

#63

5/24/66

Memorandum 66-29

Subject: Study 63(L) - The Evidence Code (Revisions of the Agricultural Code)

Attached as Exhibit I (pink pages) are the sections of the Agricultural Code that should be considered in connection with the Evidence Code. We have included all sections that relate to presumptions, including those that make evidence of one fact prima facie evidence of another. We have also included any other sections relating to evidence that are in need of revision.

I have read the entire Agricultural Code in an effort to find all pertinent sections. In addition, our Administrative Assistant has read the entire Agricultural Code to find all presumptions and prima facie evidence sections. We feel fairly confident that all pertinent sections have been located.

We suggest that we go through the pink pages section by section. The comments to the sections indicate the reason for the suggested amendments. You will note that reference is made in some of the comments to Opinions of the Attorney General. The opinions to which reference is made are attached as Exhibit II (yellow), III (green), IV (buff).

We have sent the Exhibits attached to this memorandum to the California Department of Agriculture for comment. We had hoped to have their comments prior to presenting this material to the Commission. However, it appears that the comments will be delayed, and we have concluded that the Commission must commence work on these sections if we are to submit a recommendation to the 1967 legislative session.

A nonsubstantive recodification of the entire Agricultural Code is now under way with a view to submitting a new Agricultural Code for enactment

in 1967. See Senate Preprint Bill No. 1 (1967). Hence, the Commission should consider suggesting nonsubstantive changes to the appropriate committee working on Senate Preprint Bill No. 1. This would minimize the problem of conforming the new Agricultural Code to our bill amending the existing Agricultural Code in the event that it appears that the new Agricultural Code will be enacted. Accordingly, as we go through the proposed amendments on the pink sheets, it is suggested that we consider which of the amendments could be considered nonsubstantive changes that could be recommended for inclusion in the new Agricultural Code.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

SEC. . Section 18 of the Agricultural Code is amended to read:

18. In all matters arising under this code, when the fact of possession by any person engaged in the sale of a commodity is prima-facie-evidence-that-such proved, the commodity is deemed to be possessed by him for the purpose of sale unless he proves that his possession is not for the purpose of sale .

COMMENT

Numerous sections of the Agricultural Code prohibit the sale of a commodity that is not in compliance with standards established by statute or regulation. "Sell" is defined in Agricultural Code Section 2(j) to include "have in possession for sale." The purpose of Section 18 is to facilitate proof that a commodity in possession of a person engaged in the sale of that kind of commodity is "in possession for sale." The effect of the section is to shift to the person in possession of a commodity that is not in compliance with the applicable law or regulation the burden of proving that his possession was not for the purpose of sale. 17 Ops. Cal. Atty. Gen. 154 (1951). Cf. 21 Ops. Cal. Atty. Gen. 171 (1953). Where a person engaged in the sale of a particular commodity has substandard commodities in his possession, it is reasonable to assume that he has them in possession for the purpose of sale unless he comes forward with evidence to establish that his possession is not for the purpose of sale.

Section 18, as amended, is phrased in terms of the burden of proof so that it will be clear that it is a matter of defense to show that the commodity was not being held for sale. When the section applies in a criminal case, the defendant can establish his defense by merely raising a reasonable doubt that he held the commodity for sale. See Evidence Code Section 501 and the Comment thereto. In a civil case, the defendant would have to establish his defense by a preponderance of the evidence unless the applicable statute requires a different burden. See Evidence Code Section 115.

§ 108. New pests; eradication areas; nuisances; regulations

New pests; investigation; quarantine. Upon information received by the director of the existence of any pest not generally distributed within this State he shall thoroughly investigate the existence and probability of the spread thereof, and the feasibility of control or eradication. He may establish, maintain and enforce quarantine and such other regulations as are in his opinion necessary to circumscribe and exterminate or prevent the spread of such pest.

Eradication area. Such regulations may proclaim any portion of the State to be an eradication area with respect to such pest, prescribing the boundaries of such area and naming the pest and the hosts thereof known to exist within the area, together with the means or methods to be used in the eradication or control of such pest.

Public nuisance; infested premises and articles. Any pest with respect to which an eradication area has been proclaimed, and any and all stages thereof, their hosts and carriers, and any and all premises, plants and things infested or infected or exposed to infestation or infection therewith, within such area, are hereby declared to be a public nuisance, subject to all laws and remedies relating to the pre-

vention and abatement of nuisances. The director, or the commissioner acting under the supervision and direction of the director, in a summary manner or otherwise may disinfect or take such other action, including removal or destruction, with reference to such nuisance, as in his discretion shall seem necessary.

Regulations; application of Government Code. The adoption, repeal or rescission of any regulation referred to in this section shall be in accordance with the provisions of Chapter 4, Part 1, Division 3, Title 2 of the Government Code.

Regulations; validity. No such regulations are valid unless they are clearly consistent with this chapter and are necessary to effectuate the purpose of this chapter and such regulations must conform to a strict interpretation of this chapter. The adoption of such regulations shall create no presumption of their necessity or validity. (Stats.1933, c. 25, p. 76, § 108, as amended Stats.1933, c. 723, p. 1789; Stats.1949, c. 261, p. 482, § 1.)

NO REVISION NEEDED

SEC. . Section 115 of the Agricultural Code is amended to read:

115. When any shipment of plants, or of anything against which quarantine has been established, is brought into this State and is found infested or infected or there is reasonable cause to ~~presume~~ believe that it may be infested or infected with any pest, the shipment shall be immediately destroyed by, or under the supervision of, the officer inspecting the same, at the expense of the owner or bailee thereof, unless:

(a) The nature of the pest is such that no detriment can be caused to agriculture in the State by the shipment of the plants out of the State. In such case, the officer making the inspection may affix a warning tag or notice to the shipment and shall notify the owner or bailee of said plants to ship the same out of the State within 48 hours, and such owner or bailee shall do so. The shipment shall be under the direction and control of the officer making the inspection and shall be at the expense of the owner or bailee. Immediately after the expiration of the time specified in the notice, said plants shall be seized and destroyed by the inspecting officer at the expense of the owner or bailee.

(b) Such pest may be exterminated by treatment or processing prescribed by the director, and it is determined by the inspecting officer that the nature of the pest is such that no damage can be caused to agriculture in this State, through such treatment or processing, or procedure incidental thereto. In such case, the shipment may be so treated or processed at the expense of the owner or bailee in the

manner, and within the time specified by the inspecting officer, under his supervision, and if so treated or processed, upon determination by the enforcing officer that the pest has been exterminated, the shipment may be released.

COMMENT

The word "believe" is substituted for "presume" in the introductory clause of Section 115 to reflect the obvious meaning of the section and to eliminate the improper use of the word "presume." No presumption is involved in the determination referred to in Section 115.

SEC. . Section 124 of the Agricultural Code is amended to read:

124. When any shipment of nursery stock, plants, or their containers, or appliances, or any host or other carrier of any pest brought into any county or locality in the State from another county or locality within the State, is found to be infected or infested with a pest, or there is reasonable cause to ~~presume~~ believe that said shipment may be so infested or infected, the entire shipment shall be refused delivery and may be immediately destroyed by or under the supervision of the commissioner, unless the nature of the pest is such that no damage or detriment can be caused to agriculture by the return of said shipment to the point of shipment. In such case the officer who makes the inspection may affix a warning tag or notice to the shipment and shall notify in writing the owner or bailee thereof to return said shipment to the point of shipment within 48 hours after such notification. The owner or bailee shall, at his own expense, return said shipment under the direction and control of said commissioner, and if the owner or bailee fails to return it within the time specified, the commissioner shall destroy the same. If such pest may be exterminated or controlled by treatment or processing prescribed by the commissioner, and if it shall be determined by the commissioner that the nature of the pest is such that no damage can be caused to agriculture through such treatment, processing, or procedure incidental thereto, such shipment may be so treated or processed at the expense of the owner or bailee of said shipment in a manner and within a time satisfactory to

the commissioner, and under his supervision, and if so treated or processed, said shipment may be released to the consignee. If it shall be determined by the said commissioner that only a portion of said shipment is infested or infected with a pest, or that there is reasonable cause to ~~presume~~ believe that only a portion of said shipment may be so infested or infected, then only such portion of said shipment may be destroyed or returned to origin or treated or processed as hereinbefore provided.

COMMENT

The word "believe" is substituted for "presume" in Section 124 to reflect the obvious meaning of the section and to eliminate the improper use of the word "presume." No presumption is involved in the determination referred to in Section 124.

SEC. . Section 152 of the Agricultural Code is amended to read:

152. All plants within a citrus white fly district which are infested with citrus white fly or eggs, larvae or pupae thereof, or which there is reasonable cause to ~~presume~~ believe may be infested with citrus white fly, are declared a public nuisance. The existence of any known host plant of citrus white fly within the boundaries of the district shall be deemed reasonable cause to ~~presume~~ believe said host plant to be infested with citrus white fly.

COMMENT

The word "believe" is substituted for "presume" in Section 152 to reflect the obvious meaning of the section and to eliminate the improper use of the word "presume." No presumption is involved in the determination referred to in Section 152.

SEC. . Section 160.97 of the Agricultural Code is amended to read:

160.97. Any person suffering loss or damage resulting from the use or application by others of any pesticide, or of any substance, method or device for pesticidal purposes or for the purpose of preventing, destroying, repelling, mitigating or correcting any disorder of plants or for the purpose of inhibiting, regulating, stimulating or otherwise altering plant growth by direct application to plants must, within sixty (60) days from the time that the occurrence of such loss or damage became known to him, or in the event a growing crop is alleged to have been damaged, prior to the time fifty percent (50%) of said crop shall have been harvested, provided, such loss or damage was known, file with the county commissioner of the county in which the loss or damage, or some part thereof, is alleged to have occurred, a verified report of loss setting forth so far as known to the claimant the following: name and address of claimant, type, kind and location of property allegedly injured or damaged, date the alleged injury or damage occurred, name of pest control operator allegedly responsible for such loss or damage, and name of the owner or occupant of the property for whom such pest control operator was rendering labor or services.

The filing of such report or the failure to file such report need not be alleged in any complaint which might be filed, and the failure to file the report as herein provided for shall not be a bar to the maintenance of a civil action for the recovery of damages for such loss or damage.

~~Proof-of-failure~~ If a person fails to file the report herein required ~~shall-create-a-rebuttable-presumption-that-no-such-loss-or~~

damage-occurred , he may recover for only such damage or loss as is proved by clear and convincing proof .

"Pesticide" means any economic poison as defined in Section 1061 of this code.

COMMENT

A presumption is not an appropriate method of accomplishing the purpose of the third paragraph of Section 160.97. Under the Evidence Code, the only effect of a rebuttable presumption is to shift either the burden of proof or the burden of producing evidence. See Evidence Code Sections 601, 604, and 606 and Comments thereto. Since the person required to file the report under Section 160.97 already has the burden of proof, the third paragraph of that section has no effect other than to permit an inference to be drawn from the failure to file the report.

Section 160.97 has been revised to accomplish the apparent purpose of the third paragraph of the section. That purpose appears to be to place on the person who fails to file the required report a greater burden of proof than would exist if he had filed the report. This purpose is made clear by revising the section to require that a person who fails to file the required report may recover for only such damage or loss as is proved by clear and convincing proof. See Evidence Code Section 115.

SEC. . Section 332.3 of the Agricultural Code is amended to read:

332.3. In all suits at law or in equity, when the title to any animal is involved, the brand or brand and marks of the animal shall be prima facie evidence that the owner of the brand or brand and mark was the owner of the animal at all times during which the brand or brand and mark was duly recorded as provided in this code. This presumption is a presumption affecting the burden of proof.

COMMENT

The presumption created by Section 332.3 is classified as a presumption affecting the burden of proof in order that a brand will be effective to establish ownership. See Evidence Code Section 606. Concerning the effect of this presumption in a criminal action, see Evidence Code Section 607.

Classifying this presumption as a presumption affecting the burden of proof clarifies which of two possibly conflicting presumptions will prevail. The Section 332.3 presumption, being a presumption affecting the burden of proof, prevails over the presumption provided by Evidence Code Section 637 that the things which a person possesses are presumed to be owned by him.

SEC. . Section 340.4 of the Agricultural Code is amended to read:

340.4. When the fact of possession or ownership by any person of cattle with an unrecorded, forfeited, or canceled brand is prima facie-evidence-that proved, the person in possession or the owner of the cattle has is deemed to have branded them with such brand unless he proves that he did not so brand them .

COMMENT

Agricultural Code Section 340.1 provides that it is unlawful to use an unrecorded, forfeited, or canceled brand. The purpose of Section 340.4 is to facilitate proof that the owner or person in possession of cattle with an unlawful brand is the one who used the unlawful brand. The probable effect of Section 340.4 is to shift to such person the burden of proving that he did not so brand the cattle. Cf. 17 Ops. Cal. Atty. Gen. 154 (1951); 21 Ops. Cal. Atty. Gen. 171 (1953). Where a person is the owner or has possession of unlawfully branded cattle, it is reasonable to require him to come forward with evidence to establish that he was not the one who branded the cattle.

The offense under Sections 340.1 and 340.4 is analogous to the provision of The Dangerous Weapons' Control Law (Penal Code Section 12091) that makes possession of a firearm whose identification marks have been tampered with presumptive evidence that the tampering was done by the possessor. Penal Code Section 12091 requires the possessor to go forward with evidence to the extent of raising a reasonable doubt that he tampered with the identification marks. People v. Scott, 24 Cal.2d 774, 151 P.2d 517 (1944). Under the Evidence Code, as under the previously existing law, Penal Code Section 12091

has the effect of making it a matter of defense for the person in possession of the firearm to show that he is not the one who tampered with the identification marks. Agricultural Code Section 340.1, as amended, has the same effect and is phrased in terms of the burden of proof so that it will be clear that it is a matter of defense for the defendant to show that he did not affix the unlawful brand. When Section 340.1 applies in a criminal case, the defendant can establish his defense by merely raising a reasonable doubt that he held the commodity for sale. See Evidence Code Section 501 and the Comment thereto. In a civil case, the defendant would have to establish his defense by a preponderance of the evidence. See Evidence Code Section 115.

§ 423. Livestock on public highway

No person owning, or controlling the possession of, any live stock, shall wilfully or negligently permit any such live stock to stray upon or remain unaccompanied by a person in charge or control thereof upon a public highway, both sides of which are adjoined by property which is separated from such highway by a fence, wall, hedge, sidewalk, curb, lawn or building. No person shall drive any such live stock upon, over or across any public highway between the hours of sunset and sunrise without keeping a sufficient number of herders on continual duty to open the road so as to permit the passage of vehicles. In any civil action brought by the owner, driver or occupant of a motor vehicle, or by their personal representatives or assignees, or by the owner of live stock, for damages caused by collision between any motor vehicle and any domestic animal or animals on a highway, there is no presumption or inference that such collision was due to negligence on behalf of the owner or the person in possession of such live stock. (Stats.1933, c. 25, p. 129, § 423, as amended Stats.1935, c. 265, p. 951, § 1.)

NO REVISION NEEDED

SEC. . Section 438 of the Agricultural Code is amended
to read:

438. The director is authorized to make any and all necessary investigations relative to reported violations of this division, as provided by Article 2 of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code. Copies of records, audits and reports of audits, inspection certificates, certified reports, findings and all papers on file in the office of the director ~~shall be prima facie evidence of the matters therein contained, and may be admitted into evidence~~ are admissible in any hearing pursuant to said article of the Government Code as evidence of the truth of the matters which are stated in them .

COMMENT

The second sentence of Section 438 apparently is intended to provide an exception to the hearsay rule and the best evidence rule. The section has been revised to make this clear. Concerning inspection certificates and other official certificates, see the Comment to Section 751.

SEC. . Section 651 of the Agricultural Code is amended to read:

651. As used in this division, "imitation milk product" means any substance, mixture or compound, other than milk or milk products, intended for human food, made in imitation of milk or any milk product. Proof that any fat or oil other than milk fat has been combined with any milk product and that the resulting substance, mixture, or compound has the outward appearance and semblance in taste and otherwise of a milk product and is sold for use without further processing shall be prima facie proof that such substance, mixture, or compound is an "imitation milk product." This section shall not apply to any substance, mixture, or compound in which the presence of oil or fat other than milk fat is expressly permitted and provided for in this division.

COMMENT

We are unable to determine the meaning of the second sentence of this section. Hence, we are unable to revise the section in light of the Evidence Code. The cases shed no light on the matter. See Aeration Processes, Inc. v. Jacobsen, 184 Cal. App.2d 836, 8 Cal. Rptr. 85 (1960); Midget Products, Inc. v. Jacobsen, 140 Cal. App.2d 517, 295 P.2d 542 (1956). Hence, the revision of this section is deferred until information concerning its purpose is received from the State Department of Agriculture.

SEC. . Section 695 of the Agricultural Code is amended to read:

695. The use of any container, cabinet or other dairy equipment by any person other than the person, or association whose name, mark, or device shall be upon the same, and other than the members of any association registering the same, without the written consent provided for in Section 690, or the possession by any junk dealer or dealer in second-hand articles of any such containers, cabinets or other dairy equipment, the description of the name, mark or device of which has been so filed and published as aforesaid is presumptive evidence of unlawful use of or traffic in such containers, cabinets or other dairy equipment. This presumption is a presumption affecting the burden of proof.

COMMENT

Section 695 is a part of a comprehensive statute designed to regulate use of containers and other dairy equipment marked with a registered brand. In substance, the statute requires that any person who finds or receives such equipment must return it to the owner within seven days (Section 692) and prohibits use or sale of such equipment by any person other than the owner (Section 693). Section 695 is apparently designed to facilitate proof of violation of the statute by creating a presumption that operates to place on the person who uses such container or equipment or upon the junk dealer or second-hand dealer in possession of such container or equipment the burden of proving that his use or possession is not unlawful. See Evidence Code Section 606.

When Section 695 is applicable in a criminal case, the presumption applies only if the facts that give rise to the presumption have been found or otherwise established beyond a reasonable doubt and, in such case, the defendant need only raise a reasonable doubt as to the existence of the presumed fact. See Evidence Code Section 607. In a civil case, the defendant would have to prove that the presumed fact does not exist by the preponderance of the evidence unless the applicable statute requires a different burden. See Evidence Code Section 115.

SEC. . Section 746.4 of the Agricultural Code is amended to read:

746.4. All handlers, including producer-handlers, shall keep complete and accurate records of all milk fat which they purchase, or possession or control of which they acquire from producers in the form of unprocessed milk, cream, or in any other unprocessed form. Producer-handlers shall include their own production in such records. They shall also keep complete and accurate records of all milk fat utilized by them for processing. Such records shall be in such form and contain such information, relevant to the purposes of this chapter, as the director may, by order or regulation, prescribe, shall be preserved for a period of two (2) years, and shall be open to inspection at any time on the request of the director. The director may, by rule, order, or regulation, require every such handler and producer-handler to file with him returns on forms to be prescribed and furnished by him, giving the information, or any part thereof, of which said first handlers are required to keep records, as aforesaid. In the case of any failure of any handler or producer-handler to make adequate returns, when required, the director shall estimate the amount of delinquency from the records of the department, or from such other source or sources of information as may be available, and in any action by the director to recover fees hereunder, a certificate of the director showing the amount determined by it to be required to be paid by the person required to pay the fees shall be prima facie evidence of the fact of delinquency of the amount due.

This presumption is a presumption affecting the burden of proof.

COMMENT

The presumption created by the last sentence of Section 746.4 is classified as a presumption affecting the burden of proof. As a result, the person who claims that the amount estimated by the director is not correct has the burden of proof to establish the correct amount. See Evidence Code Section 606.

Classifying this presumption as one affecting the burden of proof is consistent with the apparent purpose of the section. The presumption is a means of forcing a person to furnish the information needed to determine the amount of the fees. Since the person has not furnished the director with that information, the director may not be in a position to prove the amount due but can only make an estimate of the amount. On the other hand, the person required to pay the fees is required to keep the records that are needed to establish the amount due. If he has not kept such records or if he refuses to file an appropriate return, he should have the burden of proof if he claims the director's estimate is not correct.

SEC. . Section 751 of the Agricultural Code is amended to read:

751. The director may investigate and certify to shippers or other financially interested parties the analysis, classification, grade, quality or condition of fruit, vegetable or other agricultural products, either raw or processed, under such rules and regulations as he may prescribe, including the payment of reasonable fees.

Every certificate relating to the analysis, classification, condition, grade or quality of agricultural products, either raw or processed, and every duly certified copy of such certificate, shall be received in all the courts of the State of California as prima-facie evidence of the truth of the statements therein contained, if duly issued either:

- (1) By the director under authority of this code; or
- (2) In cooperation between federal and state agencies, authorities, or organizations under authority of an act of Congress and an act of the Legislature of any state; or
- (3) Under authority of a federal statute.

Any certificate issued by the State under the provisions of this chapter or by any person shall truly state the grade, quality and condition of the product or products certified, and a true copy of any such certificate shall be furnished to the director or to the commissioner of the county where the shipment originated; on demand made in writing.

Nothing in this chapter applies to any investigation made or any certificate issued by any person, firm or corporation in respect to

canned or dried fruit shipped, packed or stored by it or to any investigation made or any certificate issued by any bona fide chamber of commerce, board of trade or other bona fide nonprofit association of producers or merchants in respect to canned or dried fruit sold, shipped, packed or stored by any of its members or other persons for whom it may make any such inspection or issue any such certificate.

The director is authorized to cooperate with the United States Department of Agriculture in carrying out the provisions of this chapter.

COMMENT

The second paragraph of Section 751 has been revised to make it clear that this paragraph states an exception to the hearsay rule and best evidence rule. It is not clear whether this paragraph was intended to provide not only a hearsay exception but also a presumption. See 12 OPS. CAL. ATTY. GEN. 102 (1948). Under the revised section, no presumption exists, but the certificate is evidence upon which the trier of fact may base its finding. See, however, Commercial Code Section 1202 which provides that a document purporting to be an official weigher's or inspector's certificate or other document authorized to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness of the facts stated in the document by the third party. The presumption created by Section 1202 would apply to a certificate referred to in Section 751 if such certificate is authorized or required by a contract.

SEC. . Section 763.5 of the Agricultural Code is amended to read:

763.5. Each load of tomatoes offered for delivery by a grower to a canner in accordance with the terms of a contract between them shall be given such inspection as may be required without undue delay and within a reasonable time after such load arrives at the cannery or other point specified for such inspection.

Any load of tomatoes so offered for inspection and delivery that is rendered unsuitable for canning purposes as a direct result of unwarranted delay in inspection, wilfully or negligently caused or permitted by the canner, shall be paid for by the canner at the full price agreed upon for tomatoes suitable for canning purposes and on the basis that such tomatoes were of the grade, quality, and condition stipulated in the contract. If no price is stipulated in the contract, payment shall be made by the canner to the grower on the basis of the then prevailing market price for tomatoes of the grade, quality and condition specified in the contract.

In addition to any other remedy, the grower so offering for inspection and delivery any load of tomatoes who has incurred any added handling costs as a direct result of the unwarranted delay in inspection and delivery, wilfully or negligently caused or permitted by a canner, may recover the amount of such added handling costs by an action at law against such canner.

A delay in such inspection and acceptance for delivery for a period of six hours or more after a load of tomatoes is offered for inspection and delivery in accordance with the terms of a contract between the grower and the canner shall be prima facie evidence that

such delay was is presumed to be unwarranted and caused by wilfulness or negligence on the part of the canner; ~~provided, however,~~ that but during 15 24-hour peak periods in any tomato canning season, ~~delay in such inspection and acceptance of delivery shall not be prima facie evidence that such delay was caused by wilfulness or negligence on the part of the canner~~ this presumption does not apply unless such delay covered a period of more than 12 hours. Such peak periods shall be the periods of maximum delivery as shown by the records of the canner and shall be designated by the canners for each cannery or other specified inspection point promptly after the close of each tomato canning season by posting a notice of the peak periods for each cannery or inspection point in a conspicuous place at such cannery or inspection point. The presumption established by this paragraph is a presumption affecting the burden of proof.

No grower shall have any rights under this section unless he shall register each load of tomatoes with the canner at the time he offers such load for inspection and delivery. Such registration shall be made by obtaining from the canner a certificate, which such canner is hereby required to furnish, stating the time of arrival of the load at the cannery or other specified inspection point.

COMMENT

The presumption created by the fourth paragraph of Section 763.5 has been classified as a presumption affecting the burden of proof. As a result, when the grower establishes that a load of tomatoes was rendered unsuitable for canning purposes because it was not inspected within the time specified in the section, the canner has the burden of proof to

establish that the delay was not wilfully or negligently caused or permitted by him. See Evidence Code Section 606.

Classifying this presumption as one affecting the burden of proof is consistent with the apparent purpose of the section. It appears that the six-hour and twelve-hour time limits are established (and the presumption made applicable) in order to prescribe by statute what constitutes a reasonable time within which to make the inspection. The grower may not be in a position to introduce any evidence as to the reason why an inspection was not expeditiously made. For this reason, the statute includes a presumption that shifts the burden of proof to the canner who should be in a position to prove why he failed to have the tomatoes inspected within the time specified in the statute.

SEC. . Section 768 of the Agricultural Code is amended to read:

768. The inspection certificate issued pursuant to the provisions of this chapter shall be prima-facie received in the courts as evidence of the percentage of defects according to the definition of such defects as defined in this chapter.

COMMENT

Section 768 has been revised to make it clear that this section states an exception to the hearsay rule. It is not clear whether this section was intended to provide not only a hearsay exception but also a presumption. See 12 OPS. CAL. ATTY. GEN. 102 (1948). Under the revised section, no presumption exists, but the certificate is evidence upon which the trier of fact may base its finding. But see the Comment to Section 751 which discusses the effect of Commercial Code Section 1202.

SEC. . Section 772 of the Agricultural Code is amended to read:

772. The certificates provided for in this chapter shall be ~~prima-facie-evidence-before-any-court-in-this-State~~ received in the courts as evidence of the true average soluble solids test of all of the grapes in the lot or load under consideration.

COMMENT

Section 772 has been revised to make it clear that this section states an exception to the hearsay rule. It is not clear whether this section was intended to provide not only a hearsay exception but also a presumption. See 12 OPS. CAL. ATTY. GEN. 102 (1948). Under the revised section, no presumption exists, but the certificate is evidence upon which the trier of fact may base its finding. But see the Comment to Section 751 which discusses the effect of Commercial Code Section 1202.

SEC. . Section 782 of the Agricultural Code is amended to read:

782. The director and the commissioners of each county of the State, their deputies and inspectors, under the supervision and control of the director shall enforce this chapter. The refusal of any officer authorized under this chapter to carry out the orders and directions of the director in the enforcement of this chapter is neglect of duty.

The director by regulation may prescribe methods of selecting samples of lots or containers of fruits, nuts and vegetables on a basis of size or other specific classification, which shall be reasonably calculated to produce by such sampling fair representations of the entire lots or containers sampled; establish and issue official color charts depicting the color standards and requirements established in this chapter; and make such other rules and regulations as are reasonably necessary to secure uniformity in the enforcement of this chapter.

Any sample taken under the provisions of this chapter shall be prima facie evidence, in any court in this State, of the true conditions of the entire lot in the examination of which said sample was taken. This presumption is a presumption affecting the burden of proof.

A written notice of violation, issued by a duly qualified representative of the director or by commissioners, their deputies and inspectors holding valid standardization certificates of eligibility as enforcing officers of this chapter, stating that a certain lot of produce is in violation of the provisions of this chapter and based upon the examination

of such sample, shall be prima-facie-evidence, in any court in this-State, received in the courts as evidence of the true condition of the entire lot.

COMMENT

The presumption created by the first sentence of the third paragraph of Section 782 is classified as a presumption affecting the burden of proof so that the method of selecting samples established pursuant to this section will be effective to establish a sampling procedure that will withstand unmeritorious attack.

This presumption arises when it is established that the sample was taken according to the method prescribed by regulation. Thereupon, the burden of proof shifts to the person claiming that the sample is not representative of the entire lot to prove that fact. See Evidence Code Section 606. Concerning the effect of presumptions in criminal actions, see Evidence Code Section 607 and the Comment thereto.

The last sentence of the section has been revised to make it clear that this sentence states an exception to the hearsay rule. The notice of violation is given the same effect as a certificate of condition, grade, quality, or the like made under Section 751 and similar sections.

SEC. . Section 796 of the Agricultural Code is amended to read:

796. Grapefruit shall be (1) mature, (2) free from serious decay, (3) free from serious damage by freezing or drying due to any cause, (4) free from serious injury due to any cause, (5) free from serious scars, including those caused by insects, (6) free from serious scale, (7) free from serious dirt, smudge stain, sooty mold, rot residues or other foreign material, (8) free from serious staining, (9) free from serious greenish or brownish rind oil spots, (10) free from serious spotting or pitting, (11) free from serious roughness, (12) free from serious aging, (13) free from serious softness, (14) free from serious sunburn, (15) free from serious sheeppose.

The following standards shall be applied in determining whether or not grapefruit meet the requirements of this section:

(1) Grapefruit are not mature unless (a) at the time of picking and at all times thereafter the juice contains soluble solids, as determined by a Brix scale hydrometer, equal to or in excess of five and one-half parts to every part of acid contained in the juice (the acidity of the juice to be calculated as citric acid without water of crystallization), except that in view of differences in climatic conditions prevailing in the desert areas, which result in the grapefruit grown in those areas having, at maturity, a higher percentage of soluble solids to acid than the mature grapefruit grown in other areas of the State, grapefruit produced in the desert areas are considered mature if at the time of picking and at all times thereafter, the juice contains soluble solids, as determined by a Brix scale

hydrometer, equal to or in excess of six parts to every part of acid contained in the juice (the acidity of the juice to be calculated as citric acid without water of crystallization), and (b) 90 percent or more of the grapefruit, by count, at time of picking and at all times thereafter have attained, on at least two-thirds of the fruit surface, at least a minimum characteristic yellow or grapefruit color, as indicated by Color Plate No. 19 L3 in "Dictionary of Color," Maerz & Paul first edition 1930. Grapefruit produced outside of this State under climatic conditions similar to those prevailing in the desert areas and offered for sale in this State shall meet the same maturity standard as that prescribed for grapefruit produced in desert areas. The geographical boundaries of the desert areas of the State of California shall be defined as Imperial County, the portions of Riverside and San Diego Counties located east of a line extending north and south through White Water, and that portion of San Bernardino County located east of the 115 meridian.

(2) Decay is serious if any part of the grapefruit is affected with decay.

(3) Damage by freezing or drying due to any cause is serious if 20 percent or more of the pulp or edible portion of the grapefruit shows evidence of drying or a mushy condition; and damage by freezing or drying due to any cause is very serious if 40 percent or more of the pulp or edible portion of the grapefruit shows evidence of drying or a mushy condition. Evidence of damage shall be determined by as many cuts of each individual grapefruit as are necessary.

(4) Injury due to any cause is serious if the skin (rind) is broken and the injury is not healed.

(5) Scars, including those caused by insects, are serious if they are dark, or rough, or deep and if they aggregate 25 percent or more of the fruit surface.

(6) Scale is serious if 50 percent or more of the fruit surface shows scale infestation in excess of 50 scales per square inch.

(7) Dirt, smudge stain, sooty mold, rot residues, or other foreign material are serious if an aggregate area of 25 percent or more of the fruit surface is affected.

(8) Staining of the skin (rind) is serious if 50 percent or more of the fruit surface is affected with a pronounced discoloration.

(9) Greenish or brownish rind oil spots are serious if they cover an aggregate area of 25 percent or more of the fruit surface.

(10) Spotting or pitting is serious if the spots or pits are sunken and cover an aggregate area of 10 percent or more of the fruit surface.

(11) Roughness is serious if 90 percent or more of the fruit surface is rough and coarse, or lumpy.

(12) Aging is serious if one-third or more of the surface of the grapefruit is dried and hard.

(13) Softness is serious if the grapefruit is flabby.

(14) Sunburn is serious if it causes decided flattening of the fruit and drying and discoloration of the skin (rind) affecting more than one-third of the fruit surface.

(15) Sheepnose is serious if the stem end of the grapefruit protrudes decidedly.

The compliance or noncompliance with the standards for grapefruit prescribed in this chapter, except as to maturity, may be determined from a representative sample taken as follows:

(a) When in containers the sample shall consist of not less than 10 percent, by count, of the grapefruit in each of the containers selected as the sample.

(b) When in bulk the sample shall consist of not less than 100 grapefruit, except that where the total number of grapefruit in the bulk lot is less than 1,000 grapefruit a representative sample shall consist of 10 percent of the grapefruit.

Each individual grapefruit may be examined for one or all of the defects, except as to maturity, but only one defect shall be counted or scored against any individual grapefruit.

The official sample for testing for maturity of grapefruit shall consist of not less than 30 grapefruit.

Any such sample so taken shall constitute prima facie evidence of the character of the entire lot from which such sample was taken, ~~as provided in Section 782 of this code~~ . This presumption is a presumption affecting the burden of proof.

Tolerances to be applied to certain of the foregoing standards are hereby established. The grapefruit in any one container or bulk lot shall be deemed as a whole to meet the requirements of Standards Numbers 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this section so long as not over 10 percent, by count, of the individual grapefruit in such container or bulk lot are below said standards, and so long as not over 5 percent, by count, thereof are below any one of said standards. The grapefruit in any one container or bulk lot shall be deemed, as a whole, to meet the requirements of Standard Number 3 of this section so long as not more than 15 percent, by count, of the

individual grapefruit in such container or bulk lot are seriously damaged by freezing or drying due to any cause, but not to exceed one-third of this tolerance shall be allowed for very serious damage by freezing or drying due to any cause.

COMMENT

The presumption stated in the second to last paragraph of Section 796 is classified as a presumption affecting the burden of proof so that the method of selecting samples specified in the statute will be effective to establish a sampling procedure that will withstand unmeritorious attack. See the first paragraph of the Comment to Section 782. The language "as provided in Section 782 of this code" is deleted as unnecessary.

SEC. . Section 841 of the Agricultural Code is amended to read:

841. The director and the commissioners of each county of the State, their deputies and inspectors, under the supervision and control of the director shall enforce this chapter. The refusal of any officer authorized under this chapter to carry out the orders and directions of the director in the enforcement of this chapter is neglect of duty.

The director by regulation may prescribe methods of selecting samples of lots or containers of honey, which shall be reasonably calculated to produce by such sampling fair representations of the entire lots or containers sampled; establish and issue official color charts depicting the color standards and requirements established in this chapter; and make other rules and regulations as are reasonably necessary to secure uniformity in the enforcement of this chapter.

Any sample taken under the provisions of this chapter shall be prima facie evidence, in any court in this State, of the true condition of the entire lot in the examination of which said sample was taken. This presumption is a presumption affecting the burden of proof.

COMMENT

The presumption established by the last paragraph of Section 841 is classified as a presumption affecting the burden of proof so that the method of selecting samples established pursuant to Section 841 will be effective to establish a sampling procedure that will withstand unmeritorious attack. See the first paragraph of the Comment to Section 782.

SEC. . Section 892.5 of the Agricultural Code is amended to read:

892.5. The director may investigate and certify to shippers or other financially interested parties the grade, quality and condition of barley. Said certificates shall be based upon the United States standards for barley and shall be prima-facie received in the courts as evidence of the truth of the statements contained therein.

COMMENT

The second sentence to Section 892.5 has been revised to make it clear that this sentence states an exception to the hearsay rule. It is not clear whether this sentence was intended to provide not only a hearsay exception but also a presumption. See 12 OPS. CAL. ATTY. GEN. 102 (1948). Under the revised section, no presumption exists, but the certificate is evidence upon which the trier of fact may base its finding. But see the Comment to Section 751 which discusses the effect of Commercial Code Section 1202.

SEC. . Section 893 of the Agricultural Code is amended to read:

893. The director shall inspect and grade upon request and certify to any interested party the quality and condition of any field crop or other agricultural product under such rules and regulations as he may prescribe. Certificates issued by authorized agents of the director shall be received in the courts in the State as prima-facie evidence of the truth of the statements therein contained. Such inspection shall not be made or such certificates issued by any person not specifically authorized by the director in reference to any field crop product for which State standards have been established. Any person so authorized shall comply with the rules and regulations issued by the director relative to the certification of field crop products.

COMMENT

The second sentence of Section 893 has been revised to make it clear that this sentence states an exception to the hearsay rule. It is not clear whether this sentence was intended to provide not only a hearsay exception but also a presumption. See 12 OPS. CAL. ATTY. GEN. 102 (1948). Under the revised section, no presumption exists, but the certificate is evidence upon which the trier of fact may base its finding. But see the Comment to Section 751 which discusses the effect of Commercial Code Section 1202.

SEC. . Section 920 of the Agricultural Code is amended to read:

920. Any sample taken by an enforcement officer in accordance with rules and regulations promulgated under the provisions of this article for the taking of official samples shall be prima facie evidence, in any court in this State, of the true condition of the entire lot from which the sample was taken. This presumption is a presumption affecting the burden of proof. A written report issued by the State Seed Laboratory showing the analysis of any such sample shall be ~~prima-facie-evidence,-in-any-court-in-this-State,~~ received in the courts as evidence of the true analysis of the entire lot from which the sample was taken.

COMMENT

The presumption established by the first sentence of Section 920 is classified as a presumption affecting the burden of proof so that the method of selecting samples established pursuant to regulation will be effective to establish a sampling procedure that will withstand unmeritorious attack. See the first paragraph of the Comment to Section 782.

The second sentence of the section has been revised to make it clear that this sentence states an exception to the hearsay rule. The report of the State Seed Laboratory is given the same effect as a certificate of condition, grade, quality, or the like made under Section 751 or similar sections.

SEC. . Section 1040 of the Agricultural Code is amended to read:

1040. In any action, civil or criminal, in any court in this State, a certificate of the director stating the results of any analysis, purported to have been made under the provisions of this act, shall be prima-facie received as evidence of the fact that the sample or samples mentioned in said analysis or certificate were properly analyzed; that such samples were taken as herein provided; that the substance analyzed contained the component parts stated in such certificate and analysis; and that the samples were taken from the lots, parcels or packages mentioned in said certificate.

COMMENT

Section 1040 is revised to make it clear that this section states an exception to the hearsay rule. It is not clear whether this section was intended to provide not only a hearsay exception but also a presumption. See 12 CPS, CAL. ATTY. GEN. 102 (1948). Under the revised section, no presumption exists, but the certificate is evidence upon which the trier of fact may base its finding.

SEC. . Section 1105 of the Agricultural Code is repealed.

~~1105. It shall be presumed from the fact of possession by any person, firm or corporation engaged in the sale of eggs that such eggs are for sale.~~

COMMENT

Section 1105 is unnecessary in light of Agricultural Code Section 18. See Section 18 and the Comment thereto. Compare 21 Ops. Cal. Atty. Gen. 171 (1953)(concerning Section 1105) with 17 Ops. Cal. Atty. Gen. 154 (1951)(concerning Section 18).

SEC. . Section 1106.1 of the Agricultural Code is amended
read:

1106.1. The director, by regulation, shall prescribe methods of selecting samples of lots or containers of eggs which shall be reasonably calculated to produce by such sampling fair representations of the entire lots or containers sampled. Any sample taken hereunder shall be prima facie evidence, in any court in this State, of the true condition of the entire lot in the examination of which said sample was taken. This presumption is a presumption affecting the burden of proof.

COMMENT

The presumption stated in Section 1106.1 is classified as a presumption affecting the burden of proof so that the method of selecting samples established by the director will be effective to establish a sampling procedure that will withstand unmeritorious attack. See the first paragraph of the Comment to Section 782.

§ 1211. Presumption of lessor's control over products produced on land; actions against lessor to enforce contract

In any action upon such marketing agreements, it shall be conclusively presumed that a landowner or landlord or lessor is able to control the delivery of products produced on his land by tenants or others, whose tenancy or possession or work on such land or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landowner or landlord or lessor, of such a marketing agreement; and in such actions, the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landowner, landlord or lessor. (Stats.1933, c. 25, p. 262, § 1211.)

NO REVISION NEEDED

SEC. . Section 1267 of the Agricultural Code is amended to read:

1267. For the purpose of enforcing the provisions of this chapter the director is authorized to receive verified complaints from producers against any commission merchant, dealer, broker, cash buyer, or agent or any person, assuming or attempting to act as such, and upon receipt of such verified complaint shall have full authority to make any and all necessary investigations relative to the said complaint. The director or his authorized agents are empowered to administer oaths of verification on said complaints. He shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities in which any farm products are kept, stored, handled or transported. He shall full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers and other documents, articles or instruments to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders or subpoenas of said director shall be guilty of contempt and shall be certified to the superior court of the State for punishment of such contempt. Copies of records, audits and reports of audits, inspection certificates, certified reports, findings and all papers on file in the office of the director ~~shall be prima facie evidence of the matters therein contained, and may be admitted into evidence~~ are admissible in any hearing provided in this chapter as evidence of the truth of the matters stated therein .

COMMENT

The last sentence of Section 1267 apparently is intended to provide an exception to the hearsay rule and the best evidence rule. The section has been revised to make this clear. Concerning inspection certificates and other official certificates, see the Comment to Section 751.

SEC. . Section 1268.2 of the Agricultural Code is amended to read:

1268.2. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: To call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may otherwise required by statute to be recognized in-civil-actions at the hearing , and irrelevant and unduly repetitious evidence shall be excluded.

COMMENT

The revision of the last sentence of Section 1268.2 is necessary because, under Division 8 (commencing with Section 900) of the Evidence Code, the privileges applicable in some administrative proceedings are at times different from those applicable in civil actions. As revised, the last sentence of Section 1268.2 conforms to the last sentence of Government Code Section 11513 (State Administrative Procedure Act) as amended in the act that amended the Evidence Code.

SEC. . Section 1272 of the Agricultural Code is amended to read:

1272. When requested by his consignor, a commission merchant shall before the close of the next business day following the sale of any farm products consigned to him transmit or deliver to the owner or consignor of the farm products a true written report of such sale, showing the amount sold, and the selling price. Remittance in full of the amount realized from such sales, including all collections, overcharges and damages, less the agreed commission and other charges, together with a complete account of sales, shall be made to the consignor within ten days after receipt of the moneys by the commission merchant, unless otherwise agreed in writing. In the account the names and addresses of purchasers need not be given, except as required in Section 1271. Provided, however, where a commission merchant has entered into a written contract with two or more owners or consignors which contract provides that the returns for farm products sold for the account of such owners or consignors shall be pooled on a definite basis as to size and/or grade, during a certain period of time then a commission merchant shall be required to render an account of sales, showing the net average pool return on each size and/or grade from sales made and shall keep a correct record of such sales, showing in detail all information as required in Section 1271 of the Agricultural Code.

Every commission merchant shall retain a copy of all records covering each transaction, for a period of one year from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the director and the consignor.

or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity or weight of any lot, shipment or consignment of farm products, the department shall furnish upon the payment of a reasonable fee therefor by the requesting party a certificate establishing the condition, quality, grade, pack, quantity, or weight of such lot, shipment or consignment. Such certificate ~~shall be prima facie~~ evidence is admissible in all courts of this State as ~~to the recitals thereof~~ evidence of the truth of the statements therein . The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction which may be questioned.

Every dealer must pay for farm products delivered to him or it at the time and in the manner specified in the contract with the producer, but if no time is set by such contract, or at the time of said delivery, then within thirty days from the delivery or taking possession of such farm products.

No claim may be made as against the seller of farm products by a dealer or cash buyer under this chapter, and no credit may be allowed to such dealer or cash buyer as against a producer of farm products by reason of damage to or loss, dumping, or disposal of farm products sold to said dealer or cash buyer, in any payment, accounting or settlement made by said dealer or cash buyer to said producer, unless said dealer or cash buyer has secured and is in possession of a certificate, issued by an agricultural commissioner, county health officer, director, a duly authorized officer of the State Board of Health, or by some other official now or hereafter authorized by law, to the effect that the farm products involved

have been damaged, dumped, destroyed or otherwise disposed of as unfit for human consumption or as in violation of the fruit and vegetable standards of the Agricultural Code as contained in Division 5, Chapter 2 thereof. Such certificate will not be valid as proof of proper claim, credit or offset unless issued within twenty-four hours of the receipt by the dealer or cash buyer of the farm products involved.

COMMENT

The second sentence from the end of the second paragraph of Section 1272 apparently is intended to provide an exception to the hearsay rule. The section has been revised to make this clear. See the Comment to Section 751 which discusses the effect of Commercial Code Section 1202.

SEC. . Section 1272.5 of the Agricultural Code is amended to read:

1272.5. Any sale of farm products made by a commission merchant for less than the current market price to any person with whom he has any financial connection, directly or indirectly as owner of its corporate stock, as copartner, or otherwise, or any sale out of which said commission merchant receives, directly or indirectly, any portion of the purchase price, other than the commission named in licensee's application or in a specific contract with the consignor, shall be prima facie evidence of fraud within the meaning of this chapter. This presumption is a presumption affecting the burden of proof.

No commission merchant, dealer, or broker who finances, lends money, or otherwise makes advances of money or credits to another commission merchant, dealer, or broker may deduct from the proceeds of farm products marketed, sold, or otherwise handled by him on behalf of or for the account of the commission merchant, dealer, or broker to whom such money, loans, advances or credits are made, an amount exceeding a reasonable commission or brokerage together with the usual and customary selling charges and/or costs of marketing, and may not otherwise divert to his own use or account or in liquidation of such loans, advances or credits the moneys, returns, or proceeds accruing from the sale, handling or marketing of farm products handled by him on behalf of or for the account of the commission merchant, dealer, or broker to whom or for whom such loans, advances, or credits are made.

COMMENT

Section 1272.5 creates a rebuttable presumption which has been classified as a presumption affecting the burden of proof. Thus, when the facts that

give rise to the presumption have been established, the commission merchant has the burden of proof to show the absence of fraud. See Evidence Code Section 606. Concerning the effect of this presumption in a criminal action, see Evidence Code Section 607.

This presumption is classified as a presumption affecting the burden of proof in recognition of the fact that a commission merchant serves in a fiduciary capacity. See Raymond v. Independent Growers, Inc., 133 Cal. App.2d 154, 284 P.2d 57 (1955). See also Section 1272 which provides that the commission merchant has the burden of proof to prove the correctness of his accounting as to any transaction which may be questioned.

SEC. . Section 1300.3-2 of the Agricultural Code is amended to read:

1300.3-2. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: To call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are ~~now or hereafter may~~ otherwise required by statute to be recognized in civil actions at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

COMMENT

The revision of the last sentence of Section 1300.3-2 is necessary because, under Division 8 (commencing with Section 900) of the Evidence Code, the privileges applicable in some administrative proceedings are at times different from those applicable in civil actions. As revised, the last sentence of Section 1300.3-2 conforms to the last sentence of Government Code Section 11513 (State Administrative Procedure Act) as revised in the act that enacted the Evidence Code.

SEC. . Section 1300.5 of the Agricultural Code is amended to read:

1300.5. (a) Every processor other than a licensed winegrower who purchases farm products from the producer thereof on a packout basis shall promptly upon completion of said processing inform the producer of the results obtained, and in so doing shall account fully and completely for the entire weight of the farm product so received from the producer.

Where a specific grade or quality is a condition of a packout basis contract between producer and the processor, such grade or quality shall be determined at the completion of said processing by a state or federal agency duly authorized to determine said grade or quality, and the certificate issued in connection with said inspection shall be prima-facie received in the courts as evidence of the grade or condition or both of the finished product.

Every contract between a processor and a producer covering the purchase of farm products on a packout basis shall, in addition to designating the price to be paid for the specific grade, designate the price to be paid for any other grade into which the farm product is processed as determined by inspection of the finished product by a duly authorized state or federal agency.

(b) Every processor other than a licensed winegrower who receives farm products from the producer thereof for processing on a consigned basis shall promptly make and keep a correct record showing in detail the following with reference to the processing, handling, storage, and sale of said farm products:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The quantity received.
- (4) The size or sizes of the containers into which the finished product is packed.
- (5) The grade or grades and quality of the finished product.
- (6) The price or prices obtained from the sale of the finished product.
- (7) An itemized statement of costs and charges paid in connection with the processing, handling, storage, and sale of the farm product.

(c) Where the processor has entered into a written contract with two or more owners or consignors, which contract provides that the returns for the farm products handled and sold for the account of such owners or consignors shall be pooled on a definite basis as to grade or quality, or both, during a specific period of time, then the processor shall render an account of sale showing the net average pool return on each grade and quality from sales made, showing in detail all charges in connection with the handling, processing and selling of such farm products, and the processor shall keep a correct record of such sales and charges.

(d) Every processor shall keep accurate books and records showing the names and addresses of all producers selling and making delivery of farm products to him, including the dates of deliveries, the quantities thereof, and the agreed price to be paid therefor, and if no agreed price has been arrived at, or a method for determining the same agreed upon, then such agreed price shall be considered the value of such products as of date of delivery. For the purpose of ascertaining such

value and in addition to other evidence, reference may be had to price quotations from the federal-state market news service. Accurate grading and weight receipts bearing the date thereof shall be given by all processors to each producer, or his agent, upon each and every delivery, such receipt to bear the name and address of the producer and the name of the processor. Not later than five days after demand the processor shall give to every such producer so requesting a full and complete statement of such producer's account, showing the entire quantities of products delivered by him, the grades thereof, and the amount owing for every lot and for the whole thereof.

COMMENT

The second paragraph of Section 1300.5 has been revised to make it clear that this paragraph states an exception to the hearsay rule. It is not clear whether this paragraph was intended to provide not only a hearsay exception but also a presumption. See 12 OPS. CAL. ATTY. GEN. 102 (1948). Under the revised section, no presumption exists, but the certificate is evidence upon which the trier of fact may base its findings. But see the Comment to Section 751 which discusses the effect of Commercial Code Section 1202.

SEC. . Section 4135 of the Agricultural Code is amended to read:

4135. The sale by any retail store, or manufacturer or distributor, including any producer-distributor or nonprofit co-operative association acting as a distributor, of milk, cream, or dairy products at less than cost is an unfair practice. Cost as applied to manufacturers and distributors, as used herein, shall mean the cost of raw product, plus all costs of manufacturing, processing, handling, sale and delivery, including overhead costs; and cost as applied to retail stores, as used herein, shall mean invoice or replacement cost, whichever is lower, plus the cost of doing business of such retail store. "Cost of raw product," in the case of market milk and market cream, whether or not such market milk or market cream is used in the processing or manufacture of dairy products, shall be the applicable minimum price therefore, if any, payable by distributors to producers pursuant to stabilization or marketing plans in effect under the provisions of Chapter 17 (commencing with Section 4200) of Division 6; provided, however, that the foregoing definition of "cost of raw product," as applied to sales on a bid basis to public agencies or institutions, shall be applicable only to market milk or market cream utilized for Class 1 purposes, as such purposes are defined in Chapter 17, Division 6 of this code. Evidence Proof of cost, based on audits or surveys, made in accordance with generally accepted cost accounting procedures, shall constitute prima facie evidence of such cost at the time of the commission of such violation. This presumption is a presumption affecting the burden of proof. The director shall establish

by rule and regulations pursuant to Section 4143 the procedures which shall be considered as "generally accepted cost accounting procedures." Such procedures are those found by the director to accurately determine actual costs.

COMMENT

The presumption created by Section 4135 is classified as a presumption affecting the burden of proof because the information as to cost is particularly within the knowledge of the person making the sale. Thus, the person making the sale has the burden of proof to prove that the cost is lower than the cost, based on audits or surveys, made in accordance with generally accepted cost accounting procedures. See Evidence Code Section 606.

When Section 4135 is applicable in a criminal case, the presumption arises only if the facts that give rise to the presumption have been found or otherwise established beyond a reasonable doubt and, in such case, the defendant need only raise a reasonable doubt as to the existence of the presumed fact. See Evidence Code Section 607. In a civil case, the defendant would have to prove that the presumed fact does not exist by the preponderance of the evidence unless an applicable statute requires a different burden. See Evidence Code Section 115.

SEC. . Section 4148 of the Agricultural Code is amended to read:

4148. Prices filed pursuant to Section 4147 shall be made in such office of the director as he shall designate. Such prices shall not become effective until the seventh day after filing. Evidence Proof of any sale of, or offer or agreement to sell such market milk, market cream or dairy products by a distributor at less than the prices theretofore filed with the director by such distributor pursuant to the provisions of this article shall constitute prima facie proof evidence of a violation of this article. This presumption is a presumption affecting the burden of proof. Offers and agreements to sell, as used herein, shall include offers and agreements which are conditional, or which shall become effective, upon the filing thereafter of amended prices by the distributor making such offer. Upon receipt of such filings or amendments, the director shall forthwith date, file and index the same in such manner that the information therein contained shall at all times be kept current and be readily available to any interested person desiring to inspect the same. Any other distributor in the marketing area may meet any such prices so filed; provided, that such distributor shall file with the director a schedule of prices not exceeding the prices so met by him within 24 hours after meeting the same.

COMMENT

The presumption created by Section 4148 is classified as a presumption affecting the burden of proof in order that the person who makes a sale or offer or agreement to sell at less than the prices theretofore filed with

the director will have the burden of proof to show that he came within a provision of law authorizing such sale or agreement or offer to sell. See Evidence Code Section 606. Since the circumstances justifying the sale, agreement, or offer to sell are known to the distributor and might not be known to the director, it is appropriate that the burden of showing that the sale, agreement, or offer was authorized by law be placed on the distributor.

When Section 4148 is applicable in a criminal case, the presumption arises only if the facts that give rise to the presumption have been found or otherwise established beyond a reasonable doubt and, in such case, the defendant need only raise a reasonable doubt as to the existence of the presumed fact. See Evidence Code Section 607. In a civil case, the defendant would have to prove that the presumed fact does not exist by the preponderance of the evidence unless an applicable statute requires a different burden. See Evidence Code Section 115.

§ 4355. Consideration of economic factors

In determining minimum wholesale and minimum retail prices for fluid milk or fluid cream, or both, for any marketing area, the director shall take into consideration the following economic factors operative in such marketing area in addition to other matters required by this chapter to be taken into consideration by him:

(a) The quantities of fluid milk or fluid cream, or both, distributed in such marketing area.

(b) The quantities of fluid milk or fluid cream, or both, normally required by consumers in such marketing area.

(c) The estimated purchasing power of consumers in such marketing area.

(d) The cost of fluid milk or fluid cream, or both, in such marketing area to distributors and retail stores, which in all cases shall be, respectively, the prices paid by distributors to producers and the minimum wholesale prices, as established pursuant to this chapter.

(e) The reasonably necessary cost of handling fluid milk or fluid cream, or both, incurred by distributors, including all costs of hauling, processing, selling and delivering and reasonable return on necessary capital investment, for each of the several methods of distribution used in such marketing area in accomplishing such hauling, processing, selling and delivery, excluding costs which are not reasonably necessary to efficient operation, as such costs are determined by impartial cost surveys, or examination of the books and records, or both, of all, or such portion of the distributors in such marketing area as are reasonably determined by the director to be sufficiently representative to indicate the reasonably necessary costs of sufficient efficient distribution for such marketing area.

(f) The estimated amount of the available capacity for processing and distributing fluid milk or fluid cream, or both, of distributors in such marketing area and the estimated extent to which such available capacity is being used by such distributors.

(g) The reasonably necessary cost of handling fluid milk or fluid cream, or both, incurred by retail stores, as such costs are determined by impartial cost surveys, or examination of the books and records, or both, of such portion of the retail stores in such marketing area as are reasonably determined by the director to be sufficiently representative to indicate such costs of all retail stores in such marketing area. In determining such costs incurred by retail stores handling commodities in addition to fluid milk or fluid cream, or both, the director shall determine the cost of doing business for each such representative retail store and for such purpose shall consider all costs and expenses of doing business including depreciation on inventory and equipment. In the absence of satisfactory evidence to the contrary, the cost of handling such fluid milk or fluid cream, or both, shall be presumed to be the same percentage as the cost of doing business of such retail store in conducting its entire business. (As amended Stats. 1955, c. 1310, p. 2377, § 7.)

NO REVISION NEEDED

SEC. . Section 5551 of the Agricultural Code is amended to read:

5551. The California Table Grape Commission shall be and is hereby declared and created a corporate body. It shall have the power to sue and be sued, to contract and be contracted with, and to have and possess all of the powers of a corporation. It shall adopt a corporate seal. Copies of its proceedings, records and acts, when certified by the secretary and authenticated by the corporate seal, shall be admissible in evidence in all courts of the State ~~, -and- shall- be- prima- facie~~ as evidence of the truth of all statements therein.

COMMENT

The last sentence of Section 5551 is apparently intended to provide an exception to the hearsay rule and the best evidence rule. The sentence has been revised to make this clear.

EXHIBIT II

Extract from 12 California Attorney General's Opinions 102-106 (1948)
Opinion No. 48-184—August 23, 1948

SUBJECT: TOMATO INSPECTION CERTIFICATES: Certificate Issued by State Inspector Upon Delivery of Tomatoes for Canning Is Prima Facie Evidence, in Later Controversy Between Producer and Processor, of Facts Required by Statute to Be Shown in the Certificate.

Requested by: DIRECTOR OF AGRICULTURE

Opinion by: FRED N. HOWSER, Attorney General.
Paul M. Joseph, Deputy.

The Director Of Agriculture has submitted the following question:

Is a certificate issued pursuant to Chapter 1a, Division 5 of the Agricultural Code indicating that a lot of canning tomatoes complies with the standards set up in that chapter prima facie evidence of the condition of such tomatoes in a controversy between the producer and processor?

The conclusions reached are summarized as follows:

Under the Uniform Business Records as Evidence Act, (section 1953c - 1953h, Code of Civil Procedure) such certificate is admissible, if relevant and properly identified, as prima facie evidence of the facts required by statute to be set forth in the certificate.

ANALYSIS

Chapter 1a, Division 5 of the Agricultural Code, comprising sections 761 to 767, inclusive, of that Code, sets up standards of quality for tomatoes delivered for canning purposes. Provision is made in section 762.5 for the inspection of the tomatoes at the time of their delivery to the cannery. If found to be substandard, a rejection order is issued by the inspector. Where the tomatoes are found to conform to the standards established by the chapter, the inspector, in the name of the Director of Agriculture, is required to issue a certificate showing the percentage of the tomatoes in the lot which are suitable for canning purposes, the percentage of tomatoes in the lot not complying with the several quality standards set up in the statute, percentage of the delivery suitable for canning purposes and the percentage "well-colored" and "fairly well-colored" as those terms are defined in section 762.

The question does not concern any delivery unsuitable for canning purposes as to which a rejection order has been issued but is with reference to certificates issued covering lots or loads found suitable for canning purposes. Controversies often arise between the producer and the canner in which it becomes important to establish the condition of the tomatoes at the time of delivery. These differences may become the subject of legal actions or administrative proceedings in which a hearing is a matter of right.

The question is whether the certificate so issued is prima facie evidence in such court actions or administrative hearings involving the grower and canner, of the facts required by section 762.5 to be set forth in the certificate with reference to the condition of the tomatoes.

There is no provision in the Agricultural Code specifying the extent to which canning tomato inspection certificates shall be admissible as evidence nor is there any general provision in that code making inspection certificates admissible as evidence of the facts required to be set forth in such certificates. The provisions in that code with reference to certain designated types of inspections provide that the certificates issued as the result of such inspections shall be admissible in evidence, e.g., shipping point inspection certificates (sec. 751) and rejection certificates under the Fruit, Nut and Vegetable Standardization Act (sec. 782). Similarly, aside from the Agricultural Code, there is no statutory provision expressly making inspection certificates in general admissible in evidence.

Basically, such certificates are hearsay evidence. Hearsay evidence as a general proposition may not be used in a court to prove a matter in issue. In administrative hearings in which a hearing is a matter of right, hearsay evidence may be

received by the board, commission or officer conducting the hearing in explanation of other evidence but, unless an applicable statute provides to the contrary, hearsay evidence alone will not sustain a finding or an order on an issue raised in such administrative proceeding (*Walker v. City of San Gabriel*, 20 Cal. 2d 879):

The rule of evidence precluding the use of hearsay is subject to many exceptions, some of which are vague in practical application. The issues involved, the availability of other evidence and a multitude of other considerations come into play when considering these exceptions. One exception to the "hearsay rule" is set forth in section 1920 of the Code of Civil Procedure in the following language:

"Entries in public or other official books or records, made in the performance of his duty by a public officer of this State, or by another person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts stated therein."

In 5 Wigmore on Evidence 704, the distinction is made between acts done by officers or their deputies resulting in a record being kept by the officer of the facts connected with such act and the situation where an official certificate is given by the officer or his deputy to an interested party where the results of the act are not made a matter of departmental record. The reluctance of courts to admit such certificates is commented upon in that work and explained on the basis that the courts believe that where an official record is maintained of the act done there are more safeguards to the accuracy of the report than if a certificate is furnished to a private person without incorporating the results in a register, compilation, docket or the like. Perhaps a liberal interpretation of section 1920 of the Code of Civil Procedure would make the canning tomato inspection certificates issued under section 762.5 of the Agricultural Code admissible as prima-facie evidence of the facts required to be set forth in such certificates. (See *Ames v. Empire Star Mines Co., Ltd.*, 17 Cal. 2d 213; *Davis v. Standard Rice Co.* (Tex. Civ. App.) 293 S. W. 593; *Grant v. Fisher Flouring Mills Co.*, 190 Wash., 356, 68 Pac. 2d 210; 32 Corp. Jur. Sec. 502). However, as a practical matter, it would be unsafe to rely upon section 1920, Code of Civil Procedure, alone in presenting an issue as to the condition of the tomatoes at the time of inspection.

Another exception to the hearsay rule makes entries in books of account admissible in evidence under a variety of circumstances and subject to many qualifications. To get away from the restrictions, (*Loper v. Morrison*, 23 Cal. 2d 600, at 608) sections 1953e to 1953h of the Code of Civil Procedure, known as the "Uniform Business Records as Evidence Act" was adopted in 1941. By this statute, the scope of the account book exception to the hearsay rule was considerably widened, not only with respect to the manner of introducing the records but with respect to the types of documents that may be introduced.

Section 1953f of the Code of Civil Procedure provides:

"A record of an act, condition or event shall, in so far as relevant, be competent evidence if the custodian or other qualified witness testifies

to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission."

Section 1953e provides:

"The term 'business' as used in this article shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not."

We believe that a certificate disclosing the results of an inspection of tomatoes entering a cannery is a document made out in the course of business operations as the term "business" is defined in section 1953e of the Code of Civil Procedure, despite the fact that a representative of the Director of Agriculture executes the certificate and not a representative of either the producer or canner. (*Gunter v. Claggett*, 65 Cal. App. 2d 636). The Uniform Business Records as Evidence Act, section 1953e - 1953h, Code of Civil Procedure, would appear to have the effect of expanding the official records exception to the hearsay rule, as codified in section 1920, Code of Civil Procedure, as well as widening the scope of admissibility of accounting records.

Under this act the following are examples of documents that have been held to be admissible as evidence: hospital records showing the treatment given to a patient (*Lopor v. Morrison*, 23 Cal. 2d 600; *Carney v. R.K.O. Radio Pictures, Inc.*, 78 Cal. App. 2d 659); an affidavit of service of a notice signed by a process server in the presence of an attorney and placed in his files but not notarized, the process server having died before the trial, (*DeHart v. Allen*, 26 Cal. 2d 829); a superintendent's book showing hours worked, materials used and their cost (*Arques v. National Superior Co.*, 67 Cal. App. 2d 763); a disability discharge from the Naval Reserve (*Gunter v. Claggett*, 65 Cal. App. 2d 636); to prove the amount of oil produced on leased premises: a pumper's daily gauge reports, his record book of oil sold, and crude oil invoices of purchasers stating the amount of oil received (*Doyle v. Chief Oil Co.*, 64 Cal. App. 2d 284); laundry delivery tickets (*Oakland California Towel Co. v. Zanes*, 81 A.C.A. 399); business machine billing sheets (*Thompson v. Machado*, 78 Cal. App. 2d 870); a time card to show that a witness was at work and not at a dinner party at the time in question (*People v. Richardson*, 74 Cal. App. 2d 528) and a statement showing an itemized account of aid furnished indigents by a county (*Brown v. Los Angeles County*, 77 Cal. App. 2d 814.)

It appears that the canning tomato inspection certificates would be admissible in evidence under this recent legislation. However, the matter of their admissibility is to a great extent within the discretion of the trial court and such court's discretion will not be disturbed on appeal in the absence of an abuse of such discretion. (See: *Ducat v. Goldner*, 77 Cal. App. 2d 332).

Even under this statute a foundation must be laid for the introduction of the certificate. "The custodian or other qualified witness" must testify "to its identity and the mode of its preparation." (*Lushbringer v. Moore*, 31 A.C. 501, 513).

Apparently it would not be necessary to call the inspector as a witness. Someone else from the State bureau administering the law pursuant to which the inspection was made who had knowledge of the general procedure followed in making the inspections and who was familiar with the certificate forms used by the inspectors and the manner the same were usually filled out would be qualified to testify to these facts and then identify the particular inspection certificate as one of the forms so used and further identify the handwriting and any signature, initials or other identifying mark of the inspector who filled out the certificate. (*Loper v. Morrison*, 23 Cal. 2d 600; *Doyle v. Chief Oil Co.*, 64 Cal. App. 2d 284).

Whether or not any particular trial court would admit the certificate in evidence we cannot predict. The matters in controversy, the availability of the inspector to testify in person, and many other factors might influence the judge's decision. As we have said, the trial court has a great degree of latitude in deciding upon the admissibility of such evidence.

The matter could be made more certain by the adoption of appropriate legislation expressly providing for the admission of the certificates as prima facie evidence of the information required to be placed thereon.

In any event, the certificates after their admission in evidence would be subject to rebuttal by other evidence of a contrary nature and it is impossible to forecast what weight would be given to a certificate in any particular case by any particular trial court.

So, we conclude that the certificates in question are admissible in evidence in a trial court or administrative hearing as prima facie evidence of the facts required by section 762.5 of the Agricultural Code to be included in such certificate "if in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission." (C.C.P. 1933e) However, if legislation were adopted to accomplish this result with respect to this particular type of certificate, certain doubts that will be present each time the certificate is offered to a trial court as evidence will be eliminated.

EXHIBIT III

Extract from 21 California Attorney General's Opinions 171-172 (1953)
Opinion No. 52-84—April 24, 1953

SUBJECT: EGGS in possession of a dealer who sells eggs in the shell, and who also has a breaking plant, are not subject to rejection where they contain any inedible eggs (less than five per cent) where such eggs are to be used for "breaking out" purposes.

Requested by: DIRECTOR OF AGRICULTURE.

Opinion by: EDMUND G. BROWN, Attorney General.
W. R. Augustine, Deputy.

The Director of Agriculture has asked to be advised whether eggs in possession of a dealer who sells eggs in the shell, and who also has a breaking plant, are subject to rejection if they contain any inedible eggs (less than five per cent) and are to be used for breaking out purposes.

Our conclusion is that such eggs are not subject to rejection.

ANALYSIS

The principal provisions of the Agricultural Code which are applicable to this situation are the following:

"1101. (g) 'Eggs' mean eggs in the shell from chickens, turkeys, ducks, geese, or any other species of fowl."

"1101.1 (g) 'Dealer' means any person who contracts for or obtains from the producer thereof or any other dealer, possession or control of any eggs, for the purpose of sale to another dealer or retailer."

"1103. It is unlawful to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, or sell in bulk or in containers or subcontainers eggs:

"(d) That are or contain inedibles and which are not denatured, provided that not to exceed 5 per cent by count of inedibles shall be permitted when eggs are going to a dealer for candling and grading."

"1105. It shall be presumed from the fact of possession by any person, firm or corporation engaged in the sale of eggs that such eggs are for sale."

In addition to the foregoing provisions, Sections 1142, 1142.1 and 1142.2, among others, were added to the Code in 1951 (Stats. 1951, Chap. 1532, Sec. 4). Section 1142.2 provides for egg breaking establishments and sets forth certain standards and regulatory provisions relating to such establishments. Sections 1142 and 1142.1 require persons engaged in egg breaking to be licensed by the State Department of Public Health.

There is nothing in the Code which would prohibit a dealer as defined in Section 1101.1 from also operating an egg breaking establishment. It is true that Section 1105 provides that "It shall be presumed from the fact of possession by any person, firm or corporation engaged in the sale of eggs that such eggs are for sale." However, that section must be read in connection with Sections 1142, 1142.1 and 1142.2 above mentioned which clearly contemplate that a person, firm or corporation would have in its possession eggs for breaking out purposes and which therefor obviously would not be for sale as eggs. The presumption contained in Section 1105 must be held to be a rebuttable one. In our opinion, that presumption would be rebutted by a showing that the dealer was licensed to operate an egg breaking establishment and that the eggs, or a certain lot of eggs in his possession were, in fact, not for sale as eggs but were intended for breaking out purposes in the egg breaking establishment.

Answering your specific question, it is our view that eggs in possession of a dealer who sells eggs in the shell, and who also has a breaking plant, are not subject to rejection where they contain any inedible eggs (less than five per cent) where such eggs are to be used for "breaking out" purposes.

EXHIBIT IV

Extract from 17 California Attorney General's Opinions 154-156 (1951)

Opinion No. 51-73—April 20, 1951

SUBJECT: FRUITS, NUTS, VEGETABLES: Mere possession of, in bulk or in containers not conforming to requirements of Agricultural Code is not violation of sections 784 or 785 of said code, but such possession may shift burden of proof to possessor to establish that possession is not for purposes forbidden by those sections.

Requested by: ASSEMBLYMAN, 73rd DISTRICT.

Opinion by: EDMUND G. BROWN, Attorney General
W. R. Augustine, Deputy.

Hon. L. Stewart Hinckley, Member of the Assembly from the Seventy-third District, has asked us to review sections 784 and 785 of the Agricultural Code. In this connection he has asked whether the mere possession of fruits, nuts or vegetables packed in violation of the code constitutes a violation of said sections, or either of them.

Our conclusion is that mere possession standing alone does not constitute a violation of either section 784 or section 785 of the Agricultural Code. However, those sections must be read in connection with other sections of the code and particularly section 830 in order to determine whether and under what circumstances a violation of section 784 or 785 occurs.

ANALYSIS

Section 784 of the Agricultural Code reads as follows:

"It is unlawful to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, cause to be transported or sell any fruits, nuts or vegetables in bulk or in any container or subcontainer unless such fruits, nuts and vegetables, and their containers, conform to the provisions of this chapter."

Section 784.1 makes it unlawful to prepare, pack, deliver for shipment, etc. "a deceptive pack . . . of fresh or dried fruits, nuts, or vegetables."

The sections immediately following prohibit mislabeling, the making of false, deceptive or misleading statements or representations, moving fruits, etc. with a warning tag or notice affixed except under written permit, etc.

Section 785 provides in subdivision (a) thereof that:

"Any fruits, nuts or vegetables, packed, stored, delivered for shipment, loaded, shipped, or being transported or sold in violation of this chapter, together with their containers, are a public nuisance and shall be held by the person in whose possession they may be and shall not be moved from the place where they may be, except upon the written permission or upon the specific direction of an enforcing officer."

Subdivision (b) provides for a warning tag to be affixed to such nuisance; notice to the packer, owner, or any person in possession of such fruits, nuts or vegetables to recondition or remark the same. Upon failure to do so within twenty-four hours, the enforcing officer may seize and dispose of all such non-complying fruits, nuts or vegetables.

Subdivision (c) provides for condemnation and destruction or conditional release of such non-complying fruits, nuts or vegetables.

Subdivision (d) relates to the jurisdiction of various courts in actions arising under said section 785 and subdivision (e) provides that it is unlawful to fail to comply with the directions of any officer relating to the disposition of such fruits, nuts or vegetables or with any order of court respecting the same.

Nothing in either section 784 or 785 makes mere possession, as such, a violation of the code. The latter section merely sets forth the condition under which non-complying fruits, nuts or vegetables with their containers shall constitute a public nuisance and the procedure for abating the same.

Under sections 784 to 784.9 possession as such is not made unlawful. However, if the person in possession of fruits, nuts or vegetables and their containers which do not conform to the provisions of the Chapter (Chap. 2, Div. 5), prepared, packed, placed, delivered for shipment or did any of the other things set forth in those sections, such action would be unlawful. In other words, it would be the doing of the things forbidden by those sections and not the mere possession which would be unlawful.

That mere possession as such was not intended to be unlawful would appear to be evident from the provisions of section 830 of the Code. That section provides as follows:

"Fruits, nuts, and vegetables, of the kinds specified in this chapter, if not wrapped or packed, are exempt from the standards established in this chapter when being transported or delivered to the destinations and for the purposes herein set forth, or when prepared, loaded, shipped, or sold under the following conditions:

(a) From a packing plant which has not proper or adequate facilities for processing, grading, packing, or reconditioning, to another packing plant within the State which has such facilities;

(b) To a by-product plant within the State for commercial processing, preserving, or manufacture of by-products for resale; provided, that dates are not exempt from the standards established by Section 798 of this code, except when being transported or delivered (a) to a distillery for the manufacture of brandy or alcohol; or (b) to any person for the production of any product which is not for human consumption;

(c) To a feed yard within the State for livestock feeding purposes;

(d) To a dumping ground or waste disposal plant within the State for disposal;

(e) From the orchard or field where they were produced to a packing plant within the State for first processing, grading, or packing."

The sections immediately following section 830 provide for a warning notice, disposal order, transportation permits, etc. It is self-evident that possession of non-complying fruits, nuts and vegetables for the purposes of section 830 and in accordance with that section and the sections immediately following would not be unlawful.

However, as already indicated, while the mere possession of non-conforming fruits, nuts and vegetables would not constitute a violation of section 784, the doing of any of the things forbidden by that section would be unlawful unless they fall within the exemption set forth in section 830.

In this connection we should perhaps also call attention to section 18 of the Agricultural Code which provides that:

"In all matters arising under this code, the fact of possession by the person engaged in the sale of a commodity is prima facie evidence that such commodity is for sale."

The effect of this section would be to shift to the person in possession the burden of proving that the possession was for a lawful purpose and that the possession of non-complying fruits, nuts or vegetables was not for purposes of sale.