid for only one year, binds both real and personal property, and is dependent not upon the judgment itself but upon enforcement of the judgment by execution and levy.⁴⁷ Since

39. *Id.* at 956. The decision in *Wayland* was additionally justified under the presumption that the legislature created the tax lien with full knowledge of the consequences of its action. In light of this presumption, it was inconceivable that the legislature, fully aware of the use of trust deeds in property financing, would enact legislation with the intent of declaring commonly accepted statutory procedures invalid as against a tax lien. Hence, the court rejected such a change in the absence of more affirmative legislation. *Id.* at 956.

40. *In re Perry*, — F.2d —, — (9th Cir. 1973).

41. *Miller v. Bank of America*, 166 F.2d 415, 419 (9th Cir. 1948).

42. *In re Perry*, — F.2d —, — (9th Cir. 1973).

43. *Id.* at —. This issue was raised but never dealt with in *Schribner v. Alameda County-East Bay Title Ins. Co.*, 320 P.2d 82 (Cal. Dist. Ct. App. 1958).

44. *In re Perry*, — F.2d —, — (9th Cir. 1973).

45. *Lean v. Givens*, 81 P. 128 (Cal. 1905).

46. CAL. CIV. PROC. CODE § 674 (Deering 1973).

47. *Id.* § 688.

a section 18882 tax lien binds both real and personal property, there is little doubt that it is distinguishable from the ordinary judgment lien, and therefore might be perfected differently.

Other jurisdictions, in construing statutes substantially similar to section 18882, have reached divergent conclusions.⁴⁸ For example, in Pennsylvania a judgment lien commonly binds only real property;⁴⁹ execution is necessary to bind personalty.⁵⁰ Section 308.1 of the Pennsylvania Unemployment Insurance Law⁵¹ provides for a lien in favor of the commonwealth, by recording, on both real and personal property of the employer who is delinquent in payment of his unemployment compensation fund contributions.⁵² The statute further provides that the commonwealth can have copies of the lien recorded "upon which record it shall be lawful for writs of *scire facias* to issue and be prosecuted to judgment and execution in the same manner as such writs are ordinarily employed."⁵³ In *Commonwealth v. Lombardo*⁵⁴ the Supreme Court of Pennsylvania held that the commonwealth's lien under section 308.1 did not bind personal property of a delinquent employer which he had transferred to an innocent third party before the commonwealth had issued its writ of *fieri facias* or execution.⁵⁵ It was reasoned that to accept the commonwealth's contention that section 308.1 provided for a lien on personal property by mere recording, if followed to its logical conclusion, would result in a complete disruption of the Pennsylvania law of sales of personal property; no one would be assured of good title to any personal property purchased from an employer without proof of the employer's compliance with the Unemployment Compensation Law.⁵⁶ If the legislature wished to place such a restriction on the alienation of personal property, language should have been used to express such a purpose clearly and unequivocally.⁵⁷

48. *E.g.*, *In re Ever Krisp Food Prods. Co.*, 11 N.W.2d 852, 857 (Mich. 1943) held that the Michigan personal property tax lien on "all personal property" was perfected upon assessment, and that property could be distrained although found in the hands of a subsequent bona fide purchaser. *But cf.* *Voight v. Ludlow Typograph Co.*, 12 N.E.2d 499, 501 (Ind. 1938) which held that taxes are not a lien on personal property until levy. *See also* *State v. Woodroof*, 46 So. 2d 553 (Ala. 1950) and *United States v. Bradley*, 321 F.2d 224 (5th Cir. 1963), Alabama and Mississippi cases respectively, which held tax liens on personal property to be perfected by recording. But it must also be noted that in Alabama and Mississippi, ordinary judgment liens also bind personal property by recording. ALA. CODE tit. 7, §§ 584-85 (1960); MISS. CODE ANN. §§ 1554-55 (1942).

49. PA. STAT. ANN. tit. 12, § 861 (1953).

50. *In re Lehigh Valley Mills, Inc.*, 341 F.2d 398, 401 (3d Cir. 1965).

51. PA. STAT. ANN. tit. 43, § 308.1 (1964).

52. *Id.* § 308.1.

53. *Id.* § 308.1.

54. 52 A.2d 657 (Pa. 1947).

55. *Id.* at 662.

56. *Id.* at 660.

57. *Id.* at 659-60.

The rationale of *Lombardo* parallels the established presumption of California courts that the legislature, in enacting a statute, does not intend to overthrow long-established principles of law, unless such an intention clearly appears, either by express provision or necessary implication.⁵⁸ Instead, it is the policy of California courts to presume that the legislature took such principles for granted rather than sought to alter them in omitting a specific provision from their application and that where uncertainty exists, consideration may be given to consequences that will flow from a particular interpretation.⁵⁹

There are other California statutes providing for liens on personal property which, like Section 18882 of the California Revenue and Taxation Code, are given the "force, effect, and priority of a judgment lien;"⁶⁰ but they contain additional clauses exempting bona fide purchasers of personal property from the effect of those liens.⁶¹ For example, Section 1703 of the California Unemployment Insurance Code provides that the state's recording of a certificate of delinquent unemployment insurance contributions of an employer "constitutes a lien upon all the property in the county" where it is recorded with "the force, effect, and priority of a judgment lien," but such lien "shall not be valid insofar as personal property is concerned as against a purchaser for value without actual notice of the lien."⁶²

The absence of such a bona fide purchaser exemption clause in Section 18882 of the California Revenue and Taxation Code is of disputed significance. The majority in *Perry* attached little importance to the omission of the clause, reasoning that its absence was entirely consistent with its decision that a section 18882 lien on personal property is perfected only by levy of execution.⁶³ On the other hand, Judge Zirpoli in his dissent relied heavily on the uniform use of the provisions in other lien statutes as reflecting a legislative intention that without such provisions, the liens would be valid against bona fide purchasers of personalty.⁶⁴ As a corollary, he asserted that the noticeable absence of such a proviso in section 18882 may be indicative of a legislative intention to create a lien for income taxes by mere recording that is perfected as against bona fide purchasers of both real and personal property.⁶⁵

58. *Wayland v. State*, 326 P.2d 954, 956 (Cal. Dist. Ct. App. 1958); *accord*, *Los Angeles County v. Frisbie*, 122 P.2d 526, 532 (Cal. 1942); *Jaynes v. Stockton*, 14 Cal. Rptr. 49, 55 (Dist. Ct. App. 1961).

59. *Garvey v. Byram*, 115 P.2d 501, 502-03 (Cal. 1941); *Jaynes v. Stockton*, 14 Cal. Rptr. 49, 55-56 (Dist. Ct. App. 1961).

60. CAL. REV. & TAX. CODE §§ 6757, 6757.5, 18882.5 (Deering Supp. 1973); CAL. UNEMP. INS. CODE § 1703 (Deering Supp. 1973) and § 1703.5 (Deering 1971).

61. See statutes cited note 60 *supra*.

62. CAL. UNEMP. INS. CODE § 1703 (Deering Supp. 1973).

63. *In re Perry*, — F.2d —, — (9th Cir. 1973).

64. *Id.* at —.

65. *Id.* at —.

The Maryland Court of Appeals in *Liquor Dealers Credit Control, Inc. v. Comptroller of the Treasury*⁶⁶ interpreted legislative intention in the use of a similar bona fide purchaser exemption clause in a Maryland tax lien statute. Maryland, like California, requires execution to perfect a lien on a judgment debtor's personal property.⁶⁷ Article 81, Section 342(b) of the Maryland Code authorized the state to file notice of due sales taxes which would create a lien on both real and personal property of the taxpayer with the "full force and effect of a lien of judgment."⁶⁸ By amendment the Maryland Legislature later added to this tax lien statute a proviso that "[a]ny such lien on personal property shall not be effective as against an innocent purchaser for value unless the personal property has been levied upon"⁶⁹ In interpreting section 342(b) as amended, the court in *Liquor Dealers* felt that there was no reason to have subsequently added this proviso protecting bona fide purchasers if the legislature had intended that execution was necessary in order to perfect the tax lien. The court held that "giving the lien the 'full force and effect of a lien of judgment' had the effect, not of requiring the lien creditor to issue an execution in order to perfect its tax lien, but of giving the lien entered on the judgment docket the same force and effect as the lien of a judgment on which an execution had been issued."⁷⁰ Accordingly, the tax lien on personal property was perfected by mere recording.

Judge Zirpoli's dissent in the instant case, interpreting legislative intent, is substantially the same as the *Liquor Dealers* case. The two cases, however, are readily distinguishable. In *Liquor Dealers*, the task of ascertaining legislative intent in passing on a similar statute was simplified in that such intent could be determined on the basis of an affirmative act—the addition of a bona fide purchaser exemption proviso to the statute. In the instant case, however, the dissent attempted to make this determination on the basis of an omission of such a clause. The conclusion on the basis of such an omission, that the California Legislature intended a section 18882 tax lien on personal property to be perfected by mere recording, is more tenuous. Such a conclusion is contrary to established California law.⁷¹ As stated in *Wayland v. State*,⁷² absent a clear and positive assertion to the contrary, the court should not presume that the legislature intended to alter clearly established principles of law.⁷³ Because no apparent reason existed for pro-

66. 217 A.2d 571 (Md. Ct. App. 1966).

67. *Prentiss Tool & Supply Co. v. Whitman & Barnes Mfg. Co.*, 41 A. 49, 50 (Md. Ct. App. 1898).

68. MD. CODE ANN. art. 81, § 342(b) (1969).

69. *Id.* § 342(b).

70. 217 A.2d 571, 574 (Md. Ct. App. 1966).

71. *Miller v. Bank of America*, 166 F.2d 415, 419 (9th Cir. 1948); *Summerville v. Stockton Milling Co.*, 76 P. 243, 246 (Cal. 1904).

72. 326 P.2d 954 (Cal. Dist. Ct. App. 1958).

73. *Id.* at 956.

viding an exception to these principles only in the case of income tax liens, it may be more reasonable to presume that the omission was merely a legislative oversight. It is a California rule of interpretation that inconsistent statutory provisions on the same subject will not be presumed.⁷⁴ Rather every statute is "construed with reference to the whole system of law of which it is a part so that all may be harmonized" to have effect.⁷⁵ Following these rules of interpretation, the majority in *Perry* harmonized section 18882 with other similar California statutes.⁷⁶

Although never really expressed in *Perry*, perhaps the overriding reason for the majority's decision is sound policy reflective of *Wayland v. State*⁷⁷ and *Commonwealth v. Lombardo*.⁷⁸ Indeed statutes should be interpreted in light of conceived legislative intention,⁷⁹ but what purpose could the legislature have had if in fact the bona fide purchaser exemption proviso was intentionally omitted from section 18882? It must be presumed that the legislature created section 18882 with full knowledge of the consequences of its action.⁸⁰ The legislature was surely aware of the firmly established California rule that execution and levy is necessary to perfect a lien on personal property.⁸¹ The legislature must have been cognizant of the individual's necessary dependence on this rule of law. To abrogate this principle as to an income tax lien could eventually result in a complete disruption of California personal property law.⁸² While the legislature has the authority to establish such a change in statutory law, it must do so affirmatively and unequivocally. In the absence of a more definite indication of legislative intent, a construction that would only lend itself to confusion in the commercial world should be avoided.⁸³

Lewis D. Wall

74. *Ex parte Haines*, 234 P. 883, 886 (Cal. 1925).

75. *Stafford v. Realty Bond Service Corp.*, 249 P.2d 241, 245-47 (Cal. 1952).

76. See statutes cited note 60 *supra*.

77. 326 P.2d 954 (Cal. Dist. Ct. App. 1958).

78. 52 A.2d 657 (Pa. 1947).

79. *McGaffey v. Sudowitz*, 10 Cal. Rptr. 862, 865 (Dist. Ct. App. 1961).

80. *Wayland v. State*, 326 P.2d 954, 956 (Cal. Dist. Ct. App. 1958); *Commonwealth v. Lombardo*, 52 A.2d 657, 660 (Pa. 1947).

81. *Miller v. Bank of America*, 166 F.2d 415, 419 (9th Cir. 1948).

82. *Wayland v. State*, 326 P.2d 954, 956 (Cal. Dist. Ct. App. 1958); *Commonwealth v. Lombardo*, 52 A.2d 657, 659-60 (Pa. 1947).

83. *Wayland v. State*, 326 P.2d 954, 956 (Cal. Dist. Ct. App. 1958).