

#71

6/22/70

Second Supplement to Memorandum 70-66

Subject: Study 71 - Joinder of Causes; Joinder of Parties

Attached to this memorandum is a copy of Senate Bill 847 introduced by Senator Grunsky in the current session of the Legislature. Senator Grunsky is aware of the work being done by the Commission in the area of joinder of causes and parties and specifically asked the Commission to consider his bill. The bill is critically reviewed by Professor Friedenthal in his research study attached to Memorandum 70-65. See pages 36-38. The staff has little to add to our consultant's analysis. Senator Grunsky has had an opportunity to review the consultant's report.

Respectfully submitted,

Jack I. Horton
Associate Counsel

Introduced by Senator Grunsky

April 1, 1970

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 428 to the Code of Civil Procedure, relating to causes of action.

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

- 1 SECTION 1. Section 428 is added to the Code of Civil Pro-
- 2 cedure, to read:
- 3 428. Whenever several causes of action arise out of the
- 4 same transaction or occurrence, if the plaintiff prosecutes an
- 5 action to judgment upon a complaint which does not allege
- 6 each such cause of action, or does not name as a defendant a
- 7 person against whom any such cause of action could have been
- 8 asserted, the plaintiff shall be deemed to have elected his reme-
- 9 dies and cannot thereafter maintain an action against such
- 10 person or upon such cause of action if the plaintiff knew or
- 11 reasonably should have known of such person or cause of ac-
- 12 tion prior to the entry of judgment.
- 13 As used in this section, "plaintiff" includes a defendant who
- 14 asserts a cross-complaint.
- 15 Nothing in this section shall be construed as affecting the
- 16 provisions of Section 378 relating to separate trials or expedi-
- 17 ent orders, or Section 1048 relating to the severance of actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 847, as introduced, Grunsky (Jud.). Causes of action.
Adds Sec. 428, C.C.P.

Specifies that, whenever several causes of action arise out of same transaction or occurrence, if plaintiff prosecutes an action to judgment upon complaint which does not allege each cause of action or does not name a person as defendant who could have been named as such, plaintiff is deemed to have elected his remedies and cannot maintain against such person or upon such cause of action if plaintiff knew or reasonably should have known of such person or cause of action prior to entry of judgment.

Vote—Majority; Appropriation—No; Fiscal Committee—No.