

3/10/68

## Memorandum 68-35

Subject: Study 42 - Good Faith Improvers

Assembly Bill No. 40 was introduced to effectuate the Commission's Recommendation on good faith improvers. The Recommendation is found at pages 1377-1384 of the Commission's Annual Report (attached to Memorandum 68-33).

Attached as Exhibit I (pink) are amendments to A.B. 40. The amendments are designed:

(1) To provide a one-year, instead of a two-year, statute of limitations. (This will, I hope, meet an objection of Assemblyman Z' Berg.)

(2) To require that the court, in determining the appropriate remedy in a particular case, take into account the plans of the owner for the development or use of the land and his need for the land in developing or using other land owned by him. (Several members of the Committee indicated concern that a house of small value on a shopping center site would preclude the owner from developing the site.)

(3) To provide that the bill does not apply to an improvement constructed on land appropriated to a public use by a person who could have acquired the land for such use. (This amendment is needed to satisfy Pacific Gas and Electric Company.)

The revised comments are attached as Exhibit II (yellow).

The California Railroad Association was satisfied at the hearing that the bill is a good one. The Association also is satisfied with the bill as it would be amended by the attached amendments.

The Pacific Gas and Electric Company objected to the bill before the hearing. These objections would be satisfied by the attached amendments.

We do not know what would be needed to satisfy Standard Oil Company, which objected to the bill last session. We have not heard from Standard Oil this session.

Assemblyman Hayes is a member of the Assembly Judiciary Committee who objected to the bill last session. I am attempting to draft amendments which will remove his objections to the bill. I have given him a copy of the attached amendments and will discuss the bill with him on March 14 and will report the results of that discussion at the meeting.

The bill is scheduled for another hearing by the Assembly Judiciary Committee on March 18.

Respectfully submitted,

John H. DeMouly  
Executive Secretary

EXHIBIT I

AMENDMENTS TO ASSEMBLY BILL NO. 40

AMENDMENT NO. 1

In the first line of the title of the printed bill, strike out "339"  
and insert:

340

AMENDMENT NO. 2

On page 1, strike out lines 1 through 11.

AMENDMENT NO. 3

On page 2, strike out lines 1 through 21, and insert:

Section 1. Section 340 of the Code of Civil Procedure is amended to read:

340. Within one year:

1. An action upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the State, except when the statute imposing it prescribes a different limitation;
2. An action upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the people of this State;
3. An action for libel, slander, assault, battery, false imprisonment, seduction of a person below the age of legal consent, or for injury to or for the death of one caused by the wrongful act or neglect of another, or by a depositor against a bank for the payment of a forged or raised check, or a check that bears a forged or unauthorized endorsement, or against any person who boards or feeds an animal or fowl or who engages in the practice of veterinary medicine as defined in Business and Professions Code Section 4826,

for such person's neglect resulting in injury or death to an animal or fowl in the course of boarding or feeding such animal or fowl or in the course of the practice of veterinary medicine on such animal or fowl;

4. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process;

5. An action against an officer to recover damages for the seizure of any property for a statutory forfeiture to the State, or for the detention of, or injury to property so seized, or for damages done to any person in making any such seizure.

6. An action by a good faith improver for relief under Chapter 10 (commencing with Section 871.1) of Title 10 of Part 2 of the Code of Civil Procedure. The time begins to run from the date upon which the good faith improver discovers that he is not the owner of the land upon which the improvements have been made.

AMENDMENT NO. 4

On page 3, line 10, after the period, insert:

In determining whether removal of the improvement would result in substantial justice to the parties under the circumstances of the particular case, the court shall take into account any plans the owner of the land may have for the use or development of the land upon which the improvement was made and his need for the land upon which the improvement was made in connection with the use or development of other property owned by him.

AMENDMENT NO. 5

On page 3, line 21, after the period, insert:

In determining the appropriate form of relief under this section, the court shall take into consideration any plans the owner of the land may have for

the use or development of the land upon which the improvement was made and his need for the land upon which the improvement was made in connection with the use or development of other property owned by him.

AMENDMENT NO. 6

On page 3, line 26, after the period, insert:

(a)

AMENDMENT NO. 7

On page 3, between lines 31 and 32, insert:

(b) This chapter does not apply where the owner of the land upon which the improvement is constructed has appropriated the land to a public use and could have acquired the land for that use by exercising the power of eminent domain.

EXHIBIT II

REPORT OF ASSEMBLY COMMITTEE ON JUDICIARY

ON ASSEMBLY BILL NO. 40

In order to indicate more fully its intent with respect to Assembly Bill No. 40, the Assembly Committee on Judiciary makes the following report.

Except for the revised Comments set out below, the Comments contained under the various sections of Assembly Bill No. 40 as set out in the Recommendation of the California Law Revision Commission Relating to Improvements Made in Good Faith Upon Land Owned by Another (Annual Report of Law Revision Commission (December 1967) at 1373; 8 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES (1967) at 1373) reflect the intent of the Assembly Committee on Judiciary in approving the various provisions of Assembly Bill No. 40.

The following revised Comments to sections contained in Assembly Bill No. 40 also reflect the intent of the Assembly Committee on Judiciary in approving Assembly Bill No. 40.

Section 340 (amended)

Comment. The statute of limitations established by subdivision 6 applies to any action by a good faith improver for relief under Sections 871.1 to 871.7. The equitable doctrine of laches would also provide a defense to a request for relief under those sections.

Section 871.3 (new)

Comment. Section 871.3 requires that an action for relief under this chapter be brought in the superior court. Where relief under this chapter is sought by cross-complaint or counterclaim in a pending action in municipal

court and determination of the cross-complaint or counterclaim will necessarily involve the determination of questions not within the jurisdiction of the municipal court, the action must be transferred to the superior court. See Code of Civil Procedure Section 396.

The statute of limitations for an action by a good faith improver for relief under this chapter is fixed by subdivision 6 of Section 340 of the Code of Civil Procedure.

Section 871.4 (new)

Comment. Section 871.4 establishes a legislative ordering of priorities in determining how to deal judicially with the situation created by a good faith improver. See the discussion in the Comment to Section 871.5.

Section 871.5 (new)

Comment. Section 871.5 authorizes the court to exercise any of its legal or equitable powers to adjust the rights, equities, and interests of the parties, but this authority is subject to the limitation that the court must utilize the right of setoff or the right of removal in any case where the exercise of one of these rights would result in substantial justice to the parties under the circumstances of the particular case.

Under this section, the court has considerable discretion to select appropriate relief from the full range of equitable and legal remedies. However, the section requires selection of a remedy that, first, will protect the landowner from any pecuniary loss and, second, will avoid, insofar as possible, the unjust enrichment of the landowner at the expense of the good faith improver. The court also is required to consider any plans the owner of the land may have for its development or use and his need for the

land in connection with the improvement or use of other land. The form of relief must satisfy these requirements. For example, if the landowner desires the land as improved, the court might order, as the trial court did in Taliaferro v. Colasso, 139 Cal. App.2d 903, 294 P.2d 774 (1956), that title be quieted in the owner upon condition that he pay to the improver the value of the improvements or some lesser amount. On the other hand, where the landowner does not desire the land as improved and removal of the improvement is not economically possible, the court might order that title be quieted in the improver on the condition that he pay to the landowner not less than the value of the unimproved land for its highest and best use at the time of trial or, in the alternative, that a judicial sale be made and the landowner be paid not less than such amount.

In every case, the court should credit the landowner with the value of the improver's use and occupation of the land. To protect the landowner against any pecuniary loss, the court also must credit him for the expenses he has incurred in the action to resolve the matter, including but not limited to reasonable fees for attorneys and expert witnesses. Under appropriate circumstances, the judgment might permit the landowner to make installment payments and give the improver an equitable lien to secure such payments.

The situation of the landowner, however, may require a form of relief completely different from those mentioned above. The court should deny the improver any relief in a case where no remedy can be devised which can fully protect the landowner against pecuniary loss. For example, an improvement may be constructed on land that is a shopping center site and rather than adding to the value of the shopping center site the improvement may actually

reduce that value or may preclude or inhibit the development of the remaining land for its highest and best use. In such a case, the appropriate remedy would be for the court to compel removal of the improvement. See Section 871.4. Where a choice must be made between protecting one party or the other, the landowner should prevail.

In every case, the burden is on the good faith improver to establish that he is entitled to relief under this section, and the degree of negligence of the good faith improver should be taken into account by the court in determining whether the improver acted in good faith and in determining the relief, if any, that is "consistent with substantial justice to the parties under the circumstances of the particular case."

For a more detailed discussion of the alternatives available to the court in administering the statute, see Merryman, Improving the Lot of the Trespassing Improver, 11 STAN. L. REV. 456, 483-489 (1959), reprinted in 8 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 801, 848-854 (1967).