Inalienable Rights of Property a Study of Contract Obligations and Other Vested Rights

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VI. Rights of Individuals Under Particular Transactions.

Time as of which contract rights vest.—The constitutional and statutory law in force at the time a contract is made enters into and becomes a part of it; and the rights which become vested by virtue of a contract are those created by the act of the parties in view of such law.¹ Where a public contract for street work, to be completed in a specified time, and to be paid for by local assessment to be collected after the work was done, was entered into by a city in the fall of 1879, a provision of the state constitution,² adopted in 1879 to take effect in January of the following year, requiring that where public work in a city is to be paid for by local assessment, the assessment be collected and paid into the city treasury before any contract for doing the work is let, does not apply; and, such contract being valid under the law in force when it was made, was not invalidated by the constitutional provision, either as a whole, or merely as to work not done thereunder when the new constitution took effect: the fact that after January 1, 1880, the time to complete the work was extended by the city pursuant to authority given by such street law, does not affect the result, the granting of the extension not being a novation.

¹ Robinson v. Magee (1858), 9 Cal. 81; Tuolumne Redemption Co. v. Sedgwick (1860), 15 Cal. 515; Ede v. Knight (1892), 93 Cal. 159, 28 Pac. 860; Welsh v. Cross (1905), 146 Cal. 621, 81 Pac. 229, 106 Am. St. Rep. 63.
² Art. 11, § 9.
Where at the time a municipality contracted an indebtedness to an individual, its power to contract the same was limited, there is no violation of the obligation of a contract in restricting the rights and remedies of the individual on such contract to those to which he was entitled under the limitations of the law which prevailed when he made the contract. Where in 1872, when a note and mortgage were executed and the mortgagor died, the Probate Act provided:

"No holder of any claim against any estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator,"

and section 1500 of the Code of Civil Procedure, as enacted in 1872 to take effect in 1873, embodied the above section of the Probate Act with the proviso that,

"An action may be brought by any holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint,"

and thereafter the deceased mortgagor's will was probated, and notice to his creditors published, and subsequently this proviso was repealed, and later the note and mortgage became due, after which the time to present a claim thereon expired without the presentation of any, and with the exception expressed in section 1500 as enacted in 1872 the law at all times had been that a claim not presented was "forever barred;" it was held that the mortgagee contracted with reference to the law in force at the time its note and mortgage were executed, and never acquired any vested right to foreclose its mortgage without first presenting a claim, and the repeal of the proviso by the amendment did not impair the obligation of its contract.

Indefeasibility of contract rights not dependent on form of action.—The principle that rights created by a contract are vested

5a Per McKinstry, J., concurring in judgment in Hibernia Savings & Loan Soc. v. Jordan (1880), 2 Cal. Unrep. Cas. 79, 5 Pac. Coast L. J. 381, (reversed on rehearing); Same v. Hayes (1880), 56 Cal. 297, 7 Cal. Unrep. Cas. 398, 6 Pac. Coast L. J. 686, on ground that the amendment of 1874 did not apply to an estate wherein notice to creditors had been published before it took effect).

3 Oakland Paving Co. v. Barstow (1889), 79 Cal. 45, 21 Pac. 544; Ede v. Cogswell (1889), 79 Cal. 278, 21 Pac. 767; Ede v. Knight, supra, n. 2.


5 Cal. Stats. 1851, p. 448.
and cannot be impaired by a subsequent change in the law which entered into and became a part of the contract, is applicable in actions of tort for violation of the law so entering into the contract, as well as in actions of contract on the contract.\(^6\)

**Pensions and benefits.**—By statute a fund was provided for the insurance of the San Francisco police, the fund consisting of a monthly sum paid by each police officer, and the accumulations thereof. This act was impliedly superseded by a later act which contained provisions inconsistent with the first, and this second act was superseded by the freeholders' charter of 1899. Until the happening of a contingency upon which, under that of the foregoing enactments in force at the time of its happening, a benefit was payable out of the fund created by them, the right of the beneficiary thereto was a mere expectancy and not a vested right.\(^7\) Thus the right to a benefit was to be determined by the law in force at the time of the happening of the contingency, and was subject to be lost by a change in the law\(^8\) or by the discharge of the police officer\(^9\) before the happening thereof. But upon its happening, the right to the benefit became vested and was not thereafter subject to be lost by any change in the law.\(^10\)

**Measure of damages for tort.**—It cannot be held that a change in an arbitrary and statutory standard of measurement of damages in cases of tort, when applied to a person who had suffered a wrong before the change, impairs the obligation of a contract or deprives him of any vested right, even though by the change the amount of damages recoverable by him for the wrong was reduced.\(^11\) Thus where at the time of the wrongful conversion of certain personal property section 3336 of the Civil Code provided that the detriment caused by the wrongful conversion of personal property "is presumed to be . . . . the value of the property at the time of the conversion, with the interest from that time, or,

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\(^6\) James v. Oakland Traction Co., supra, n. 1.
\(^7\) Pennie v. Reis (1889), 80 Cal. 266, 22 Pac. 176, affirmed (1889), 132 U. S. 464, 33 L. Ed. 426, 10 Sup. Ct. Rep. 149.
\(^8\) Pennie v. Reis, supra, n. 7; Cohn v. Henderson (1912), 19 Cal. App. 89, 124 Pac. 1037.
\(^9\) Clarke v. Reis (1891), 87 Cal. 543, 25 Pac. 759.
\(^10\) Kavanaugh v. Board of Police Pension Fund Commissioners (1901), 134 Cal. 50, 66 Pac. 36.
where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party," together with "a fair compensation for the time and money properly expended in pursuit of the property," and after an action for damages for such conversion had with reasonable diligence been commenced and before the trial thereof this section was amended by striking out the alternative permitting recovery in certain cases of "the highest market value of the property at any time between the conversion and the verdict;" the injured party could not in such action recover such highest market value, but was restricted to a recovery of the value "at the time of the conversion, with the interest from that time."12

Unenforced penalty.—"No person has a vested right in an unenforced penalty."13 Thus where the statute provided that in the event that the directors of a corporation failed to make the necessary reports they should be liable to the stockholders, jointly and severally, to the extent of one thousand dollars, and a stockholder recovered judgment, but pending the appeal the statute was amended to read that the stockholder could only recover actual damages, it was held that this amendment prevented any further prosecution of the litigation.14

VII. ADJECTIVE AND REMEDIAL RIGHTS.

I. GENERAL PRINCIPLES.

Adjective and remedial rights are placed by the constitutional guaranties beyond the reach of alteration by legislative act only so far as necessary for the protection of vested substantive rights. A change in adjective and remedial rights may always be made, provided that after the change a remedy remains which, in comparison with that existing before the change, is reasonably efficient. Adjective and remedial rights may not, however, be entirely denied, nor changed so as to defeat or impair a vested substantive right or render it scarcely worth pursuing.1

12 Tulley v. Tranor, supra, n. 11.
13 Anderson v. Byrnes (1898), 122 Cal. 272, 54 Pac. 821.
1 Smith v. Morse (1852), 2 Cal. 524; People v. Hays (1854), 4 Cal. 127, compare, however, remarks of Heydenfeldt, J., dissenting, p. 156;
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On the other hand, where a debt or duty is recognized by law as legally binding, an adequate remedy, though never there-fore existing, may be given for the enforcement.  

In the application of these principles, it is often a difficult question whether a particular right is substantive in its nature, or adjective or remedial; and whether, if adjective or remedial in its nature, a change therein, applied to existing subject-matters, impairs vested substantive rights. In the further progress of this discussion, it will therefore be desirable to consider:

First—Whether particular statutory changes affect substantive, or only adjective or remedial, rights;

Second—Whether particular changes in adjective or remedial rights impair vested substantive rights.

In what follows, the material under these sub-heads has not in all cases been rigidly classified as between them, for where in regard to the same topic both questions have been treated by the courts, as, for instance, in case of redemption law, and statutes of limitation, it has seemed best, owing to the intimate connection between the materials under the two sub-heads, to consider all the points that have arisen under the first.

And finally, under separate sub-heads, will be considered certain instances wherein the courts have considered whether or not particular remedial rights are essential to the protection of substantive rights, and one instance wherein the court, in its zeal to declare a law unconstitutional, held that to confer a certain remedial right in specified cases, subverted inalienable rights of property.


2 People v. Seymour (1860), 16 Cal. 332; Galland v. Lewis (1864), 26 Cal. 46; Aikins v. Kingsbury (1915), 170 Cal. 674, 151 Pac. 145.
2. PARTICULAR STATUTORY CHANGES AS AFFECTING SUBSTANTIVE OR ONLY REMEDIAL RIGHTS.

It is sometimes a difficult matter to distinguish between the right and the remedy.³

Changing mode of probate sale.—In an early case where it was held that a special law authorizing the administrator of a decedent’s estate to sell land of such estate on grounds additional to those permitted at the time of the decedent’s death invaded vested rights of the distributees of the estate, the court, however, said that a special law which authorized the administrator to sell in a mode not provided in the general law, as by private sale, would be remedial and unobjectionable.⁴

Validating informal acts.—A statute validating a contract or conveyance made in good faith, but not in the mode prescribed by the then existing law, and void under such law, cannot be said to divest a vested right: there is no vested right to take advantage of a defect in form.⁵ Thus where a statute of 1863 authorized married women to make and revoke powers of attorney in the manner and to the extent provided by the act,⁶ and theretofore a married woman was incompetent to execute a power of attorney, but section 4 of the act provided:

“All powers of attorney heretofore made and executed by any married woman, with her husband, and acknowledged and certified in the manner provided in section 1 of this act, and all conveyances heretofore and hereafter executed under and by virtue of such powers of attorney, and acknowledged and certified in the manner provided in section 2 of this act, shall be valid and binding; provided, that no rights already vested in third persons shall be affected by anything in this section contained;”

section 4 is not open to objection as impairing the obligation of contracts or as divesting vested rights.⁷

However, “it is a well settled proposition that where some

³ Smith v. Morse (1852), 2 Cal. 524; Aikins v. Kingsbury, supra, n. 2.
⁴ Brenham v. Story (1870), 39 Cal. 179.
⁵ Dentzel v. Waldie (1866), 30 Cal. 138.
⁶ Cal. Stats. 1863, p. 165.
⁷ Dentzel v. Waldie, supra, n. 5, (a married woman cannot, after the passage of the act, maintain an action to set aside a conveyance of her separate land, made before the passage of the act, pursuant to a power of attorney given by her); Dow v. Gould & Curry Silver Mining Co. (1867), 31 Cal. 629, (the act validated an assignment of a certificate of corporate stock, standing in the name of a married woman, made pursuant to a power of attorney given by her before the passage of the act).
essential ceremony in the matter of executing a will has been neglected, so that the will is not lawfully executed, and such essential requisite has been dispensed with by a law enacted after the death of the person attempting to make such will, the law cannot be applied thereto and the person must be held to have died intestate.\(^8\) The vested rights of some third persons in the decedent's estate would be injuriously affected.

**Removing speed limit of street cars after accident from excessive speed.**—Where a proximate cause of an injury to a street car passenger was a violation of a state law regulating the speed of cars, it was held that the law was a condition entering into the contract of the carrier with such passenger, a rule of property and not a mere matter of procedure or rule of evidence, and continued to apply in an action by such passenger for damages from such injuries, notwithstanding its later repeal.\(^9\)

**Authorizing interception of contract price for street work.**—Where the special charter of San Jose city of 1874 provided for the acceptance or rejection of street work done for the city under contract therefor after certain inspection, and if accepted required a warrant on the general fund to be drawn "in favor of the contractor for the amount due upon such contract;" and the charter was amended so as to provide that upon the acceptance of the work notice thereof must be given by publication, that at any time before the warrant is drawn any person furnishing labor or materials in the performance of the work may file with the city a verified claim for the amount due him, that if not disputed by the contractor any such claims shall be paid from the moneys owing the contractor, pro rata if necessary, and charged to the contractor, and that if any such claim is disputed the amount claimed shall be retained by the city treasurer out of the contract price until such claim is adjudicated in a court of competent jurisdiction, it was held that the amendatory act could not be applied to a contract for street work entered into by the city before the amendatory act took effect, even though the contract was finished afterwards, although the verified claims filed with the city were not disputed by the contractor and were paid by the city; notwithstanding such payment the contractor

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was entitled to receive from the city the contract price of his contract.¹⁰

Making fraudulent as against creditors certain transfers.—Where at the time an insolvent debtor conveyed certain real property without consideration section 3442 of the Civil Code provided that the fraudulent intent in such a transfer was a question of fact, which could not be found merely from the fact of absence of consideration, and later the proviso was added that “any transfer or incumbrance of property, made or given voluntarily or without a valuable consideration, by a party while insolvent, or in contemplation of insolvency, shall be fraudulent and void as to existing creditors,” it was held that the proviso could not be applied to the conveyance in question. Section 3442 is something more than a rule of evidence; it is a rule of property as well, for under the section as it stood before the proviso was added, insolvency was only a circumstance tending to show fraudulent intent, and there might be other controlling facts which would relieve the act from any fraudulent intent and validate it, but under the amendment, fraudulent intent is presumed from the act as matter of law, and no conceivable fact can remove such presumption.¹¹

Changes relating to public obligations.—An important group of cases have to do with statutory changes bearing upon obligations already incurred by public authorities.

In the absence of an express contract to the contrary, the state or a public body thereof may make such appropriation of its revenues as it may from time to time elect, even to the extent of forbidding the payment therefrom of an existing obligation.¹² Its creditors have nothing to rely upon except its good faith; it cannot be sued or made amenable to judicial process except with

¹⁰McGee v. San Jose (1885), 68 Cal. 91, 8 Pac. 641, the court saying: “The legislature could not, by an act passed after this contract was made, change its terms or authorize a performance different from that prescribed in the contract.” (The real effect of the amendatory act in question appears, however, merely to have been to give certain of the contractor's creditors a new remedy, by intercepting the contract price of his contract.)

¹¹Cook v. Cockins (1897), 117 Cal. 140, 48 Pac. 1025.

¹²McDonald v. Griswold (1854), 4 Cal. 352 (353, 354); Hunsaker v. Borden (1855), 5 Cal. 288; San Francisco v. Beideman (1861), 17 Cal. 443; Sharp v. Contra Costa County (1867), 34 Cal. 284; Rose v. Estudillo (1870), 39 Cal. 270.
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its consent.\textsuperscript{13} In a case in 1855 it was further said that the right to sue a county may be withdrawn at will at any time.\textsuperscript{14} On the other hand, it was held in 1891 that where at the time Sacramento city contracted a bonded indebtedness its charter provided that the city might "sue and be sued in all courts and in all actions whatsoever," the legislature could not thereafter by any act it might pass take away from any holder of any such bonds his right to sue the city thereon.\textsuperscript{15}

The holder of an audited debt of a public body cannot, however, be required to submit to a new auditing thereof,\textsuperscript{16} nor to accept other obligations of such body in payment thereof.\textsuperscript{17} The legislature cannot declare duly audited claims against a county invalid, nor authorize an auditing board to do so, nor impose additional conditions upon creditors.\textsuperscript{18}

Moreover, if the revenue has been provided by law, and the money produced by it for the purpose of paying the debts the state has contracted to pay, the creditor, who by law is entitled to the money, has an interest in the fund of which the legislature cannot deprive him.\textsuperscript{19}

And where by the express provision of the law by acceptance of which a contract with the state or public authority is made, specific provision is made for the auditing and payment of the demand of the person who entered into such contract, or for raising revenue to pay the demands against the state or public body arising under such contract, or appropriating money to its payment, such provisions constitute part of the contract obligation, and the rights of such contractee cannot be destroyed or impaired by any subsequent legislation.\textsuperscript{20}

\textit{San Francisco funding act of 1851.}—In concluding this discussion of public obligations, the series of cases dealing with

\textsuperscript{13} Hunsaker v. Borden, supra, n. 12; Sharp v. Contra Costa County, supra, n. 12.
\textsuperscript{14} Hunsaker v. Borden, supra, n. 12.
\textsuperscript{15} Bates v. Gregory (1891), 89 Cal. 387, 26 Pac. 891.
\textsuperscript{16} Robinson v. Magee (1858), 9 Cal. 81; Rose v. Estudillo (1870), supra, n. 12.
\textsuperscript{17} McDonald v. Griswold, supra, n. 12, where the court said: "We do not believe that the legislature could compel the holders of county scrip to fund the same, unless by their consent."
\textsuperscript{18} Rose v. Estudillo, supra, n. 12.
\textsuperscript{19} Rose v. Estudillo, supra, n. 12; Laforge v. Magee (1856), 6 Cal. 650.
\textsuperscript{20} People v. Brooks (1860), 16 Cal. 11; English v. Board of Supervisors (1861), 19 Cal. 172.
the San Francisco city funding act of 1851, will be considered together, although some of them bear more or less fully on points already made.

This act authorized the holders of the floating indebtedness of San Francisco city to exchange their demands against the city for certificates of indebtedness bearing ten per cent interest, termed city stock, required the board of "commissioners of the funded debt," created by the act, to certify to the city assessors annually before the general assessment-list was made out, the amount which must be raised "for the payment of the interest of the debt so funded for the current year," and the assessors to add to the annual budget "the amount so certified, . . . and . . . the further sum of $50,000 in each and every year, for the purpose of a sinking fund for the redemption of such stock," provided that "the first moneys collected upon the whole of such general assessment-list . . . shall be paid . . . by the city treasurer into the hands of said commissioners as fast as collected; and no payment shall, either directly or indirectly, be made out of the moneys assessed or collected upon the said assessment-list, for any other purpose, until the amount authorized . . . shall have been actually paid over to said commissioners," required said commissioners with said moneys to pay the interest on the city stock and use the residue for said sinking fund purposes as prescribed by the act, made wilful violation of the act by any public officer a misdemeanor, and gave the district court power to enforce the act. Thereafter, pursuant to such act, holders of city indebtedness exchanged their demands for city stock. Shortly after the city and county of San Francisco were consolidated by The Consolidation Act important questions as to the effect of the new instrument of government upon the contract of the holders of city stock arose. This lead the Supreme Court to say in one of the earlier cases where such questions were involved:21

"Nothing which adds any new risks, delays, or embarrassments to the execution of this contract as it is written, can be grafted on its original terms. . . . The substantial right is that this sum shall certainly be raised, and that the first moneys collected upon the whole general assessment list are to be paid to the treasurer, and by the treasurer into the hands of the commissioners as soon as collected. . . .

21 People v. Bond (1858), 10 Cal. 563.
It is just as incompetent for the legislature to subject this money, lying in the treasury in trust for the commissioners, and immediately payable to them, to the supervision, discretion, or control of the board of supervisors, as it would be incompetent to add any other term to the contract. . . . The debt is due and liquidated. . . . It requires no auditing. The propriety of the payment is not to be passed upon. The simple ministerial duty of counting and handing over the money to the treasurer, who alone is trusted with the duty, remains; and he must discharge that legal duty, thus cast upon him, and not wait until it pleases the supervisors to meet, and meeting, to take up the question, and, taking it up, allow it to be paid or not at their discretion."

The following year, in an opinion by the same justice, the court further declared:22

"The act of 1851 is a law as well as a contract. . . . While in its substantive provisions it partakes of the nature of a contract and has the sanctity and inviolability of one, yet it is of the very nature of the law that those of its provisions which are merely legislative modes to give effect to the substantial purposes of the act may need revision and alteration. The details may, as in other laws, be altered where the alteration does not affect the security of the bondholders. New provisions may be added for their security, and other provisions may be added for the protection or security of the city."

Accordingly the court held that the Consolidation Act cannot be given the effect of withdrawing from the possession and control of the commissioners any part of the annual proceeds of the tax required by the act of 1851.23 But where the Consolidation Act provided for the election of but one assessor, and not for the three provided by the city charter of 1851 and placed the sole power to levy city and county taxes in the hands of the board of supervisors, it was not the right nor the duty of the assessor so provided to add to the amount of taxes required by the supervisors to be collected the amount necessary for the purposes of the commissioners, but the first revenue derived from such taxes must be paid by the treasurer to the commissioners, as in the act of 1851 required.24 And where the act of 1851 provided for the purchase and redemption of the city stock with

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22 Thornton v. Hooper (1859), 14 Cal. 9.
23 People v. Woods (1857), 7 Cal. 579.
24 People v. Bond, supra, n. 21.
such moneys as came into the hands of the commissioners beyond that required for interest and expenses, "provided, that no stock shall be so purchased at a price higher than par," but stock could not be purchased at that price and a surplus accumulated in the commissioners' hands, there was no constitutional objection to a statute amending the proviso to read: "provided, that no proposal shall be accepted at any higher premium than five per cent above par;" no better method of providing for the security of the surplus could be conceived. Again, where the act of 1851 vested in the commissioners certain lands and gave them "the right, at such time and place as in their discretion the interest of the city may require, to expose at public sale or to lease the property," and required them to "apply the proceeds of such sale or lease to the liquidation of the floating debt of said city," it would not be within the power of the legislature to deprive the holders of the city stock of this additional security. 

There is, however, no objection to a statute providing that where any person had been in actual possession of any of said land, personally or by his tenants or predecessors in interest, from January 1, 1855, and was a purchaser in good faith for value, and claimed title thereto under a statute ratifying the grants made by the Van Ness ordinance of June 20, 1855, the commissioners might, if the land had not been already disposed of by them, convey it to him on payment of costs and a certain further sum: a public sale, as provided in the act of 1851, of land subject to such an adverse claim, would seldom produce more than a nominal sum.

Redemption laws.—A second important group of cases deals with changes in redemption laws, that is, laws authorizing the redemption by owners and other specified persons of real property from tax sales, execution sales, or judicial foreclosure sales, and prescribing the terms on which such redemptions are allowable, and the procedure by which they are effected. The right of redemption from sales on judicial process was first introduced into this state by the Practice Act of 1851. Before that time

26 Thornton v. Hooper, supra, n. 22.
27 Board of Education v. Fowler (1861), 19 Cal. 11.
28 Supra, n. 23.
29 Babcock v. Middleton (1862), 20 Cal. 643.
30 Cal. Stats. 1851, p. 51.
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all such sales had been absolute, without right of redemption. Since that time a right of redemption, though undergoing many changes, has always been recognized.

It is apparent that the adoption and alteration of such laws create different problems of vested rights, according as they are viewed from the standpoint of creditor, debtor, purchaser at the sale, or redemptioner. The first case in this group\(^1\) involved a sale under a money judgment rendered after the redemption law took effect, on a contract debt which had become due before then. Only the rights of the purchaser were in question. Justice Wells in the leading opinion argued that the redemption law could not be applied to the sale in question, because it would hinder the creditor in collecting his money, and thus impair to some extent the obligation of his contract, and that the purchaser must be presumed to have known that this was so. Chief Justice Murray concurred in the judgment on other grounds. Justice Heydenfeldt, dissenting, declared that it could not be assumed that the judgment debtor had only enough land to pay the debt in question when sold absolutely, that under the exacting conditions of redemption prescribed, it could not be inferred that land would bring less when sold subject to redemption than when sold absolutely, that the redemption law left the creditor a substantial remedy, that the only contract in which the purchaser was interested was that which he made when he bought at the sale, that he must be presumed to have looked to the law as it existed at that time, and that certainly the application to the sale of the redemption law did not violate any vested right of his.

The next case\(^2\) involved the question whether the change made in the Practice Act by a statute of 1859\(^3\) of the terms upon which a subsequent redemption could be made, applied to an attempted redemption by a redemptioner of certain land which had been sold, on foreclosure of a mortgage, to the judgment creditor, after the amendment took effect. The court held that redemption laws related solely to the remedy, that rights of redemption were given to prevent a sacrifice of the land at forced sale, not as a part of the contract between the parties but to pre-

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\(^1\) People v. Hayes (1854), 4 Cal. 127.

\(^2\) Tuolumne Redemption Co. v. Sedgwick (1860), 15 Cal. 515.

\(^3\) Cal. Stats. 1859, p. 139.
vent an abuse of the remedy, that a sale either with or without a right of redemption is an adequate remedy, that the change did not affect the contract of mortgage, that the mortgagee had no vested right to have the land sold in any particular way, that the only contract the redemption law entered into or of which it became a part was that of the purchaser at the sale, and that it was the redemption law in force at the time he bought that became a part of his contract, and in the terms of which the purchaser secured vested rights. As said by two justices of the Supreme Court in the leading opinion:

"The legislature has no right to alter the terms of a contract already in existence; it has a right to alter the remedy. The contract in this case was the engagement to pay money; the remedy was a forced sale of the property of the debtor; the mode of the sale was a matter of legislative discretion."

And on denying a rehearing the court said:

"The whole aim of our opinion was to show that this matter of redemption was a new contract, not connected with the original contract, but created or authorized by statute as a part of the remedy."

In the third case,34 in 1869, the court held on the authority of the latter case, and of the opinion of Justice Heydenfeldt in the former, that where a money judgment was rendered before, but land was sold thereunder after, the redemption law of 1851 took effect, the sale was subject to redemption, notwithstanding the judgment creditor was purchaser at the sale.

The result, then, of these early decisions was:

1. That redemption rights relate only to the remedy, and a sale either with or without a right of redemption affords an adequate remedy.

2. That whether the first conclusion is right or not, it is certain that neither a purchaser nor a redemptioner can complain of the application to his situation of the law in force when the sale was made.

In subsequent cases the right of purchasers and redemptioners, in case of alteration of a redemption law after a sale, came in for consideration.

As to the purchaser, it was held in 1892 that where the time to redeem lands from a tax sale had once expired, the purchaser

34 Moore v. Martin (1869), 38 Cal. 428.
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could not, by an amendatory law enlarging the time for redemption, be deprived of his absolute right to a deed;\textsuperscript{35} in 1897, that an amendment to section 702 of the Code of Civil Procedure, reducing the premium to be added to the purchase price, in ascertaining the amount necessary to effect a redemption, from two per cent per month to one per cent per month, did not and could not apply to a redemption from a sale made before it took effect;\textsuperscript{36} and in 1911, that the provision of a statute of 1906, that “any act or proceeding appointed, required or limited by or in pursuance of law to be performed or taken on any day or within any time in the month of June, 1906, prior to the last day of said month, may be performed or taken on any day not later than the 10th day of July, A. D. 1906, with the same effect as if it had been performed or taken on the day or within the time wherein such act or proceeding was so appointed, required or limited to be performed,” cannot make effectual a redemption of land attempted July 9, 1906, from a sale made June 12, 1905, the law in force at the time of sale limiting the period of redemption to one year.\textsuperscript{37} The redemption law in effect at the time of the sale enters into and becomes a part of the contract of the purchaser at the sale. As to redemptioners, it was held in 1897, that the right given the owner to redeem is a vested right, pertaining to the contract of purchase, and in reason and justice no more open to attack than that of the purchaser.\textsuperscript{38}

This conclusion, however, left out of account the provisions of section 327 of the Political Code, considered in the second division of this article, in connection with rights expressly made revocable.

Subsequent cases have held that the redemption of land sold at a tax sale is governed by the law in force at the time of sale: it cannot be affected by subsequent legislation.\textsuperscript{39}

\textsuperscript{35}Rollins v. Wright (1892), 93 Cal. 395.
\textsuperscript{36}Thresher v. Atchison (1897), 117 Cal. 73, 48 Pac. 1020, 59 Am. St. Rep. 159.
\textsuperscript{37}Summers v. Hammell (1911), 17 Cal. App. 493, 120 Pac. 63.
\textsuperscript{38}Teralta Land & Water Co. v. Shaffer, supra, n. 1. In Collier v. Shaffer (1902), 137 Cal. 319, 70 Pac. 177, however, the court held that the amendment prevailed in such a redemption, to the extent that it eliminated a clause of the original provision requiring the redemptioner to pay the County Auditor a fee of $2 for an estimate of the amount of redemption money necessary, on the ground that the legislature could relieve a party desiring to redeem from burdens in favor of the state.
Even as to purchasers, however, a subsequent statute requiring the purchaser of land at a tax sale to give the former owner or the occupant of the land, not more than thirty days before the expiration of the period of redemption, thirty days' written notice of such expiration or of the time when he will apply for a deed of the land, and extending the period of redemption until the notice is given and the deed applied for, affects the remedy only and is therefore applicable to a redemption from a tax sale made before its enactment. But a subsequent statute, abolishing the requirement of notice in case of the sale of property to the state for taxes, and making the period of redemption five years and until entry upon or sale of said land by the state, in lieu of one year and until the giving of such notice and the application for a deed, injuriously affects substantive rights of redemptioners, in that the period of redemption may end without notice to redemptioners, and, possibly, sooner than before, and therefore cannot apply to a redemption from a tax sale made before it took effect.

The decisions thus far considered are all consistent with one another; but beginning in 1899, under the influence of a decision of the United States Supreme Court, rendered in 1896 on appeal from Kansas, the State Supreme Court sharply limited, if it did not overrule, the old doctrine that a sale either with or without a right of redemption affords an adequate remedy. On the contrary, it held, in a series of cases where the amendment to section 702 of the Code of Civil Procedure, enlarging the period of redemption from six months to one year, was involved, that such amendment could not apply at all to a redemption from a sale made on the foreclosure of a mortgage made before the amendment took effect, nor to a redemption from an execution sale on a judgment rendered before it took effect, notwithstanding such sales were made thereafter.

41 Johnson v. Taylor, supra, n. 39.
42a Savings Bank of San Diego County v. Barrett (1899), 126 Cal. 413, 58 Pac. 914; Haynes v. Treadway (1901), 133 Cal. 400, 65 Pac. 892, where the court further held that the fact that the land sold for more than sufficient to satisfy the mortgage debt and all its incidents, was immaterial; Tuohy v. Moore (1901), 133 Cal. 516, 65 Pac. 1107; Malone v. Roy (1901), 134 Cal. 344, 66 Pac. 313.
It may be doubted, whether, in so deciding, the State Supreme Court correctly understood the import of the decision of the federal court in question. A Kansas statute was there involved which not only created a period of redemption of eighteen months' duration where theretofore there had been no right of redemption at all, but besides gave the judgment debtor during that period the right to continue in possession, and the absolute title to the rents, issues and profits, except as needed for repairs, and provided that, in case of a redemption by him, the land should thereafter be exempt from liability for any unpaid balance of the debt on which it was sold, or on any inferior lien the holder of which might have redeemed. In all these respects the Kansas statute went beyond anything ever contained in the California redemption law, which not only prescribes a shorter period of redemption, but, where a redemption is not effected, entitles the purchaser to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof, and, where it is effected, makes no exemption. The United States Supreme Court, in holding the Kansas statute could not apply to a sale made on foreclosure of a mortgage executed before its passage, among other things, said:

"It seems impossible to resist the conviction that such a change in the law is not merely the substitution of one remedy for another, but is a substantial impairment of the rights of the mortgagee as expressed in the contract."

In a more recent decision, in 1904, the United States Supreme Court pointed out that if a mortgagee claimed that subsequent legislation relating to rights of redemption impaired his contract and desired a sale without reference thereto, he should present such claim and desire to the court in which his mortgage was being foreclosed, and cause an appropriate provision to that effect to be inserted in the judgment; but that in the absence of such a provision, a third party purchasing at the sale could not be heard to say that the redemption law in force when the mortgage was made applied to him, because the subsequent legislation might be void as to some one else. "The some one else might waive its illegality, or consent to its enforcement, or the question might have no importance because

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the property sold for enough to pay the debt, even though there was an abstract impairment of the obligation of his contract.”

Moreover, the State Supreme Court has not altogether followed the doctrine of its late decisions last referred to. The United States decision of 1904 was in affirmance of a decision of the California Supreme Court of 1902, wherein it was held that where a mortgage was executed before the amendment to section 702 of the Code of Civil Procedure reducing the premium to be paid on a redemption from two per cent per month to one per cent per month, and the property was sold to a third person after the amendment took effect, for more than enough to satisfy the mortgage debt in full, such purchaser cannot successfully urge that a redemption made by payment only of the amount required by the amended law was insufficient.45

The last group of cases under this head deals with statutes of limitation and kindred acts.

Statutes of limitation.—It is settled law that statutes of limitation relate to the remedy.46 So long as not unreasonable, they do not impair contract obligations or other vested rights.47

Subject to the limitation that a reasonable time must be allowed for commencing an action or a proceeding after the passage of an act establishing or shortening a period of limitation, the constitutionality of statutes establishing or altering the period of limitation as to contracts and on vested rights then in force is beyond question.48

Similarly, the time for commencing an action or a proceeding may be extended.49 A statute of 1850 defined the time for commencing civil actions, limited the time in cases of actions to recover real property, or of defenses based on title to real property, to five years, and said time ran from the passage of the act, April 22, 1850. By a statute of 1855 in effect from April 11, 1855, said sections were amended so that in case of a claim, derived from the Spanish or Mexican governments, to real property, the five years ran only from the time of the final confirma-

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46 Billings v. Hall (1857), 7 Cal. 1.
47 Tuttle v. Block (1894), 104 Cal. 443, 38 Pac. 109.
tion of such title by the United States. It was held that the claim that the right to the limitations fixed by the act of 1850 had become vested in those in possession of real property, and that, as against them, the period of limitation could not be extended by the latter act, could not be sustained. Nevertheless, in a case where the owner of land caused the same to be conveyed to another by deed absolute, June 12, 1869, to secure certain advances then made by the grantee to him, both parties then being residents of and within New York state and neither of them then nor thereafter in actual possession of the land, and by the California laws of that time the right to redeem from a mortgage was barred when the demand secured by the mortgage was barred by limitations, and by the New York laws such demand was so barred November 20, 1874, and in 1872 the California Code of Civil Procedure was enacted to take effect January 1, 1873, section 346 providing:

"An action to redeem a mortgage of real property, with or without an account of rents and profits, may be brought by the mortgagor, or those claiming under him, against the mortgagee in possession, or those claiming under him, unless he or they have continuously maintained an adverse possession of the mortgaged premises for five years after breach of some condition of the mortgage,"

it was held that section 346 was inapplicable to the transaction in question, and that an action to redeem, brought March 15, 1887, could not be maintained.

In 1857, Chief Justice Murray said that since statutes of limitation affect only the remedy, and do not destroy the right, the legislature may by a repeal of such a statute revive a right which has not been extinguished but has been held in abeyance for want of a remedy to assert it; and distinguished cases from Louisiana and Texas on the ground that the doctrine of prescription there prevailed, which differed from the doctrine of limitations, in that the former confers a right, the latter takes away a remedy. Section 1007 of our Civil Code, however, adopts the doctrine of prescription. Thus whatever view be taken

\[50\text{ Billings v. Hall, supra, n. 46.}\]

\[51\text{Allen v. Allen (1892), 95 Cal. 184, 30 Pac. 213, Beatty, C. J., dissenting, and among other things saying: "A law enlarging the period of limitations upon existing contracts is not a retroactive law, and it impairs no vested right."}\]

\[52\text{Billings v. Hall, supra, n. 46.}\]
of the correctness of the remarks of the Chief Justice (a question on which decisions in other states are not unanimous), in view of the code section, there is no doubt that it is now the law, as held in subsequent cases, that when a limitation on a right of action has once fully run, a subsequent repeal of the statute of limitation cannot be given the effect of re-establishing the right of action. Thus where section 321 of the Code of Civil Procedure, as originally enacted, provided that in every action for the recovery of real property the legal title should prevail unless "the property has been held and possessed adversely to such legal title, for five years before the commencement of the action," and sections 322-326 defined the elements of adverse possession, one who, during the time that such provisions were in effect, had an adverse possession of land that fulfilled all the statutory requirements, thereby acquired a perfect title to such land; and notwithstanding he had not paid taxes on such land during the prescriptive period, the legislature, by the later amendment to section 325 adding the further prerequisite to adverse possession that the adverse claimant have paid all taxes on the land during the prescriptive period, the legislature, by the later amendment to section 325 adding the further prerequisite to adverse possession that the adverse claimant have paid all taxes on the land during the prescriptive period, did not have power to bring his title in question.

Finally, as already suggested, the time allowed by statutes of limitation must be reasonable: a statute cannot be so applied as to deprive a person of all remedy, nor so as to unreasonably restrict him in availing himself of the remedy which is given. "It has been often held that a limitation to one year, and even to six months, is not unreasonable, and does not impair the obligation of the contract nor deprive the obligee of an adequate remedy." In 1850 the statute defining the time for commencing civil actions, prescribed a limitation of five years for "an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States." In 1855 the legislature shortened the limitation to two years. It was

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53 Swamp Land District No. 307 v. Glide, supra, n. 49; Peiser v. Griffin (1899), 125 Cal. 9, 57 Pac. 690; Weldon v. Rogers (1907), 151 Cal. 432, 90 Pac. 1062.
56 Tuttle v. Block, supra, n. 47.
held that the amendatory act could not be applied so as to bar an action, brought October 12, 1856, upon an Ohio judgment rendered October 6, 1853: it must be construed as applying only to judgments not in esse at the time of its passage, or as giving two years from its passage upon judgments not then barred.  

*Extending time wherein execution may issue.*—At the time a certain money judgment was rendered, section 685 of the Code of Civil Procedure did not permit a money judgment to be enforced after five years from its entry, but before the five year period had fully run on this money judgment the section was so amended as to provide that on all money judgments theretofore rendered, upon which the limitation had not yet fully run, and upon all money judgments thereafter to be rendered, process might issue after the five year period by leave of court on motion, or by judgment for that purpose founded upon supplemental pleadings. It was held that there could be no doubt of the constitutional power of the legislature to apply the amendment to the judgment in question.

*Changing time to claim mechanic's lien.*—Where in 1887 section 1187 of the Code of Civil Procedure was so amended that the thirty day period within which a lien for materials bestowed in the construction of an unfinished building upon which work had ceased for thirty days ran at once, instead of from the final completion of the building, the amended section applied to a materialman who had already bestowed a part of the materials he had contracted to bestow at the time the amendment took effect, and a lien claimed by him within thirty days after the final completion of the building, and not within thirty days after the thirty days' cessation, was void.

*Extending time to file claim on contractor's bond.*—An amendment enlarging from thirty days to ninety days the time within which after completion of any public work a person furnishing any labor, materials, or supplies in the performance of the work and seeking recourse on the bond of the contractor for payment for such work, must file with the public authority by which the

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57 Scarborough v. Dugan (1858), 10 Cal. 305.
58 Weldon v. Rogers, supra, n. 53; Doehla v. Phillips, supra, n. 48.
59 Kerckhoff-Cuzner Mill & Lumber Co. v. Olmstead (1890), 85 Cal. 80, 24 Pac. 648.
contract was let, a verified statement of his claim, and enlarging from ninety days to six months the time within which after filing his claim the claimant might commence his action on his claim, applies to a claim on a bond given before the passage of the amendatory act for payment for work not completed until after it took effect,60 or for materials supplied after such time.61

Limiting time to present claim against decedent’s estate.—The provision of section 1493 of the Code of Civil Procedure that,

“If a claim (against a decedent’s estate) arising upon a contract heretofore made (by the decedent), be not presented (to his executor or administrator) within the time limited in the notice (to creditors), it is barred forever, except as follows: If it be not then due, or if it be contingent, it may be presented within one month after it becomes due or absolute,”

is not unconstitutional as unreasonably limiting and restricting the time to present his claim of a claimant whose claim did not become due until after the expiration of the time limited in the notice to creditors.62

And where the time to present a claim on a contract demand secured by mortgage had, under said provision, expired before section 1500 of the Code of Civil Procedure was amended so as to permit, in certain cases, without such presentation, an action to foreclose a lien or mortgage against property of a decedent’s estate subject thereto, the latter amendment could not restore the claim to validity: the bar had become a vested right.63

Limiting time to assert title to land purchased at tax sale.—Where the time to redeem certain land from a sale for delinquent taxes expired December 1, 1875, without a redemption having been made, and under the law then prevailing the purchaser was entitled thereafter, without any limitation of time, to demand a deed of the land from the tax collector, but by a statute of 1885 he was required to get his deed within one year and three months or relinquish all rights, and the purchaser in question demanded a deed for the first time more than six months after

62 Supra, n. 55.
63 Supra, n. 55.
the said period of limitation had expired, the amended provision applied to his case, and he was not entitled to the deed.\textsuperscript{64}

3. PARTICULAR CHANGES IN REMEDIAL RIGHTS AS IMPAIRING VESTED RIGHTS.

Providing additional mode of contesting application to purchase state land.—In 1901, defendant made application by affidavit pursuant to section 3443 of the Political Code to purchase certain state land. Under the law then prevailing his right to purchase was open to question at any time prior to the issuance of patent through a contest initiated in a superior court on the demand of any other applicant to purchase the same land, and doubtless also through an action brought for that purpose by the state. In 1903, this section was amended so as to provide that if it was made to appear to the surveyor general by counter affidavit that when the application to purchase was made the counter affiant or those under whom he claims had been in the actual possession of said land or any part thereof for farming purposes for ten years next prior to said application and had reclaimed and cultivated the same, or that the affidavit of the applicant was false in any material particular, the surveyor general must refer the question so raised to a certain superior court for adjudication according to a procedure outlined. It was held that this amendment affects the remedy only, and may properly be invoked for determining the validity of the application in question, without violating any constitutional guaranty.\textsuperscript{65}

Providing additional mode of terminating right to purchase state land.—A statute,\textsuperscript{66} enacted in 1867, provided for the sale of school lands at one dollar and twenty-five cents per acre, "payable twenty per cent . . . . within fifty days from the date of the certificate of location issued to the purchaser by the surveyor general; the balance, bearing interest at the rate of ten per cent per annum in advance . . . . within one year after the passage of any act of the legislature requiring such payment,

\textsuperscript{64} Tuttle v. Block, supra, n. 47.
\textsuperscript{65} Boggs v. Ganeard (1906), 148 Cal. 711, 84 Pac. 195, the court saying: "A change in the law to this extent affects only the remedy, and disturbs or impairs no existing legal right. . . . Having the right to provide for the inquiry as to whether the claim of the applicant is valid in such manner as it sees fit, subject to the limitation as to impairment of vested rights, the state may authorize such an inquiry to be instituted and maintained by any officer or person or class of persons."
\textsuperscript{66} Cal. Stats. 1867, p. 415.
or before, if desired by the purchaser;" for the preparation and forwarding annually to the District Attorney of each county of a list of all lands in his county upon which "payments have not been made according to law;" that upon receipt of the delinquent list, the District Attorney, after fifty days' notice by publication in a newspaper, shall commence an action for strict foreclosure of the interests of all purchasers who have not in the meantime paid the amounts owing by them with costs of publication, and that by making payment of the amount due the state and of all costs, within twenty days after entry of judgment of foreclosure, any purchaser may redeem. In 1889 it was provided that whenever the holder of a certificate of purchase of state lands, issued before March 27, 1872, had failed to pay for five years "arrears of principal or of interest due to the state for said land, and the state shall . . . . have issued a certificate of purchase for the same land, or any part thereof, to a subsequent purchaser, then, unless the holder . . . . of such prior certificate shall pay the entire residue of the interest remaining unpaid for such purchase within six months from and after the passage of this act, such holder . . . . shall be deemed to have lost all right to the land . . . . or to complete the purchase of such land, and all moneys heretofore paid to the state . . . . on such purchase shall be deemed . . . . forfeited to the state." Pursuant to the act of 1868, the initial payment of twenty per cent on the purchase price of certain school lands was paid in July, 1869, the certificate of purchase issued, and interest paid to January, 1873; but no further sum was paid or tendered on account of the purchase until 1911. Meanwhile, in December, 1886, a certificate of purchase for the same lands was issued to another purchaser, who completed his purchase in 1911. In this situation, the application to the first purchaser and his assignee of the act of 1889, and consequent termination of their right to purchase and forfeiture of payments made and of all right to the lands, does not impair the obligation of any contract. It is no ground for complaint that the state has established a new method of declaring a forfeiture different from that authorized by the act of 1868, especially as the later act is more liberal than the earlier in that it gives a longer period of redemption.67

67 Aikins v. Kingsbury (1915), 170 Cal. 674, 151 Pac. 145.
Requiring additional notice of sale by the state of land sold to it for taxes.—The 1905 amendment to section 3897 of the Political Code, requiring that in case of the sale by the state of land sold to it for taxes, the tax collector authorized to make the sale must, in addition to the notice of such sale theretofore required by said section to be given by such tax collector by publication, also mail a copy of said notice with postage prepaid to the last person to whom the land had been assessed, if his address is known, is applicable to a sale of such land made after the amendment took effect, although the sale was authorized and notice published before it took effect. 68

Giving or taking away a right of personal action on a local assessment.—The San Francisco Consolidation Act, in reference to local assessments for street work, in addition to a remedy for the enforcement of the assessment lien, provided in section 59 that an action could be maintained by the contractor for work done and materials furnished at street crossings against the several owners liable therefor. Afterwards this section was repealed. Subsequently the provisions of the Consolidation Act were revised, and the revisory act allowed a personal judgment against the owner of property assessed, in actions for the foreclosure of the assessment liens.

While section 59 was in force certain street work was done in San Francisco under contract therefor, and while the act of 1861 was in force certain other street work was done. To pay for each a local assessment was levied, but in each case the respective enactment was repealed as above set forth before the collection of the assessment. It was held that the first contractor, notwithstanding the repeal of section 59, could maintain the action authorized thereby: to withdraw the personal liability would impair the obligation of his contract pro tanto. 69 On the other hand, the second contractor could not avail himself of the personal recovery authorized by the act of 1862:

68 Buck v. Canty (1912), 162 Cal. 226, 121 Pac. 924, the court saying: "The amendment simply affects a change in the method by which the right may be exercised; a change in the remedy whereby additional opportunity is given to the former owner before an actual sale to regain his property by redemption without impairing the right of the state to proceed to sell in case he does not."

69 Creighton v. Pragg (1862), 21 Cal. 115.
such a recovery could not be had on a contract made while the act of 1861 was in force.\textsuperscript{70}

Changing rules of evidence.—It is said that it is competent for the legislature at any time to change or modify the rules of evidence and the degree of proof and make such alterations applicable to pending cases.\textsuperscript{71}

Section 1880 of the Code of Civil Procedure, which as amended, went into effect in 1874, provided that “parties to an action or proceeding, or in whose behalf an action or proceeding is prosecuted, against an executor, or an administrator, upon a claim or demand against the estate of the deceased” could not be witnesses. Before the enactment of such amendment there was no such disqualification to testify. An action against the executors of a decedent’s estate was commenced June 9, 1873, upon a rejected claim against the estate, but was not brought to trial until July 30, 1874. The amendment applied, and it was error to admit in evidence the plaintiff’s deposition, taken October 10, 1873.\textsuperscript{72}

The California statutes nowhere declaring that the destruction of a will without intent to revoke or by accident operates to revoke the will, and the procedure for the probate of wills being established only to furnish an exclusive mode for the settlement of all disputes concerning the execution of wills and conclusive evidence of their contents, and not being the foundation of the rights of those claiming under wills nor having the effect of bringing wills admitted to probate into legal existence, the heirs of a decedent who died while it was in force have no vested right in section 1339 of the Code of Civil Procedure, providing as enacted 1872, that,

“No will shall be proved as a lost or destroyed will, unless the same is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses;”

accordingly where after the death of the testatrix, and the filing

\textsuperscript{70} Creighton v. Manson (1865), 27 Cal. 614.

\textsuperscript{71} Himmelman v. Carpentier (1873), 47 Cal. 42; (rules of evidence); Mitchell v. Haggenneyer (1875), 51 Cal. 108, (rules of evidence); In re Patterson’s Estate (1909), 155 Cal. 626, 102 Pac. 941, 132 Am. St. Rep. 116, (rules of evidence and degree of proof).

\textsuperscript{72} Mitchell v. Haggenneyer, supra, n. 71.
of the petition for the probate of her will, section 1339 was amended so as also to permit the proof of a lost or destroyed will where it is shown to have been "by public calamity destroyed in the lifetime of the testator, without his knowledge," and it appeared that her will was destroyed in her lifetime in the great San Francisco fire of April 18, 1906, without her knowledge, the will was rendered capable of proof and probate.\textsuperscript{73}

It also appears that the legislature is authorized to give the official papers of public officers the effect of prima facie evidence of designated facts. A statute directing that in civil actions to recover taxes, the delinquent tax lists, duly certified, shall be evidence to prove the delinquency of the tax, the property assessed "and that all the forms of law in relation to the levy and assessment of such taxes have been complied with" is not open to constitutional objection.\textsuperscript{74}

It has also been held that an action to collect a local assessment brought while a statute was in force giving certain weight to the record of the assessment as evidence, is to be governed by this statute, and not by the presumptions created by a statute which was in existence when the work was done.\textsuperscript{75}

Prior to 1872 an undivided interest in certain lands had been conveyed to husband and wife. Both under the statute in effect before the enactment of the code and under the codes as enacted 1872 the Supreme Court many times held that in the absence of clear and convincing proofs that property acquired by husband or wife after marriage was acquired in such way as to make it separate property, or was taken in exchange for separate property, it was presumed to be community property. Prior to 1889, the Civil Code read that: "All other property acquired after marriage by either husband or wife, or both, is community property." In 1889 this was amended by the addition of the following:

"but whenever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title is thereby vested in her as her separate property. And in case the conveyance be to such married woman and her husband, or to her and any other person, the presumption is that the married woman takes the part conveyed to her as tenant in common, unless a different intention is expressed in the

\textsuperscript{73} In re Patterson's Estate, supra, n. 71.
\textsuperscript{74} People v. Seymour (1860), 16 Cal. 332.
\textsuperscript{75} Himmelman v. Carpentier, supra, n. 71.
instrument, and the presumption in this section mentioned is conclusive in favor of a purchaser or incumbrancer in good faith and for a valuable consideration."

The court held that the rule declared by the amendment was more than a rule of evidence, that it was a rule of property, that the legislature did not have the power to apply it so that it would be retroactive and in effect disturb titles already vested, and that the changed presumption did not apply to the ownership of the undivided interest in question.\footnote{Jordan v. Fay (1893), 98 Cal. 264, 33 Pac. 95.}

\textit{Awarding specific relief in certain cases.}—Where the Specific Contract Act,\footnote{Cal. Stats. 1863, p. 687.} provided that,

"In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein;"

and required the sheriff to collect on execution in satisfaction of a judgment only the kind of money specified therein, it was held that there was no constitutional objection to the application of the provisions of the act in an action brought after the passage thereof on a note executed prior thereto in view of the fact that the act was purely remedial.\footnote{Carpentier v. Atherton (1864), 25 Cal. 564; Galland v. Lewis (1864), 26 Cal. 47.}

\textit{Changing the right to, or effect of, an appeal.}—Article 6, section 4\textsuperscript{\textfrac{3}{4}}, of the state constitution, forbidding a court to set aside a judgment or grant a new trial unless of opinion that the error complained of resulted in a miscarriage of justice, affects the remedy only. While originally applicable only in criminal cases, it now applies in all cases, including civil appeals to the supreme court then pending, although submitted prior to its adoption.\footnote{Vallejo & Northern R. R. Co. v. Reed Orchard Co. (1915), 169 Cal. 545, 147 Pac. 238.} "A party has no contractual or vested right to have a judgment reversed because of an error which the court cannot say has produced what that section describes as a 'miscarriage of justice'.... Doubtless the people could, by constitutional
amendment, abolish the right of appeal and require the dismissal of appeals remaining undetermined."

Exemptions.—By the earliest practice in this state, property of municipal corporations, whether unimproved lands owned by them, municipal buildings, or other property, having been subject to sale on execution for municipal debts, a law passed in 1851 exempting from sale on execution all property of San Francisco city necessary for municipal purposes, was void as against one who at the time of the passage of the act was owner and holder of subsisting unpaid indebtedness of the city, as impairing the obligation of his contract with the city. In reaching this conclusion, Chief Justice Murray, speaking for the court, said:

“There is, I think, no well-defined middle ground between holding that none of the debtor's property can, by a subsequent law, be withdrawn from the reach of the creditor, or else, admitting that the whole of his estate may be exempted from sale on execution . . . . Such property as was subject to execution at the time the debt was contracted must remain subject to execution until the debt is paid. As to future obligations, the legislature may make the exemption as broad as it pleases. It may abolish credit altogether, but it cannot legislate backward, and annul the force of prior obligations.”

On the other hand, in a case where at the time that the debt was incurred no right to sue a county existed, but later this right was given by statute, it was held that the execution issued in a suit under this statute was subject to exemptions created by a statute passed prior to the statute conferring the right to sue.

Limiting right to abandon certain condemnation proceedings.—The amendment in 1909 to the City Street Improvement Act of 1903, whereby the right of a city to abandon a condemnation proceeding instituted by it under the act was limited to abandonment before the entry of interlocutory judgment in such proceeding, instead of being authorized, as before, at any time before the payment of the compensation for the property condemned, is properly applied to a condemnation proceeding brought by Los Angeles city and pending at the time the amendment took effect, in which interlocutory judgment was not rendered until almost

80 Supra, n. 79.
81 Smith v. Morse (1852), 2 Cal. 524.
82 Gilman v. Contra Costa County (1857), 8 Cal. 52, 68 Am. Dec. 290.
nine months after the amendment took effect, and so applied does not violate any constitutional right.  

Annexing right to interest to past due demands.—The legislature has power to impose on all debtors interest from the date of the legislation imposing it, by way of compensation for the delay in the payment of money already due. Thus under section 1369 of the Civil Code, providing that "Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease," where certain specific legacies had become due and payable before the code took effect, they bear interest from the time it took effect, though before the enactment of the code interest was not allowable on legacies.

IV. PARTICULAR REMEDIAL RIGHTS AS ESSENTIAL.

Injunctive relief in certain cases.—Should the statute passed in 1903, declaring, among other things, that no restraining order nor injunction shall be issued with relation to any agreement, combination, or contract to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees within the state, be construed as undertaking to render a court powerless to grant a restraining order or injunction enjoining one from obstructing another in the conduct of the latter's business by stationing pickets, carrying placards and the like with the words "unfair," "please don't patronize," and the like, upon them, in the immediate vicinity of the latter's place of business, or intimidating the latter's employees or customers, such act would to that extent be void as violating inalienable rights of property.

Civil action against decedent's estate.—It seems that presentation to the executor or administrator, as authorized by the Code of Civil Procedure, is, in the first instance, a sufficient remedy on

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83 Title Ins. & Trust Co. v. Lusk (1911), 15 Cal. App. 358, 115 Pac. 53, the court saying: "This section affects a remedy as distinguished from a right. .... It cannot .... be said that this section unreasonably impaired the remedy in the case under consideration."

84 Dunne v. Mastick (1875), 50 Cal. 244.

85 Cal. Stats. 1903, p. 289.

INALIENABLE RIGHTS OF PROPERTY

a claim against a decedent’s estate. Thus section 1500 of the Code of Civil Procedure as enacted 1872 provided that,

“No holder of any claim against an estate shall maintain any action thereon, unless the claim is first presented to the executor or administrator, except in the following case: An action may be brought by any holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint.”

This was amended in 1873 by eliminating the exception therefrom, thereby requiring presentation in every case. It was said by certain justices that this amendment did not divest any vested right of a mortgagee, but related to his remedy only, and could be applied in every case.

Remedies of creditors of corporations.—The fact that the only notice required, in case of proceedings for the voluntary dissolution of corporations is by publication in a newspaper of the county not less than thirty days nor more than fifty days, or if there is no newspaper, then by posting in three of the principal public places of the county, does not render such proceedings void as restricting the opportunity of creditors of corporations thereby dissolved to recover and impairing the obligation of contracts. Section 400 of the Civil Code provides:

“Unless other persons are appointed by the court, the directors or managers of the affairs of a corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation.”

The debts of a corporation are notvacated by its dissolution.

V. PARTICULAR REMEDIAL RIGHTS AS SUBVERSIVE OF INALIENABLE RIGHTS.

Awarding counsel fees in certain cases.—That portion of section 1195 of the Code of Civil Procedure, providing with reference to actions to foreclose the liens of mechanics and others that,

“The court must also allow, as a part of the costs, . . . reasonable attorney’s fees in the superior and supreme courts, such . . . attorney’s fees to be allowed to each lien claimant whose lien is established, whether he be plaintiff or defendant,

87 Supra, n. 55.
88 Supra, n. 55.
89 Crossman v. Vivienda Water Co. (1907), 150 Cal. 575, 89 Pac. 335.
or whether they all join in one action or separate actions are consolidated,” violates inalienable rights of property.90

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