

2/16/67

Memorandum 67-19

Subject: Senate Bill No. 251 (Unincorporated Associations)

Attached as Exhibit I (pink) is a revised version of this bill designed to effectuate the decisions (except the one made with respect to Section 414) made at the January meeting. The revision of Section 414 will require a separate bill and is considered later in this memorandum. Exhibit II (yellow) contains a draft of a report of the Senate Committee on Judiciary concerning this bill.

The following matters are called to your attention:

Revision of Section 388

This change was approved for form and substance at the January meeting.

Revision of Section 411

Subdivision 2.1 has been revised and subdivision 2.2 has been added to Section 411 to make a specific reference in Section 411 to the procedure for serving a summons on a foreign partnership covered by Section 15700 of the Corporations Code. If subdivision 2.2 were not added, the matter would be covered by subdivision 2.1 which is inconsistent with Section 15700 of the Corporations Code. (See pages 4a and 4b for Section 15700.)

The addition of the words "the suit is" to subdivisions 3 and 4 is a technical change designed to conform those subdivisions to the form used in the previous subdivisions.

Amendment of Section 15700

We have revised this section, in accordance with the decision made at the last meeting, to permit a foreign partnership to designate a

corporate agent for service of process. After considerable thought, we concluded that the best way to accomplish this objective is to make a reference to the procedure provided in Section 24003. Otherwise, we would have to duplicate Section 24003 and would run the danger of having later amendments to one section but not the other that would result in a lack of conformity in the two sections. We have also revised Section 15700 to pick up by reference the manner specified in Section 24003 for serving process on the agent for service of process. We have made no change in substance in Section 15700 except to permit use of a corporate agent for service of process.

Revision of Section 24000

This revision was approved for form and substance at the January meeting.

Position of State Bar

The Board of Governors of the State Bar approved the report of CAJ insofar as it endorses the principle of permitting an unincorporated association to sue and be sued as a legal entity. The Board of Governors neither approves nor disapproves of any of the suggestions of CAJ but directs that they be called to the attention of the Commission. We considered these suggestions at the January meeting and made a number of changes as a result. Hence, we assume that the State Bar will support-- or at least not oppose--this bill.

Revision of Code of Civil Procedure Section 414

The staff has concluded that a separate bill will be needed to revise Section 414 in accordance with the decisions made at the January meeting. We suggest that a separate Recommendation be prepared concerning this section and that we request that the Senate Judiciary Committee

have the recommendation printed in the Senate Journal if the proposed legislation contained in the recommendation is approved by that Committee. We attached as Exhibit III (green) a suggested draft of the Recommendation on Section 414. Exhibit IV (buff) sets out Code of Civil Procedure Sections 989-994. No revision of these sections is necessary, but we include them in this exhibit so they will be available for easy examination.

Civil Code Section 3369

The staff was requested at the January meeting to examine this section to determine whether any revision of the section or our recommendation is necessary. The section is consistent with our recommendation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

SENATE BILL

No. 251

Introduced by Senator Bradley

February 6, 1967

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Sections 388, 410, and 411 of, and to add Section 395.2 to, the Code of Civil Procedure, and to add Part 4 (commencing with Section 24000) to Title 3 of the Corporations Code, relating to unincorporated associations.

amend Section 15700 of, and

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 388 of the Code of Civil Procedure is
- 2 amended to read:
- 3 388. When two or more persons, associated in any busi-
- 4 ness, transact such business under a common name, whether

LEGISLATIVE COUNSEL'S DIGEST

SB 251, as introduced, Bradley (Jud.). Unincorporated associations. Amends and adds various secs., C.C.P. and Corp.C.

Permits unincorporated agencies, defined to include partnership, any other unincorporated organization, and a government or governmental subdivision or agency, generally to sue in own name.

Omits limitation that unincorporated association must be engaged in business before it can be sued in common name.

Permits unincorporated association to file statement with Secretary of State showing principal place of business; and provides that when such is done, the association shall be subject to suit in same county as it would be if a corporation.

Omits provision that judgment against associates sued in common name is binding on individual property of associate served, in same manner as if all associates had been named defendants.

Makes unincorporated association, except a government or governmental subdivision or agency, liable for acts or omissions of officers, agents, or employees acting within scope of office, agency, or employment.

Permits unincorporated association to file statement with Secretary of State designating agent for service of process. Provides for service thereafter, either upon such person or a partner or official of association.

Vote—Majority; Appropriation—No; State Expense—Yes.

1 it comprises the names of such persons or not, the associates
 2 may be sued by such common name, the summons in such
 3 cases being served on one or more of the associates; and the
 4 judgment in the action shall bind the joint property of all
 5 the associates, and the individual property of the party or
 6 parties served with process, in the same manner as if all had
 7 been named defendants and had been sued upon their joint
 8 liability.

9 (a) As used in this section:

10 (1) "Unincorporated association" means any unincorporated
 11 organization of two or more persons which engages in
 12 any activity of any nature, whether for profit or not, under a
 13 common name.

14 (2) "Person" includes a natural person, corporation, part-
 15 nership or any other unincorporated organization, and a gov-
 16 ernment or governmental subdivision or agency.

17 (b) An unincorporated association may sue and be sued
 18 in its common name.

delete

Any partnership or other unincorporated association,
 whether organized for profit or not, may sue and be
 sued in the name which it has assumed or by which it
 is known.

19 Sec. 2. Section 395.2 is added to the Code of Civil Proce-
 20 dure, to read:

21 395.2. If an unincorporated association has filed a state-
 22 ment with the Secretary of State pursuant to Section 24003
 23 of the Corporations Code listing its principal office or place of
 24 business in this state, the proper county for the trial of an
 25 action against such unincorporated association is the same
 26 as it would be if the unincorporated association were a cor-
 27 poration and, for the purpose of determining such county, the
 28 principal place of business of the unincorporated association
 29 shall be deemed to be the principal office or place of business
 30 listed in the statement.

31 Sec. 3. Section 410 of the Code of Civil Procedure is
 32 amended to read:

33 410. The summons may be served by the sheriff, a con-
 34 stable, or marshal, of the county where the defendant is found,
 35 or any other person over the age of 18, not a party to the
 36 action. A copy of the complaint must be served, with the sum-
 37 mons, upon each of the defendants. When the service is against
 38 a corporation, or against an unincorporated association in an
 39 action brought under associates conducting business under a
 40 common name, in the manner authorized by Section 388, there
 41 shall appear on the copy of the summons that is served a notice
 42 stating in substance: "To the person served: You are hereby
 43 served in the within action (or proceeding) on behalf of
 44 (here state the name of the corporation or the unincorporated
 45 association common name under which business is conducted
 46 by the associates) as a person upon whom the summons and
 47 a copy of the complaint must be served to effect service against
 48 said party under the provisions of (here state appropriate
 49 provisions of Section 388 or 411) of this the Code of Civil
 50 Procedure." When service is intended to be made upon said
 51 person as an individual as well as a person upon whom service
 52 must be made on behalf of said corporation or said association

1 associates, said notice shall also indicate that service is had
2 upon said person as an individual as well as on behalf of said
3 corporation or said *association associates*. In a case in which
4 the foregoing provisions of the section require that notice of
5 the capacity in which a person is served must appear on the
6 copy of the summons that is served, the certificate or affidavit
7 of service must recite that such notice appeared on such copy
8 of the summons, if, in fact, it did appear. When service is
9 against a corporation, or against an *unincorporated associa-*
10 *tion in an action brought under associates* conducting a busi-
11 *ness under a common name, in the manner authorized by*
12 Section 388, and notice of that fact does not appear on the
13 copy of the summons or a recital of such notification does not
14 appear on the certificate or affidavit of service of process as
15 required by this section, no default may be taken against such
16 corporation or such *association associates*. When service is
17 made upon the person served as an individual as well as on
18 behalf of the corporation or *association associates* conducting
19 a business under a common name, and the notice of that fact
20 does not appear on the copy of the summons or a recital of such
21 notification does not appear in the certificate or affidavit of
22 service of process as required by this section, no default may
23 be taken against such person.

24 When the summons is served by the sheriff, a constable or
25 marshal, it must be returned, with his certificate of its service,
26 and of the service of a copy of the complaint, to plaintiff if
27 he is acting as his own attorney, otherwise to plaintiff's attor-
28 ney. When it is served by any other person, it must be re-
29 turned to the same place, with the affidavit of such person of
30 its service, and of the service of a copy of the complaint.

31 If the summons is lost subsequent to service and before it is
32 returned, an affidavit of the official or other person making
33 service, showing the facts of service of the summons, may be
34 returned in lieu of the summons and with the same effect
35 as if the summons were itself returned.

36 Sec. 4. Section 411 of the Code of Civil Procedure is
37 amended to read:

38 411. The summons must be served by delivering a copy
39 thereof as follows:

40 1. If the suit is against a domestic corporation: to the
41 president or other head of the corporation, a vice president,
42 a secretary, and assistant secretary, general manager, or a
43 person designated for service of process or authorized to
44 receive service of process. If such corporation is a bank, to
45 any of the foregoing officers or agents thereof, or to a cashier
46 or an assistant cashier thereof. If no such officer or agent of
47 the corporation can be found within the state after diligent
48 search, then to the Secretary of State as provided in Sections
49 3301 to 3304, inclusive, of the Corporations Code, unless the
50 corporation be of a class expressly excepted from the opera-
51 tion of those sections.

1 2. If the suit is against a foreign corporation, or a non-
 2 resident joint stock company or association, doing business
 3 in this state; in the manner provided by Sections 6500 to
 4 to 6504, inclusive, of the Corporations Code.

5 2.1. If the suit is against an unincorporated association (not
 6 including a "public agency" as defined in subdivision 5): to
 7 the president or other head of the association, a vice president,
 8 a secretary, an assistant secretary, general manager, general
 9 partner, or a person designated as agent for service of process
 10 as provided in Section 24003 of the Corporations Code. If no
 11 president or other head of the association, vice president, sec-
 12 retary, assistant secretary, general manager, or general
 13 partner can be found within the state after diligent search,
 14 and if the person designated as agent for service of process
 15 cannot be found at his address as specified in the statement
 16 designating him as the agent of the association for the service
 17 of process, then to any one or more of the association's mem-
 18 bers and by mailing a copy thereof to the last known mailing
 19 address, if any, of the principal office or place of business of
 20 the association.

or a foreign
 partnership covered
 by Section 15700 of
 the Corporations
 Code

2.2. If the suit is against a foreign
 partnership covered by Section 15700 of the
 Corporations Code; in the manner provided by
 Section 15700 of the Corporations Code.

21 3. If against a minor, under the age of 14 years, residing
 22 within this state: to such minor, personally, and also to his
 23 father, mother, or guardian; or if there be none within this
 24 state, then to any person having the care or control of such
 25 minor, or with whom he resides, or in whose service he is
 26 employed.

the suit is

27 4. If against a person residing within this state and for
 28 whom a guardian or conservator has been appointed: to such
 29 person, and also to his guardian or conservator.

the suit is

30 5. Except as otherwise specifically provided by statute, in
 31 an action or proceeding against a local or state public agency,
 32 to the clerk, secretary, president, presiding officer or other
 33 head thereof or of the governing body of such public agency.
 34 "Public agency" includes (1) every city, county, and city
 35 and county; (2) every public agency, authority, board, bu-
 36 reau, commission, corporation, district and every other polit-
 37 ical subdivision; and (3) every department and division of
 38 the state.

39 6. In all cases where a corporation has forfeited its charter
 40 or right to do business in this state, or has dissolved, by de-
 41 livering a copy thereof to one of the persons who have become
 42 the trustees of the corporation and of its stockholders or mem-
 43 bers; or, in a proper case, as provided in Sections 3305 and
 44 3306 of the Corporations Code.

45 7. If the suit is one brought against a candidate for public
 46 office and arises out of or in connection with any matter con-
 47 cerning his candidacy or the election laws and said candidate
 48 cannot be found within the state after diligent search, then
 49 as provided for in Section 54 of the Elections Code.

50 8. In all other cases to the defendant personally.

Sec. 5. Section 15700 of the Corporations Code is amended to read:

15700. Every partnership, other than a commercial or banking partnership established and transacting business in a place without the United States, which is domiciled without this State and has no regular place of business within this State, shall, within 40 days from the time it commences to do business in this State, file a statement in the office of the Secretary of State ~~a designation of~~ in accordance with Section 24003 designating some natural person ~~residing within~~ the State or corporation as the agent of the partnership upon whom process issued by authority of or under any law of this State directed against the partnership may be served, ~~which designation shall include the complete business or residence address of the person designated~~. A copy of such designation, duly certified by the Secretary of State, is sufficient evidence of such appointment.

Such process may be served ~~by personal delivery to~~ in the manner provided in subdivision (e) of Section 24003 on the person so designated, or, in the event that no such person has been designated, or the person designated cannot be found at the address given in the designation, then service may be made by personal delivery to the Secretary of State, Assistant Secretary of State or a deputy secretary of state of the process, together with a statement of the last-known address of the partnership and a service fee of five dollars (\$5). The Secretary of State shall immediately give notice of such service to the partnership by prepaid telegram, and forward the process to it by registered mail, return receipt requested, at the address given in the statement.

Service on the person designated 2 or personal delivery of the process and statement of address, together with a service fee of five dollars (\$5) to the Secretary of State, Assistant Secretary of State or a deputy secretary of state 2

pursuant to this section is a valid service on the partnership. The partnership so served shall appear within 30 days after service on the person designated or within 30 days after delivery of the process to the Secretary of State, Assistant Secretary of State or a deputy secretary of state.

51 Sec. 5 Part 4 (commencing with Section 24000) is added
52 to Title 3 of the Corporations Code, to read:

1 PART 4. LIABILITY; LEVIES AGAINST PROPERTY;
2 DESIGNATION OF AGENT FOR SERVICE AND OF
3 PRINCIPAL OFFICE OR PLACE OF BUSINESS

4 24000. (a) As used in this part, "unincorporated asso-
5 ciation" means any unincorporated organization of two or
6 more persons which engages in any activity of any nature,
7 whether for profit or not, under a common name but does
8 not include a government or governmental subdivision or
9 agency. partnership or other
10 organized

11 (b) As used in this section, "person" includes a natural
12 person, corporation, partnership or any other unincorporated
13 organization, and a government or governmental subdivision or
14 agency.

15 24001. Except as otherwise provided by statute, an unin-
16 corporated association is liable for its act or omission, and
17 for the act or omission of its officer, agent, or employee acting
18 within the scope of his office, agency, or employment, to the
19 same extent as if the association were a natural person. Noth-
20 ing in this section affects the liability between members of an
21 association or the liability between an association and the
22 members thereof.

23 24002. Only the property of an unincorporated association
24 may be levied upon under a writ of execution issued to enforce
25 a judgment against the association.

26 24003. (a) An unincorporated association may file with
27 the Secretary of State on a form prescribed by him a statement
28 containing either or both of the following:

29 (1) A statement designating the location and complete ad-
30 dress of the association's principal office in this state or prin-
31 cipal place of business in this state. Only one such place may
32 be designated.

33 (2) A statement designating as agent of the association for
34 service of process any natural person residing in this state
35 or any corporation which has complied with Section 3301.5
36 or Section 6403.5 and whose capacity to act as such agent has
37 not terminated.

38 (b) If a natural person is designated as agent for service
39 of process, the statement shall set forth his complete business
40 or residence address. If a corporate agent is designated, the
41 statement shall set forth the state or place under the laws
42 of which such agent was incorporated and the name of the
43 city, town, or village wherein it has the office at which the
44 association designating it as such agent may be served, as set
45 forth in the certificate filed by such corporate agent pursuant
46 to Section 3301.5, 3301.6, 6403.5, or 6403.6.

47 (c) An unincorporated association may at any time file with
48 the Secretary of State a revocation of a statement filed by the
49 association under this section. A statement designating either
50 a new principal office or place of business or a new agent for
51 the service of process, or both, is a revocation of any prior
52 statement filed by the association under this section.

1 (d) A revocation becomes effective 30 days after it is re-
2 ceived by the Secretary of State, except that:

3 (1) A revocation of a designation of a principal office or
4 place of business is effective upon receipt of the revocation
5 by the Secretary of State if the revocation is a statement that
6 designates a new principal office or place of business.

7 (2) A revocation of a designation of an agent for the ser-
8 vice of process is effective upon receipt of the revocation by
9 the Secretary of State if the revocation is a statement that
10 designates a new agent for the service of process.

11 (e) Delivery by hand of a copy of any process against the
12 unincorporated association (1) to any natural person desig-
13 nated by it as agent, or (2) if the association has designated
14 a corporate agent, at the office of such corporate agent, in the
15 city, town, or village named in the statement filed by the asso-
16 ciation under this section to any person at such office named
17 in the certificate of such corporate agent filed pursuant to
18 Section 3301.5 or 6403.5 if such certificate has not been super-
19 seded, or otherwise to any person at such office named in the
20 last certificate filed pursuant to Section 3301.6 or 6403.6, con-
21 stitutes valid service on the association.

22 (f) For filing a statement as provided in this section, the
23 Secretary of State shall charge and collect the fee prescribed
24 in Government Code Section 12185 for filing a designation
25 of agent.

26 (g) The Secretary of State may destroy or otherwise dis-
27 pose of any statement filed under this section:

28 (1) At any time one year after such statement has been
29 revoked; or

30 (2) In the case of a statement that only designates an agent
31 for the service of process, at any time one year after such
32 designation has been revoked or such agent has resigned as
33 provided in Section 24004.

34 24004. An agent designated by an unincorporated associa-
35 tion for the service of process may file with the Secretary of
36 State a written statement of resignation as such agent which
37 shall be signed and execution thereof shall be duly acknowl-
38 edged by the agent. Thereupon the authority of the agent to
39 act in such capacity shall cease and the Secretary of State
40 forthwith shall give written notice of the filing of the state-
41 ment by mail to the unincorporated association addressed to
42 its last known principal office or principal place of business
43 in this state.

EXHIBIT II

DRAFT OF REPORT FOR SENATE COMMITTEE ON JUDICIARY

REPORT OF SENATE COMMITTEE ON JUDICIARY ON SENATE BILL NO. 251

In order to indicate more fully its intent with respect to Senate Bill No. 251, the Senate Committee on Judiciary makes the following report.

Except for the new and revised comments set out below, the comments contained under the various sections of Senate Bill No. 251 as set out in the Recommendation of the California Law Revision Commission Relating to Suit By or Against an Unincorporated Association (October 1966) reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Senate Bill No. 251.

The following new and revised comments to various sections of Senate Bill No. 251 also reflect the intent of the Senate Committee on Judiciary in approving Senate Bill No. 251.

Code of Civil Procedure Section 411 (amended)

Comment. Subdivision 2.1 has been added to Section 411 to permit service upon an unincorporated association in much the same manner that service may be made upon a corporation. The revised form of the section provides assurance that the responsible officers of an unincorporated association will become aware of any actions that are brought against the association. Prior law did not provide such assurance, for service could be made under the prior law upon any member of the association.

Subdivision 2.2 has been added to Section 411 because the procedure for service of summons on a foreign partnership covered by Section 15700 of the Corporations Code is specified in that section.

Corporations Code Section 15700 (amended)

Section 15700 has been amended to adopt the general procedure provided by Corporations Code Section 24003 for designating an agent for service of process. The substantive effect of the amendment is to permit a foreign partnership covered by Section 15700 to designate a corporate agent for service of process. This gives the foreign partnership the same right as all other unincorporated associations.

Section 15700 has also been amended to adopt the general procedure provided by Corporations Code Section 24003 for service on the person designated as agent for service of process.

EXHIBIT III

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

CODE OF CIVIL PROCEDURE SECTION 414

At common law, a person seeking to enforce a joint liability was required to join all of the joint obligors as defendants, and if all of the defendant joint obligors were not served or did not appear, the action could not proceed to judgment. See Sheppard v. Bailie, 101 Eng. Rep. 577 (1795); Sturges, Unincorporated Associations as Parties to Actions, 33 YALE L. J. 383, 400 (1924).

The common law rule requiring joinder of joint obligors is still the law of California. In the words of Code of Civil Procedure Section 389, a joint obligor is an "indispensable party" who must be joined as a defendant before the action can proceed. Morrison Drilling Co. v. Superior Court, 208 Cal. App.2d 740, 25 Cal. Rptr. 682 (1962). However, two sections--Code of Civil Procedure Sections 388 and 414--have modified the common law rule requiring service of process upon all of the defendant joint obligors before the action can proceed.

Code of Civil Procedure Section 414 provides that, if joint obligors are sued on an obligation arising from contract, the action can proceed against those defendants who were actually served with process just as if they were the only defendants. After a judgment against some joint obligors has been obtained under Section 414, the plaintiff can summon the remaining defendants under Code of Civil Procedure Section 989-994 to show cause why they should not be bound by the judgment in the same manner as if they had been originally served with summons.

Section 388 of the Code of Civil Procedure provides, in effect, that an action against an unincorporated association is an action against the association members as joint defendants "in the same manner as if all had been named defendants and had been sued upon their joint liability." Section 388 authorizes a judgment to be taken against the association even though all members are not served and provides that the judgment binds the joint property of the associates--the association's property--and the individual property of the association member who was served with process. While Section 414 applies only to obligations arising out of contract, Section 388 applies to any obligation of the association.

The Law Revision Commission has recommended a revision of the law now stated in Section 388. See Recommendation and Study Relating to Suit By or Against an Unincorporated Association (October 1966). Senate Bill No. 251 was introduced on February 6, 1967, to effectuate the recommendation of the Law Revision Commission. Senate Bill No. 251 would amend Section 388 of the Code of Civil Procedure and add Section 24002 to the Corporations Code. Under these sections, as proposed by Senate Bill No. 251, a judgment against an association will bind only the association's property. A judgment binding on the personal assets of a member of an association can be obtained only by naming the individual member as a defendant.

Where the liability of a member for an association's contractual liability is involved, Senate Bill No. 251 will have little effect on a plaintiff's rights against the member, for the individual liability of the members for an association's contractual obligation is considered a joint liability. See Recommendation and Study Relating to Suit By or Against an Unincorporated Association, 8 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 921, 929 (1966).

Thus, if the plaintiff wishes to proceed against any of the individual members of the association, he can name as joint defendants all of the members of the association and then proceed against those members served with process as authorized by Section 414.

Where the liability of a member for an association's tort liability is involved, Senate Bill No. 251 will have little effect on a plaintiff's rights against the member, for any liability of the association's members for a tort committed on behalf of the association is regarded as a joint and several liability. Recommendation and Study Relating to Suit By or Against an Unincorporated Association, § CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 921, 931 (1966). Thus, if a plaintiff wishes to proceed against any member of the association, he can do so simply by naming that member as a defendant.

Some joint obligations of members of unincorporated associations have been created by statute. For example, the members of a partnership are jointly liable for the partnership's statutory obligation to pay workmen's compensation benefits to an employee of the partnership. DeMartini v. Industrial Acc. Com., 90 Cal. App.2d 139, 202 P.2d 828 (1949).

Where the joint liability of the association member is based on a statutory obligation, Senate Bill No. 251 might impair the plaintiff's rights against the individual members of the association unless Section 414 is modified as hereinafter recommended. Section 414 now authorizes an action to proceed against some joint obligors without service of process upon all of the defendant joint obligors only where the obligation is contractual. If the joint obligation arises from statute, there is no provision permitting the plaintiff to proceed to judgment without securing the court's personal jurisdiction over all of the joint obligors.

Unless Section 414 is modified, therefore, the common law rule relating to actions on joint obligations would apparently require that all of the association members be named as defendants and be served or otherwise appear in an action based on an association's statutory obligation before the plaintiff could secure a judgment binding on any of the members' separate assets.

Accordingly, the Commission recommends that Section 414 be modified to provide that an action against joint obligors can proceed even though all joint obligors are not served, whether the joint obligation is contractual or statutory. This would enable a plaintiff suing the members of an association upon their joint responsibility for a statutory obligation of the association to secure a judgment binding on the personal assets of those joint obligors that he could serve, and he could proceed against the remaining joint obligors under the provisions of Sections 989-994 at such time as service upon them could be effected.

This recommendation would be effectuated by the enactment of the following measure:

An act to amend Section 414 of the Code of Civil Procedure,
relating to proceedings where two or more defendants are
jointly or severally liable on an obligation.

The people of the State of California do enact as follows:

Section 1. Section 414 of the Code of Civil Procedure is amended to read:

414. ~~PROCEEDINGS WHERE THERE ARE SEVERAL DEFENDANTS
AND PART ONLY ARE SERVED.~~ When the action is against two

or more defendants jointly or severally liable on a contract or a statutory obligation , and the summons is served on one or more, but not on all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

Comment. The addition of the words "or a statutory obligation" to Section 414 eliminates the last vestiges of the common law rule that an action against joint obligors cannot proceed unless they are all served or otherwise appear in the action. Under Section 414 as amended, the obligee of any joint obligation, contractual or statutory, may obtain a judgment against those joint obligors that he is able to serve and then enforce his rights against the remainder under Sections 989-994 when he is able to make service upon them.

CODE OF CIVIL PROCEDURE

TITLE 14. MISCELLANEOUS PROVISIONS

CHAPTER 1. PROCEEDINGS AGAINST JOINT DEBTORS

§ 989. Unserved joint debtors; summons to show cause why they should not be bound by judgment

When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in section 414 of this code, those who were not originally served with the summons, and did not appear in the action, may be summoned to appear before the court in which such judgment is entered to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons. (Enacted 1872. As amended Stats.1933, c. 744, p. 1896, § 170; Stats.1935, c. 722, p. 1965, § 25.)

§ 990. Summons to show cause; issuance; contents; service and return

The summons specified in Section 989 shall be issued by the clerk, or by the judge if there be no clerk, upon presentation of the affidavit specified in Section 991, and must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner, and returnable no later than ninety (90) days after the time specified for the return of the original summons. It is not necessary to file a new complaint. (As amended Stats.1957, c. 1195, p. 2484, § 1.)

§ 991. Summons to show cause; affidavit

AFFIDAVIT TO ACCOMPANY SUMMONS: The summons must be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon. (Enacted 1872.)

§ 992. Answer

Upon such summons, the defendant may answer within the time specified therein, denying the judgment; or setting up any defense which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, by reason of any defense existing at the commencement of the action. (Enacted 1872. As amended Stats.1907, c. 325, p. 600, § 1.)

§ 993. Pleadings; amendments

If the defendant, in his answer, denies the judgment, or sets up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he denies his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, constitute such written allegations, subject to the right of the parties to amend their pleadings as in other cases. (Enacted 1872. As amended Stats.1907, c. 325, p. 600, § 2.)

§ 994. Trial; verdict

ISSUES, HOW TRIED. VERDICT, WHAT TO BE. The issues formed may be tried as in other cases; but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must be for not exceeding the amount remaining unsatisfied on such original judgment, with interest thereon. (Enacted 1872.)