

10/26/67

Memorandum 67-68

Subject: Annual Report (December 1967)

Attached hereto (pink) is the Annual Report. Most of the Annual Report was approved at previous meetings of the Commission.

The type used to print the previous Annual Report was saved and used to the extent possible in the attached Annual Report. Hence, we will need to revise the inside front cover, the letter of transmittal, and the portion on "Personnel of the Commission" (page 1310) to reflect the current officers and members of the Commission as of December 31, 1967. We assume that the new officers will be elected at the November meeting as has been our past practice so that the new officers may be listed in the Annual Report which must be approved for printing before the December meeting so that the Annual Report and the recommendations contained therein will be available for the background hearings on our program and recommendations which will be held during the first portion of January 1968. All of these technical changes and the other revisions indicated in the attached report will be made before the report is printed.

The following portions of the report have not yet been approved:

1. Studies for future consideration (page 1325). The request for authority to make a supplemental study on arbitration has not previously been considered by the Commission. Commissioner Stanton suggested that this topic be added to our agenda. The staff believes that it would be a good topic to add to our agenda and that we need additional topics that are relatively narrow in scope (as this one is) if we are to have a significant legislative program during the years we are devoting our attention primarily to condemnation law and inverse condemnation law.

We suggest that the request for authority to study this topic be included in a separate resolution since the request will no doubt cause the resolution to be referred to the fiscal committees in the Senate and Assembly. In this connection, it would be desirable for the Commission to consider the fiscal implications of this request. We estimate that we could obtain the necessary study for \$1,000, whether it is prepared by the staff (which we assume will be the case) or by an outside consultant. It is possible that we can interest a law review in preparing a student note on the problem and thus perhaps avoid the expense of having the study prepared by the staff or an outside consultant. We have suggested to the Hastings Law Journal that this would be a suitable topic for law review consideration. In any event, the approval of the resolution would not require any increase in the appropriation to the Commission.

2. Report on Statutes Repealed by Implication or Held Unconstitutional (page 1327). Attached as Exhibit I (green) and Exhibit II (yellow) are the two cases referred to in this portion of the report.

We have included reference to the United States Supreme Court case holding Proposition 13 unconstitutional. You will recall that we did not report the California Supreme Court case on Proposition 13 in the last Annual Report because it was anticipated that the matter would be reviewed by the United States Supreme Court.

By a strict construction of Section 10331, the Commission is not required to include cases holding provisions of the Constitution (as distinguished from statutes) unconstitutional. This construction would appear, however, to be contrary to the legislative purpose of the section

which is clearly designed to provide a means whereby the Legislature is advised of such cases. This matter should be considered and determined by the Commission.

The Recommendations on page 1328 will be revised, if necessary, in light of the Commission's decision on the Proposition 14 case.

3. Tentative date for submission of recommendation on inverse condemnation. The Annual Report as previously approved reported on page 1313 that the Commission tentatively plans to submit a recommendation on inverse condemnation to the 1969 Legislature. We have changed this to the 1970 Legislature. It is now obvious that it would not be possible to submit a recommendation on this subject in 1969.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

COVER  
STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**Annual Report**

**December 1967**

**CALIFORNIA LAW REVISION COMMISSION  
School of Law  
Stanford University  
Stanford, California 94305**

INSIDE FRONT COVER  
(WILL REVISE TO REFLECT OFFICERS, MEMBERS, AND STAFF AS  
OF DECEMBER 31, 1967)  
**THE CALIFORNIA LAW REVISION COMMISSION**

**COMMISSION MEMBERS**

<b>RICHARD H. KEATINGE</b> <i>Chairman</i>	<b>JAMES R. EDWARDS</b> <i>Member</i>
<b>SHO SATO</b> <i>Vice Chairman</i>	<b>JOHN R. McDONOUGH</b> <i>Member</i>
<b>JAMES A. COBEY</b> <i>Member of the Senate</i>	<b>HERMAN F. SELVIN</b> <i>Member</i>
<b>ALFRED H. SONG</b> <i>Member of the Assembly</i>	<b>THOMAS E. STANTON, JR.</b> <i>Member</i>
<b>JOSEPH A. BALL</b> <i>Member</i>	<b>GEORGE H. MURPHY</b> <i>Ex Officio</i>

**COMMISSION STAFF**

<b>Legal</b>	<b>Administrative-Secretarial</b>
<b>JOHN H. DEMOULLY</b> <i>Executive Secretary</i>	<b>ANNE SCHMIDT-WEYLAND</b> <i>Administrative Assistant</i>
<b>JOSEPH B. HARVEY</b> <i>Assistant Executive Secretary</i>	<b>LINDA E. BERRY</b> <i>Supervising Secretary</i>
<b>CLARENCE B. TAYLOR</b> <i>Special Condemnation Counsel</i>	<b>VIOLET S. HARJU</b> <i>Secretary</i>
<b>JOHN L. REEVE</b> <i>Junior Counsel</i>	

**NOTE**

This pamphlet begins on page 1301. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 8 of the Commission's **REPORTS, RECOMMENDATIONS, AND STUDIES**.

CALIFORNIA LAW REVISION COMMISSION

SCHOOL OF LAW  
STANFORD UNIVERSITY  
STANFORD, CALIFORNIA 94305



RICHARD H. KEATINGE  
Chairman  
AND ELTO  
Vice Chairman  
SEYMOUR JAMES A. COHEN  
ABRAHAM ALFRED H. BOND  
JOSEPH A. BAILL  
JAMES E. EDWARDS  
JOHN E. ANDERSON  
WILLIAM F. BRYAN  
THOMAS E. STANTON, Jr.  
GEORGE H. HARRIS  
Of Counsel

LETTERHEAD AS OF DECEMBER 31, 1967, WILL  
BE USED

December 31, 1967

To HIS EXCELLENCY, RONALD REAGAN  
Governor of California and  
THE LEGISLATURE OF CALIFORNIA

In conformity with Government Code Section 10335, the California Law Revision Commission herewith submits this report of its activities during 1967.

Respectfully submitted,  
RICHARD H. KEATINGE  
Chairman

New Chairman will  
sign report

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# REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1967

## FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the Legislative Counsel who is ex officio a nonvoting member.<sup>1</sup>

The principal duties of the Law Revision Commission are to:

(1) Examine the common law and statutes of the State for the purpose of discovering defects and anachronisms therein.

(2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations, and other learned bodies, judges, public officials, lawyers, and the public generally.

(3) Recommend such changes in the law as it deems necessary to bring the law of this State into harmony with modern conditions.<sup>2</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.<sup>3</sup>

Each of the Commission's recommendations is based on a research study of the subject matter concerned. Many of these studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration.

The consultant submits a detailed research study that is given careful consideration by the Commission. After making its preliminary decisions on the subject, the Commission distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature, including a draft of any legislation necessary to effectuate its recommendation, is published in a printed pamphlet.<sup>4</sup> If the research study has not been previously published, it usually is published in the pamphlet containing the recommendation.

<sup>1</sup> See CAL. GOVT. CODE §§ 10300-10340.

<sup>2</sup> See CAL. GOVT. CODE § 10330. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States. CAL. GOVT. CODE § 10331.

<sup>3</sup> See CAL. GOVT. CODE § 10335.

<sup>4</sup> Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the State.<sup>5</sup> Thus, a large and representative number of interested persons are given an opportunity to study and comment upon the Commission's work before it is submitted to the Legislature. The annual reports and the recommendations and studies of the Commission are bound in a set of volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the State.

A total of 67 bills and two proposed constitutional amendments have been drafted by the Commission to effectuate its recommendations.<sup>6</sup> Forty-three of these bills were enacted at the first session to which they were presented; eleven bills were enacted at subsequent sessions or their substance was incorporated into other legislation that was enacted. Thus, of the 67 bills recommended, 54 eventually became law.<sup>7</sup>

<sup>5</sup> See CAL. GOV. CODE § 10323.

<sup>6</sup> The number of bills actually introduced was in excess of 67 since, in some cases, the substance of the same bill was introduced at a subsequent session and, in the case of the Evidence Code, the same bill was introduced in both the Senate and the Assembly.

<sup>7</sup> Cal. Stats. 1955, Ch. 739, p. 1400 and Ch. 877, p. 1494. (Revision of various sections of the Education Code relating to the Public School System.)

Cal. Stats. 1955, Ch. 1183, p. 2193. (Revision of Probate Code Sections 640 to 646—setting aside of estates.)

Cal. Stats. 1957, Ch. 102, p. 678. (Elimination of obsolete provisions in Penal Code Sections 1377 and 1378.)

Cal. Stats. 1957, Ch. 133, p. 732. (Maximum period of confinement in a county jail.)

Cal. Stats. 1957, Ch. 249, p. 992. (Judicial notice of the law of foreign countries.)

Cal. Stats. 1957, Ch. 456, p. 1308. (Recodification of Fish and Game Code.)

Cal. Stats. 1957, Ch. 490, p. 1520. (Rights of surviving spouse in property acquired by decedent while domiciled elsewhere.)

Cal. Stats. 1957, Ch. 540, p. 1589. (Notice of application for attorney's fees and costs in domestic relations actions.)

Cal. Stats. 1957, Ch. 1498, p. 2324. (Bringing new parties into civil actions.)

Cal. Stats. 1958, Ch. 122, p. 2705. (Doctrine of worthier title.)

Cal. Stats. 1959, Ch. 468, p. 2403. (Effective date of an order ruling on motion for new trial.)

Cal. Stats. 1959, Ch. 489, p. 2404. (Time within which motion for new trial may be made.)

Cal. Stats. 1959, Ch. 470, p. 2405. (Suspension of absolute power of alienation.)

Cal. Stats. 1959, Ch. 500, p. 2441. (Procedure for appointing guardians.)

Cal. Stats. 1959, Ch. 501, p. 2443. (Codification of laws relating to grand juries.)

Cal. Stats. 1959, Ch. 523, p. 2459. (Mortgages to secure future advances.)

Cal. Stats. 1959, Ch. 1715, p. 4115 and Chs. 1724-1728, pp. 4133-4156. (Presentation of claims against public entities.)

Cal. Stats. 1961, Ch. 401, p. 1546. (Arbitration.)

Cal. Stats. 1961, Ch. 589, p. 1733. (Rescission of contracts.)

Cal. Stats. 1961, Ch. 636, p. 1888. (Inter vivos marital property rights in property acquired while domiciled elsewhere.)

Cal. Stats. 1961, Ch. 657, p. 1857. (Survival of actions.)

Cal. Stats. 1961, Ch. 1612, p. 3439. (Tax apportionment in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1613, p. 3442. (Taking possession and passage of title in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1616, p. 3459. (Revision of Juvenile Court Law adopting the substance of two bills drafted by the Commission to effectuate its recommendations on this subject.)

Cal. Stats. 1963, Ch. 1631. (Sovereign immunity—tort liability of public entities and public employees.)

Cal. Stats. 1963, Ch. 1715. (Sovereign immunity—claims, actions and judgments against public entities and public employees.)

Cal. Stats. 1963, Ch. 1682. (Sovereign immunity)—insurance coverage for public entities and public employees.)

Cal. Stats. 1963, Ch. 1683. (Sovereign immunity—defense of public employees.)

Cal. Stats. 1963, Ch. 1684. (Sovereign immunity—workmen's compensation benefits for persons assisting law enforcement or fire control officers.)

Cal. Stats. 1963, Ch. 1685. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 1686. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 2029. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1965, Ch. 299. (Evidence Code.)

One of the proposed constitutional amendments was approved and ratified by the people; \* the other was not approved by the Legislature.

Commission recommendations have resulted in the enactment of legislation affecting 1,855 sections of the California statutes: 943 sections have been added, 427 sections amended, and 485 sections repealed.

Cal. Stats. 1965, Ch. 653. (Sovereign immunity—claims and actions against public entities and public employees.)

Cal. Stats. 1965, Ch. 1151. (Evidence in eminent domain proceedings.)

Cal. Stats. 1965, Ch. 1527. (Sovereign immunity—liability of public entities for ownership and operation of motor vehicles.)

Cal. Stats. 1965, Chs. 1649, 1650. (Reimbursement for moving expenses.)

Cal. Stats. 1967, Ch. 52. (Additur.)

Cal. Stats. 1967, Ch. 262. (Evidence Code—Agricultural Code revisions.)

Cal. Stats. 1967, Ch. 850. (Evidence Code—Evidence Code revisions.)

Cal. Stats. 1967, Ch. 702. (Vehicle Code Section 17150 and related sections.)

Cal. Stats. 1967, Ch. 703. (Evidence Code—Commercial Code revisions.)

Cal. Stats. 1967, Ch. 1164. (Exchange of valuation data in eminent domain proceedings.)

Cal. Stats. 1967, Ch. 1524. (Suit by or against an unincorporated association.)

\* CAL. CONST., Art. XI, § 10 (1960). (Power of Legislature to prescribe procedures governing claims against chartered cities and counties and employees thereof.)

## PERSONNEL OF COMMISSION

As of December 31, 1967, the membership of the Law Revision Commission is:

	Term expires
Richard H. Keatinge, Los Angeles, <i>Chairman</i> .....	October 1, 1967
Sho Sato, Berkeley, <i>Vice Chairman</i> .....	October 1, 1969
Hon. James A. Cobey, Merced, <i>Senate Member</i> .....	•
Hon. Alfred H. Song, Monterey Park, <i>Assembly Member</i> .....	•
Joseph A. Ball, Long Beach, <i>Member</i> .....	October 1, 1969
James R. Edwards, San Bernardino, <i>Member</i> .....	October 1, 1967
John R. McDonough, Stanford, <i>Member</i> .....	October 1, 1967
Herman F. Selvin, Los Angeles, <i>Member</i> .....	October 1, 1967
Thomas E. Stanton, Jr., San Francisco, <i>Member</i> .....	October 1, 1969
George H. Murphy, Sacramento, <i>ex officio Member</i> .....	†

In June 1967, Mr. Gordon E. McClintock was appointed to the Commission's staff as Student Legal Assistant.

In July 1967, Mr. Clarence B. Taylor, previously on the Commission's staff as Special Condemnation Counsel, was appointed Assistant Executive Secretary to fill the vacancy created when Mr. Joseph B. Harvey resigned to enter private law practice.

In September 1967, Mr. Ted W. Isles was appointed to the Commission's staff as Senior Attorney.

• The legislative members of the Commission serve at the pleasure of the appointing power.

† The Legislative Counsel is *ex officio* a nonvoting member of the Commission.

NOTE: Will list current officers and members of Commission as of December 31, 1967, will report appointments of new commissioners, and will report election of new officers of Commission.

## SUMMARY OF WORK OF COMMISSION

During the past year, the Law Revision Commission was engaged in three principal tasks:

- (1) Presentation of its legislative program to the Legislature.<sup>1</sup>
- (2) Work on various assignments given to the Commission by the Legislature.<sup>2</sup>
- (3) A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the State have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed.<sup>3</sup>

The Commission held four one-day meetings, five two-day meetings, and one three-day meeting in 1967.

<sup>1</sup> See pages 90-91, *infra*.

<sup>2</sup> See page 92, *infra*.

<sup>3</sup> See page 93, *infra*.

} will revise if necessary

## 1968 LEGISLATIVE PROGRAM

The Commission plans to submit five recommendations to the 1968 Legislature:

- (1) *Recommendation Relating to Escheat* (September 1967), reprinted in 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967).
- (2) *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*. See Appendix XI to this Report.
- (3) *Recommendation Relating to Improvements Made in Good Faith Upon Land Owned by Another*. See Appendix XII to this Report.
- (4) *Recommendation Relating to Damages for Personal Injuries to a Married Person as Separate or Community Property*. See Appendix XIII to this Report.
- (5) *Recommendation Relating to Service of Process on Unincorporated Associations*. See Appendix XIV to this Report.

The Commission also recommends that three studies be dropped from its calendar of topics. (See page 1324, *infra*) and that it be authorized to study one additional topic (See page 1325, *infra*).

## MAJOR STUDIES IN PROGRESS

### INVERSE CONDEMNATION

Resolution Chapter 130 of the Statutes of 1965 directed the Commission to study "whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised, including but not limited to the liability for inverse condemnation resulting from flood control projects." The Commission intends to devote a substantial portion of its time during the next two years to the study of inverse condemnation and tentatively plans to submit a recommendation on this subject to the 1970 Legislature.

Professor Arvo Van Alstyne of the College of Law, University of Utah, has been retained as the Commission's research consultant on this topic. One portion of his research study has been completed and published. See Van Alstyne, *Statutory Modification of Inverse Condemnation: The Scope of Legislative Power*, 19 STAN. L. REV. 727 (1967). ~~The remainder of the research study is available in mimeographed form, and arrangements are being made for its publication in a law review.~~

The Commission began its consideration of the research study at its November 1967 meeting.

A substantial portion of the

} will revise if necessary

### CONDEMNATION LAW AND PROCEDURE

The Commission is now engaged in the study of condemnation law and procedure and tentatively plans to submit a recommendation for a comprehensive statute on this subject to the 1972 Legislature.

As it did in connection with the Evidence Code study, the Commission will publish a series of reports containing tentative recommendations and research studies covering various aspects of condemnation law and procedure. The comments and criticisms received from interested persons and organizations on these tentative recommendations will be considered before the comprehensive statute is drafted. The first report in this series has been published. See *Tentative Recommendation and a Study Relating to Condemnation Law and Procedure: Number 1—Possession Prior to Final Judgment and Related Problems*, 8 CAL. L. REVISION COMM'N REPORTS 1101 (1967). The second research study in this series, dealing with the right to take, is available in mimeographed form and arrangements are being made for its publication in a law review. The Commission's staff has begun work on the third study which will deal with compensation and the measure of damages. The Commission also has retained Professor Douglas Ayer of the Stanford Law School to prepare a research study on the procedural aspects of condemnation.

Prior to 1972, the Commission will submit recommendations concerning eminent domain problems that appear to be in need of immediate attention. The Commission submitted the first such recommenda-

tion, relating to the exchange of valuation data, to the 1967 Legislature,<sup>1</sup> and will submit a recommendation to the 1968 Legislature relating to the recovery of the condemnee's expenses on abandonment of an eminent domain proceeding.<sup>2</sup>

### EVIDENCE

The Evidence Code was enacted in 1965 upon recommendation of the Commission. Resolution Chapter 130 of the Statutes of 1965 directs the Commission to continue its study of the Evidence Code. Pursuant to this directive, the Commission has undertaken two projects.

The first is a continuing study to determine whether any substantive, technical, or clarifying changes are needed in the Evidence Code. In this connection, the Commission is continuously reviewing texts, law review articles, and communications from judges, lawyers, and others concerning the Evidence Code. As a result of this review, the Commission recommended to the 1967 Legislature that various changes be made in the Evidence Code.<sup>3</sup>

The second project is a study of the other California codes to determine what changes, if any, are needed in view of the enactment of the Evidence Code.<sup>4</sup> The Commission submitted recommendations relating to the Agricultural Code<sup>5</sup> and the Commercial Code<sup>6</sup> to the 1967 legislative session. Mr. Jon D. Smock, a former member of the Commission's legal staff and now a member of the staff of the Judicial Council, has been retained as a research consultant to prepare research studies on the changes needed in the evidence provisions contained in the Business and Professions Code and the Code of Civil Procedure. To the extent that its work schedule permits, the Commission will submit recommendations relating to these and additional codes to future sessions of the Legislature.

<sup>1</sup>See *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967). For a legislative history of this recommendation, see page 66, *infra*. See also Cal. Stats. 1967, Ch. 1104.

<sup>2</sup>See *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, Appendix XI of this Report.

<sup>3</sup>See *Recommendation Relating to the Evidence Code: Number 1—Evidence Code Revisions* (October 1966). For a legislative history of this recommendation, see page 66, *infra*. See also Cal. Stats. 1967, Ch. 650.

Since the publication of its recommendations to the 1967 Legislature, the Commission has reviewed the following: Kongsgaard, *Judicial Notice and the California Evidence Code*, 18 HASTINGS L.J. 117 (1966); McDonough, *The California Evidence Code: A Précis*, 18 HASTINGS L.J. 89 (1966); Miller, *Beyond the Law of Evidence*, 40 SO. CAL. L. REV. 1 (1967); Molinari, *The Presumption Takes on a New Look in California*, 2 LINCOLN L. REV. 101 (1967); Notes, 18 HASTINGS L.J. at 188, 210, and 222 (1966), at 677 (1967). The Commission has also considered letters from judges and attorneys.

<sup>4</sup>Concerning this project, see Molinari, *The Presumption Takes on a New Look in California*, 2 LINCOLN L. REV. 101, 109-110 (1967).

<sup>5</sup>See *Recommendation Relating to the Evidence Code: Number 2—Agricultural Code Revisions* (October 1966). For a legislative history of this recommendation, see page 66, *infra*. See also Cal. Stats. 1967, Ch. 262.

<sup>6</sup>See *Recommendation Relating to the Evidence Code: Number 3—Commercial Code Revisions* (October 1966). For a legislative history of this recommendation, see page 66, *infra*. See also Cal. Stats. 1967, Ch. 703.

1315,

1316,

1316,



## LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1967 LEGISLATIVE SESSION

Eleven bills and one concurrent resolution were introduced to effectuate the Commission's recommendations to the 1967 session of the Legislature. Seven of the bills passed the Legislature and were approved by the Governor. The concurrent resolution was adopted.

With respect to each bill, at least one special report was adopted by a legislative committee that considered the bill. Each report, which was printed in the legislative journal, accomplished three things: First, it declared that the Committee presented the report to indicate more fully its intent with respect to the particular bill; second, it stated that the comments under the various sections of the bill contained in the Commission's recommendation reflected the intent of the Committee in approving the bill except to the extent that new or revised comments were set out in the Committee report itself; third, the report set out one or more new or revised comments to various sections of the bill in its amended form, stating that such comments also reflected the intent of the Committee in approving the bill. The reports relating to the bills that were enacted are included in the appendices to this Report. The following legislative history also includes a reference to the report or reports that relate to each bill.

### RECOMMENDATIONS ENACTED

#### *Resolution Approving Topics for Study*

Senate Concurrent Resolution No. 13, introduced by Senator Clark L. Bradley and adopted as Resolution Chapter 81 of the Statutes of 1967, authorizes the Commission to continue its study of topics previously authorized for study and to drop from its calendar one topic (right to support after an ex parte divorce) on which the Commission had concluded no additional legislation was needed.

#### *Evidence Code*

The Commission submitted three recommendations relating to the Evidence Code. One recommendation related to revisions of the Evidence Code itself; the others related to revisions of evidence provisions in other codes.

*Evidence Code revisions.* Senate Bill No. 247, which in amended form became Chapter 650 of the Statutes of 1967, was introduced by Senator Bradley to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to the Evidence Code: Number 1—Evidence Code Revisions*, 8 CAL. L. REVISION COMM'N REPORTS 101 (1967); *Report of the Senate Committee on Judiciary on Senate Bill No. 247*, SENATE J. (Mar. 30, 1967) at 789, reprinted as Appendix II to this Report.

The following significant amendments were made to Senate Bill No. 247:

(1) Proposed Evidence Code Section 646, relating to *res ipsa loquitur*, was deleted. It was not possible to achieve agreement as to the language that should be used to state the presumptive effect of *res ipsa loquitur*. Accordingly, the matter was left to court determination in accordance with the general guidelines already in the code.

(2) Proposed Public Resources Code Section 2325 was deleted as unnecessary. See the revised comment to Evidence Code Section 1602 (repealed), printed in the Senate Journal for March 30, 1967, and reprinted in Appendix II to this Report.

*Agricultural Code revisions.* Senate Bill No. 248, which in amended form became Chapter 262 of the Statutes of 1967, was introduced by Senator Bradley to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to the Evidence Code: Number 2—Agricultural Code Revisions*, 8 CAL. L. REVISION COMM'N REPORTS 201 (1967).

A new Agricultural Code was enacted as Chapter 15 of the Statutes of 1967. Senate Bill No. 248, which as introduced had been drafted to amend or repeal provisions of the existing Agricultural Code, was therefore amended to make the same changes in the new code. The Senate Committee on Judiciary adopted a report containing a comment to each section of the amended bill. See *Report of Senate Committee on Judiciary on Senate Bill No. 248*, SENATE J. (Mar. 30, 1967) at 785-789, reprinted as Appendix III to this Report.

*Commercial Code revisions.* Senate Bill No. 249, which in amended form became Chapter 703 of the Statutes of 1967, was introduced by Senators Bradley and Song to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to the Evidence Code: Number 3—Commercial Code Revisions*, 8 CAL. L. REVISION COMM'N REPORTS 301 (1967).

The following significant amendments were made to Senate Bill No. 249:

(1) Section 1202 of the Commercial Code, as amended in the bill as introduced, was further amended as follows: In subdivision (1), the phrase "document in due form purporting to be" was deleted. In paragraph (a) of subdivision (2), the phrase "A document in due form purporting to be the document referred to in subdivision (1)" was substituted for the words "The document." In paragraph (b), the phrase "Unless the contract otherwise provides" was deleted as unnecessary in view of Commercial Code Section 1102(3).

(2) Section 1209 of the Commercial Code, as added by the bill as introduced, was renumbered as Section 1210 and the reference to Section 4103 was deleted from renumbered Section 1210.

(3) Section 4103 of the Commercial Code was deleted from the bill because the Commission concluded that this section needed further study.

The Senate Committee on Judiciary adopted a report containing a comment for new Section 1210 of the Commercial Code. See *Report of*

*Senate Committee on Judiciary on Senate Bill No. 249, SENATE J. (May 22, 1967) at 1997, reprinted as Appendix IV to this Report.*

#### *Additur*

Senate Bill No. 250, which in amended form became Chapter 72 of the Statutes of 1967, was introduced by Senators Bradley and Song and Assemblyman Burton to effectuate the recommendation of the Commission on this subject. See *Recommendation and Study Relating to Additur*, 8 CAL. L. REVISION COMM'N REPORTS 601 (1967).

The following significant amendments were made to Senate Bill No. 250:

(1) Code of Civil Procedure Section 657 was amended to substitute "insufficiency of the evidence to" or comparable language for "the evidence does not" or comparable language in various places in the section. This amendment was made at the suggestion of the State Bar on the ground that the meaning of the existing language, which the amendment restored, has been settled by judicial decision.

(2) Code of Civil Procedure Section 662.5 was amended as follows: The phrase "and specifies in its order" was inserted in subdivisions (a) and (c). The phrase "grant a motion for" was substituted for the word "order" and the phrase "its order granting a new trial" was substituted for the phrase "such order" in subdivision (c). All of these amendments were intended to make the language clearer rather than to change it in substance.

The Senate Committee on Judiciary adopted a report containing a revised comment to Section 657. See *Report of Senate Committee on Judiciary on Senate Bill No. 250, SENATE J. (Mar. 16, 1967) at 678-679, reprinted as Appendix V to this Report.*

#### *Vehicle Code Section 17150 and Related Sections*

Senate Bill No. 244, which in amended form became Chapter 702 of the Statutes of 1967, was introduced by Senators Bradley and Song and Assemblyman Bear to effectuate the recommendation of the Commission on this subject. See *Recommendation and Study Relating to Vehicle Code Section 17150 and Related Sections*, 8 CAL. L. REVISION COMM'N REPORTS 501 (1967); *Report of Senate Committee on Judiciary on Senate Bill No. 244, SENATE J. (Apr. 21, 1967) at 1267-1268, reprinted as Appendix I to this Report.*

The bill was amended to delete the proposed provisions relating to contribution because the State Bar reported that it was making a comprehensive study of contribution and opposed the enactment of special contribution statutes before the comprehensive study is completed. Subdivision (b), relating to liability for punitive damages, was added to Vehicle Code Sections 17151 and 17709. Other technical amendments were made.

#### *Suit By or Against An Unincorporated Association*

Senate Bill No. 251, which in amended form became Chapter 1324 of the Statutes of 1967, was introduced by Senators Bradley and Song to effectuate the recommendation of the Commission on this subject. See *Recommendation and Study Relating to Suit By or Against An Unin-*

*corporated Association*, 8 CAL. L. REVISION COMM'N REPORTS 901 (1967); *Report of Senate Committee on Judiciary on Senate Bill No. 251*, SENATE J. (Apr. 21, 1967) at 1269-1270, portion reprinted as Appendix VI to this Report; *Report of Assembly Committee on Judiciary on Senate Bill No. 251*, ASSEMBLY J. (July 6, 1967) at 4997-4998, portion reprinted as Appendix VII to this Report.

The bill was substantially amended in the Senate and in the Assembly. The text of the bill as enacted, together with the official comment to each section of the bill, is set out as Appendix VIII to this Report. Most of the amendments were technical or clarifying; the following are the principal substantive amendments:

(1) Subdivision 2.1 of Section 411 was amended to permit service on any member of the unincorporated association if no person has been designated agent for service of process by the association or if the person so designated cannot be found. The Commission intends to submit a recommendation to the 1968 Legislature that this rule be modified. See Appendix XIV to this Report.

(2) Section 15700 of the Corporations Code, which was not affected by the bill as introduced, was amended to conform to the other provisions of the bill and to make other revisions.

(3) The provisions relating to filing a designation of agent for service of process or designation of principal office were substantially revised to permit use of automatic data processing equipment and to make other revisions.

#### *Discovery in Eminent Domain Proceedings*

Senate Bill No. 253, which in amended form became Chapter 1104 of the Statutes of 1967, was introduced by Senators Bradley and Song to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967); *Report of Assembly Committee on Judiciary on Senate Bill No. 253*, ASSEMBLY J. (June 28, 1967) at 4717-4720, portion reprinted as Appendix IX to this Report.

The bill was amended in the Senate and in the Assembly. The text of the bill as enacted, together with a comment to each section of the bill, is set out in Appendix X of this Report. Most of the amendments were technical or clarifying; the following are the principal substantive amendments:

(1) Subdivision (e) of Section 1272.01, relating to rules of the Judicial Council, was deleted.

(2) The bill was made inapplicable to any eminent domain case in Los Angeles County in which a pretrial conference is held.

### RECOMMENDATIONS NOT ENACTED

#### *Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property*

Senate Bill No. 245 was introduced by Senators Bradley and Song and Senate Bill No. 246, a companion bill, was introduced by Senator Bradley to effectuate the recommendation of the Commission on this subject. See *Recommendation and Study Relating to Whether Damages*

*for Personal Injury to a Married Person Should Be Separate or Community Property*, 8 CAL. L. REVISION COMM'N REPORTS 401 (1967); *Report of Senate Committee on Judiciary on Senate Bill No. 245 and Senate Bill No. 246*, SENATE J. (Apr. 21, 1967) at 1268-1269. Neither bill was enacted. Both bills passed the Senate, Senate Bill No. 245 in amended form and Senate Bill No. 246 as introduced. Senate Bill No. 245 was defeated on the Assembly floor and Senate Bill No. 246 was thereupon ordered to the Assembly inactive file. The Commission has reviewed this recommendation and will submit a revised recommendation to the 1968 Legislature. See Appendix XIII to this Report.

*The Good Faith Improver of Land Owned By Another*

Senate Bill No. 254 was introduced by Senator Bradley to effectuate the recommendation of the Commission on this subject. See *Recommendation and Study Relating to the Good Faith Improver of Land Owned by Another*, 8 CAL. L. REVISION COMM'N REPORTS 801 (1967); *Report of Senate Committee on Judiciary on Senate Bill No. 254*, SENATE J. (Mar. 16, 1967) at 679-680. The bill was not enacted. It passed the Senate in amended form, passed the Assembly, reconsideration was granted, and the bill was re-referred to the Assembly Committee on Judiciary and died in that Committee. The Commission has reviewed this recommendation and will submit a revised recommendation to the 1968 Legislature. See Appendix XII to this Report.

*Abandonment or Termination of a Lease*

Senate Bill No. 252 was introduced by Senators Bradley and Song to effectuate the recommendation of the Commission on this subject. See *Recommendation and Study Relating to Abandonment or Termination of a Lease*, 8 CAL. L. REVISION COMM'N REPORTS 701 (1967); *Report of Senate Committee on Judiciary on Senate Bill No. 252*, SENATE J. (Mar. 16, 1967) at 679. The bill was not enacted. It passed the Senate in amended form, was favorably reported by the Assembly Committee on Judiciary, but was moved to the inactive file in the Assembly after the Commission withdrew its recommendation that the bill be enacted because the Commission concluded that the proposal needed further study.

## CALENDAR OF TOPICS FOR STUDY

### STUDIES IN PROGRESS

The Commission has on its calendar of topics the topics listed below. Each of these topics has been authorized for Commission study by the Legislature.<sup>1</sup>

#### *Topics Under Active Consideration*

During the next year, the Commission plans to devote substantially all of its time to consideration of the following topics:

1. Whether the law and procedure relating to condemnation should be revised with a view to recommending a comprehensive statute that will safeguard the rights of all parties to such proceedings (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1956, Res. Ch. 42, p. 263; 4 CAL. L. REVISION COMM'N REPORTS at 115 (1963)).<sup>2</sup>
2. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).<sup>3</sup>

<sup>1</sup> Section 10335 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topic which the Legislature by concurrent resolution refers to it for such study.

The legislative directives to make these studies are listed after each topic.

<sup>2</sup> See *Recommendation and Study Relating to Evidence in Eminent Domain Proceedings; Recommendation and Study Relating to Taking Possession and Passage of Title in Eminent Domain Proceedings; Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property Is Acquired for Public Use*, 3 CAL. L. REVISION COMM'N REPORTS, Recommendations and Studies at A-1, B-1, and C-1 (1961). For a legislative history of these recommendations, see 3 CAL. L. REVISION COMM'N REPORTS 1-5 (1961). See also Cal. Stats. 1961, Ch. 1612 (tax apportionment) and Cal. Stats. 1961, Ch. 1613 (taking possession and passage of title). The substance of two of these recommendations was incorporated in legislation enacted in 1965, Cal. Stats. 1965, Ch. 1151, p. 2900 (evidence in eminent domain proceedings); Ch. 1649, p. 3744, and Ch. 1650, p. 3746 (reimbursement for moving expenses).

See also *Recommendation and Study Relating to Condemnation Law and Procedure: Number 4—Discovery in Eminent Domain Proceedings*, 4 CAL. L. REVISION COMM'N REPORTS 701 (1963). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 213 (1963). See also *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 66 (1967). See also Cal. Stats. 1967, Ch. 1104 (exchange of valuation data).

See also *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 CAL. L. REVISION COMM'N REPORTS 66 (1967).

The Commission is now engaged in the study of this topic and tentatively plans to submit a recommendation for a comprehensive statute to the 1972 Legislature. See 8 CAL. L. REVISION COMM'N REPORTS 66 (1967).

<sup>3</sup> See *Recommendations Relating to Sovereign Immunity: Number 1—Port Liability of Public Entities and Public Employees; Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees; Number 3—Insurance Coverage for Public Entities and Public Employees; Number 4—Defense of Public Employees; Number 5—Liability of Public Entities for Ownership and Operation of Motor Vehicles; Number 6—Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers; Number 7—*

3. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised, including but not limited to the liability for inverse condemnation resulting from flood control projects (Cal. Stats. 1965, Res. Ch. 130, p. 5289).
4. Whether the Evidence Code should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289).<sup>4</sup>
5. Whether the law relating to the use of fictitious names should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 18 (1957)).
6. Whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).<sup>5</sup>

*Amendments and Repeals of Inconsistent Special Statutes*, 4 CAL. L. REVISION COMM'N REPORTS 801, 1001, 1201, 1301, 1401, 1501, and 1601 (1963). For a legislative history of these recommendations, see 4 CAL. L. REVISION COMM'N REPORTS 211-213 (1963). See also *A Study Relating to Sovereign Immunity*, 5 CAL. L. REVISION COMM'N REPORTS 1 (1963). See also Stats. 1963, Ch. 1681 (tort liability of public entities and public employees); Cal. Stats. 1963, Ch. 1715 (claims, actions and judgments against public entities and public employees); Cal. Stats. 1963, Ch. 1682 (insurance coverage for public entities and public employees); Cal. Stats. 1963, Ch. 1653 (defense of public employees); Cal. Stats. 1963, Ch. 1684 (workmen's compensation benefits for persons assisting law enforcement or fire control officers); Cal. Stats. 1963, Ch. 1685 (amendments and repeals of inconsistent special statutes); Cal. Stats. 1963, Ch. 1686 (amendments and repeals of inconsistent special statutes); Cal. Stats. 1963, Ch. 2023 (amendments and repeals of inconsistent special statutes).

See also *Recommendation Relating to Sovereign Immunity: Number 8—Revisions of the Governmental Liability Act*, 7 CAL. L. REVISION COMM'N REPORTS 401 (1965). For a legislative history of this recommendation, see 7 CAL. L. REVISION COMM'N REPORTS 914 (1965). See also Cal. Stats. 1965, Ch. 653 (claims and actions against public entities and public employees); Cal. Stats. 1965, Ch. 1527 (liability of public entities for ownership and operation of motor vehicles).

This topic will be considered in connection with the Commission's study of topic 3 (inverse condemnation).

- <sup>4</sup> See *Recommendation Proposing an Evidence Code*, 7 CAL. L. REVISION COMM'N REPORTS 1 (1965). A series of tentative recommendations and research studies relating to the Uniform Rules of Evidence was published and distributed for comment prior to the preparation of the recommendation proposing the Evidence Code. See 6 CAL. L. REVISION COMM'N REPORTS at 1, 161, 201, 601, 701, 801, 901, 1001, and *Appendix* (1964). For a legislative history of this recommendation, see 7 CAL. L. REVISION COMM'N REPORTS 912-914 (1965). See also *Evidence Code With Official Comments*, 7 CAL. L. REVISION COMM'N REPORTS 1001 (1965). See also Cal. Stats. 1965, Ch. 290 (Evidence Code).

See also *Recommendations Relating to the Evidence Code: Number 1—Evidence Code Revisions; Number 2—Agricultural Code Revisions; Number 3—Commercial Code Revisions*, 8 CAL. L. REVISION COMM'N REPORTS 101, 201, 301 (1967). For a legislative history of these recommendations, see 8 CAL. L. REVISION COMM'N REPORTS 60-66 (1967). See also Cal. Stats. 1967, Ch. 659 (Evidence Code revisions); Cal. Stats. 1967, Ch. 262 (Agricultural Code revisions); Cal. Stats. 1967, Ch. 703 (Commercial Code revisions).

This topic is under continuing study to determine whether any substantive, technical, or clarifying changes are needed in the Evidence Code and whether changes are needed in other codes to conform them to the Evidence Code. See 8 CAL. L. REVISION COMM'N REPORTS 66 (1967).

- <sup>5</sup> See *Recommendation and Study Relating to Abandonment or Termination of a Lease*, 8 CAL. L. REVISION COMM'N REPORTS 701 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 66 (1967).

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*Topics Continued on Calendar for Further Study*

On the following topics, studies and recommendations relating to the topic, or one or more aspects of the topic, have been made. The topics are continued on the Commission's Calendar for further study of recommendations not enacted or for the study of additional aspects of the topic or new developments.

1. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person (Cal. Stats. 1957, Res. Ch. 202, p. 4589).<sup>1</sup>
2. Whether the law relating to additur and remittitur should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).<sup>2</sup>
3. Whether Vehicle Code Section 17150 and related statutes should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1962, Res. Ch. 23, p. 94).<sup>3</sup>
4. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).<sup>4</sup>
5. Whether the law relating to suit by and against partnerships and other unincorporated associations should be revised and whether the law relating to the liability of such associations and their members should be revised (Cal. Stats. 1966, Res. Ch. 9; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).<sup>5</sup>
6. Whether the law relating to the escheat of property and the disposition of unclaimed or abandoned property should be revised (Cal. Stats. 1967, Res. Ch. 81; see also Cal. Stats. 1956, Res. Ch. 42, p. 263).<sup>6</sup>

<sup>1</sup> See *Recommendation and Study Relating to Whether Damages for Personal Injury to a Married Person Should be Separate or Community Property*, 8 CAL. L. REVISION COMM'N REPORTS 401 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 40 (1967).  
The Commission will submit a revised recommendation to the 1968 Legislature.

<sup>2</sup> See *Recommendation and Study Relating to Additur*, 8 CAL. L. REVISION COMM'N REPORTS 601 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 60 (1967). See also Cal. Stats. 1967, Ch. 72.

<sup>3</sup> See *Recommendation and Study Relating to Vehicle Code Section 17150 and Related Sections*, 8 CAL. L. REVISION COMM'N REPORTS 501 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 48 (1967). See also Cal. Stats. 1967, Ch. 702.

<sup>4</sup> See *Recommendation and Study Relating to The Good Faith Improver of Land Owned by Another*, 8 CAL. L. REVISION COMM'N REPORTS 801 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 80 (1967).

The Commission will submit a revised recommendation to the 1968 Legislature.

<sup>5</sup> See *Recommendation and Study Relating to Suit By or Against an Unincorporated Association*, 8 CAL. L. REVISION COMM'N REPORTS 901 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 90 (1967). See also Cal. Stats. 1967, Ch. 1324.

The Commission will submit a recommendation on this topic to the 1968 Legislature.

<sup>6</sup> See *Recommendation Relating to Escheat*, 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967).

The Commission will submit its recommendation on this topic to the 1968 Legislature.

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7. Whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases (Cal. Stats. 1955, Res. Ch. 207, p. 4207).<sup>7</sup>
8. Whether the law relating to quasi-community property and property described in Section 201.5 of the Probate Code should be revised (Cal. Stats. 1966, Res. Ch. 9).<sup>8</sup>

*Other Topics Authorized for Study*

The Commission has not yet begun the preparation of a recommendation on the topics listed below. In a few cases, however, the research study is in preparation.

1. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised (Cal. Stats. 1956, Res. Ch. 42, p. 263; see also 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 29 (1957)).
2. Whether the law relating to attachment, garnishment, and property exempt from execution should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 15 (1957)).
3. Whether the various sections of the Code of Civil Procedure relating to partition should be revised and whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial partition sales (Cal. Stats. 1959, Res. Ch. 218, p. 5792; see also Cal. Stats. 1956, Res. Ch. 42, p. 463; 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 21 (1957)).
4. Whether the Small Claims Court Law should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 16 (1957)).
5. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 19 (1957)).
6. Whether Civil Code Section 1698 should be repealed or revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 21 (1957)).
7. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised (Cal. Stats. 1958, Res. Ch. 61, p. 135; see also 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 20 (1959)).

<sup>7</sup> See *Recommendation and Study Relating to Taking Instructions to the Jury Room*, 1 CAL. L. REVISION COMM'N REPORTS at C-1 (1957). For a legislative history of this recommendation, see 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 13 (1959).

<sup>8</sup> See *Recommendation and Study Relating to Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere*, 1 CAL. L. REVISION COMM'N REPORTS at B-1 (1957). For a legislative history of this recommendation, see 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 13 (1959). See also Cal. Stats. 1957, Ch. 490. See *Recommendation and Study Relating to Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere*, 3 CAL. L. REVISION COMM'N REPORTS at 1-1 (1961). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 15 (1963). See also Cal. Stats. 1961, Ch. 636.

8. Whether Section 7031 of the Business and Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 23 (1957)).
9. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court (Cal. Stats. 1958, Res. Ch. 61, p. 135; see also 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 18 (1959)).
10. Whether the law relating to a power of appointment should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289).

### STUDIES TO BE DROPPED FROM CALENDAR OF TOPICS

#### *Pour-Over Trusts*

In 1965, the Commission was directed to make a study to determine whether the law relating to devises and bequests to a trustee under, or in accordance with, terms of an existing inter vivos trust (the so-called "pour-over trust") should be revised. Cal. Stats. 1965, Res. Ch. 130, p. 5289.

Chapter 1640 of the California Statutes of 1965 enacted the Uniform Testamentary Additions to Trusts Act (Probate Code Sections 170-173) to deal with the problems that existed in this field of law. Accordingly, the Commission recommends that this topic be dropped from its calendar of topics.

#### *Division of Property on Divorce or Separate Maintenance*

In 1966, the Commission was directed to make a study to determine whether the law relating to the allocation or division of property on divorce or separate maintenance should be revised. Cal. Stats. 1966, Res. Ch. 9.

In December 1966, the Governor's Commission on the Family recommended the creation of a statewide family court system and revisions of the substantive law relating to the family. *Report of the Governor's Commission on the Family* (December 1966). The recommended revisions include revisions of the law relating to allocation or division of property on divorce or separate maintenance. To avoid duplicating the work of the Governor's Commission, the Law Revision Commission recommends that this topic be dropped from its calendar of topics.

#### *Rights of a Putative Spouse*

In 1956, the Commission was authorized to make a study to determine whether the law relating to the rights of a putative spouse should be revised. Cal. Stats. 1956, Res. Ch. 42, p. 263.

The recommendations of the Governor's Commission on the Family include recommendations relating to the rights of a putative spouse. *Report of the Governor's Commission on the Family* (December 1966). To avoid duplicating the work of the Governor's Commission, the Law Revision Commission recommends that this topic be dropped from its calendar of topics.

## STUDIES FOR FUTURE CONSIDERATION

The Commission now has an agenda consisting of 27 studies which will require substantially all of its energies for several years. For this reason the Commission will not request authority at the 1968 legislative session to undertake any new studies. The Commission recommends, however, that it be authorized to make a study of a problem that has arisen under legislation enacted on recommendation of the Commission.

*A study to determine whether the law relating to arbitration should be revised.*

Code of Civil Procedure Sections 1280 to 1294.2, relating to arbitration, were enacted in 1961<sup>1</sup> upon recommendation of the Law Revision Commission.<sup>2</sup> Although experience under the 1961 statute has been generally satisfactory, the effect of an arbitration clause upon the right of a party to file a mechanic's lien or obtain provisional relief such as attachment is unclear.

Commentators generally agree that provisional remedies should be available for the preservation of property and to secure the satisfaction of the award to the same extent it would be available if the dispute were in litigation rather than arbitration.<sup>3</sup> This rule has been established by statute in some jurisdictions<sup>4</sup> and by judicial decision in others.<sup>5</sup> The law in California, however, is unclear because of three recent Court of Appeal decisions.

In *Homestead Sav. & Loan Ass'n v. Superior Court*,<sup>6</sup> the plaintiff filed a mechanic's lien claim for money due on a construction contract. Shortly thereafter, he filed a complaint for breach of contract which contained a recital of the arbitration clause and a prayer for an order to arbitrate. The defendant brought mandamus to set aside the arbitration order on the ground that the filing of the mechanic's lien and the filing of the complaint, which was in the form of a foreclosure action, constituted a repudiation and waiver of the arbitration agreement. Citing the statutory law in New York, the court held that the filing of

<sup>1</sup> Cal. Stats. 1961, Ch. 461, p. 1540.

<sup>2</sup> See *Recommendation and Study Relating to Arbitration*, 3 CAL. L. REVISION COMM'N REPORTS at G-1 (1961).

<sup>3</sup> STURGES, COMMERCIAL ARBITRATION AND AWARDS § 142. See 1954 HANDBOOK, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 119-123; Sturges, *Common-law and Statutory Arbitration: Problems Arising From Their Coexistence*, 46 MINN. L. REV. 819, 851 (1962); Note, 17 N.Y.U.L.Q. 638 (1940).

<sup>4</sup> The first Uniform Arbitration Act was adopted in 1924. That act provided, in Section 12, that an arbitration clause would not bar provisional remedies. It was enacted in four states: NEV. REV. STAT. § 38.130; N.C. GEN. STAT. § 1-155; UTAH CODE ANN. § 78-31-12. Wyoming Laws of 1927, Ch. 46, § 12 (repealed 1959). Connecticut also has such a statute. CONN. GEN. STAT. ANN. § 52-422. New York has a statute which only applies to mechanic's liens. N.Y. LIEN LAW § 35. Provisional remedies are preserved in actions otherwise justiciable in admiralty by the Federal Arbitration Act, 9 U.S.C. § 8.

The 1955 Uniform Arbitration Act originally provided for provisional remedies. 1954 HANDBOOK, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 206. The section was deleted, apparently because of a fear of excess labor injunctions. For discussion, see *Salvucci v. Sheehan*, 349 Mass. 659, 663-664, 212 N.E.2d 243, 245 (1965).

<sup>5</sup> *Salvucci v. Sheehan*, 349 Mass. 659, 212 N.E.2d 243 (1965); *Auerbach v. Grand Nat'l Pictures, Ltd.*, 176 Misc. 1031, 29 N.Y.S.2d 747, *aff'd* 263 App. Div. 712, 31 N.Y.S.2d 670, *appeal denied* 263 App. Div. 807, 32 N.Y.S.2d 129 (1941).

<sup>6</sup> 195 Cal. App.2d 697, 16 Cal. Rptr. 121 (1961).

a mechanic's lien is not inconsistent with arbitration because it merely preserves the status quo. Therefore, the plaintiff was allowed to compel arbitration despite his earlier assertion of a mechanic's lien.

In *Palm Springs Homes, Inc. v. Western Desert, Inc.*,<sup>7</sup> the court reached an apparently inconsistent result on similar facts. In that case, the appellant had submitted to arbitration under an arbitration clause after filing a mechanic's lien and starting foreclosure proceedings. The court held, on an unclear record, that the arbiters apparently found that the filing of the lien under the facts was inconsistent with the agreement to submit all controversies to arbitration and therefore affirmed the award in favor of respondent for breach of contract. The alleged breach appears to have been the filing of the lien.

In the more recent case of *Ross v. Blanchard*,<sup>8</sup> the plaintiff filed suit on a building contract and attached the property of the defendant. The defendant's answer alleged an arbitration clause and the trial court ordered the action stayed until the disposition of arbitration proceedings. An award was made for the plaintiff two years later and, after a confirmation of that award, defendant moved to discharge plaintiff's attachment on the ground that plaintiff had been bound to arbitrate and his filing of the suit at law had resulted in a wrongful attachment. The court first held that a party to an arbitration agreement may initially resort to the courts because a later arbitration order merely stays initial court proceedings. It then held that the attachment should not be dissolved because the plaintiff would be entitled to attachment to satisfy the award and defendant had not moved to dissolve it during the two-year interim. The court avoided deciding whether or not the defendant could have dissolved the attachment during the interim, but relied heavily on a Massachusetts case<sup>9</sup> which held that the trial court had no power to discharge an attachment when an action has been stayed pending arbitration.

Sections 1280 to 1294.2 do not deal with the three problems posed by the above cases:

1. When a party to an arbitration clause seeks a provisional remedy or files a mechanic's lien, may the other party assert that this action constitutes a waiver of the arbitration clause which will preclude the plaintiff from seeking an order to arbitrate?<sup>10</sup>

2. When a party to an arbitration agreement levies an attachment or files a mechanic's lien and his opponent obtains a stay of the proceedings and an order to arbitrate, should the attachment or lien be dissolved?

3. Does the filing of a mechanic's lien or the attempt to obtain provisional relief constitute a breach of the arbitration clause such that the other party may obtain damages?

In view of the importance of these questions and the necessity to clarify California law on this point, the Commission believes that a study should be made to determine whether or not provisional remedies should be available where a plaintiff is bound by an arbitration clause.

<sup>7</sup> 215 Cal. App.2d 270, 30 Cal. Rptr. 34 (1963).

<sup>8</sup> 251 A.C.A. 833, 50 Cal. Rptr. 783 (1967).

<sup>9</sup> *Salvucci v. Sheehan*, 349 Mass. 659, 212 N.E.2d 243 (1965).

<sup>10</sup> An arbitration clause can be waived by a party. CAL. CODE CIV. PROC. § 1281.2. Such a waiver may be effected by initiating an action at law on the contract. *Berman v. Renart Sportswear Corp.*, 222 Cal. App.2d 385, 35 Cal. Rptr. 218 (1963).

## REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's last Annual Report was prepared.<sup>1</sup> It has the following to report:

(1) No decision of the Supreme Court of the United States holding a statute of this state repealed by implication has been found.

(2) No decision of the Supreme Court of California holding a statute of this state repealed by implication has been found.

(3) One decision of the Supreme Court of the United States holding a provision of the state Constitution unconstitutional has been found. In *Reitman v. Mulkey*,<sup>2</sup> the Supreme Court of the United States held unconstitutional Article I, Section 26, of the California Constitution (Proposition 13, submitted by the initiative and approved by the electors, November 3, 1964) which provided, in part, that neither the state nor any of its subdivisions or agencies shall deny or abridge the right of any person to sell, lease, or rent his realty, or decline to do so, to anyone he chooses.<sup>3</sup>

(4) One decision of the Supreme Court of California holding a statute of this state unconstitutional has been found. In *Bagley v. Washington Township Hospital District*,<sup>4</sup> the Supreme Court of California held Government Code Section 3205, which limits the right of public officers or employees to take active part in political activities of a local agency, unconstitutional on the ground that the sweeping prohibitions of the statute are not necessary to an efficient functioning of the civil service system.

<sup>1</sup> This study has been carried through 67 Adv. Cal. 246 (1967) and 388 U.S. 292 (1967).

<sup>2</sup> 387 U.S. 369 (1967).

<sup>3</sup> The California Supreme Court had also held Proposition 13 unconstitutional. *Mulkey v. Reitman*, 64 Cal.2d 529, 50 Cal. Rptr. 881, 413 P.2d 825 (1966).

<sup>4</sup> 65 Cal. 490, 55 Cal. Rptr. 401, 421 P.2d 409 (1966).

## RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed as studies in progress on pages 60-66 of this report, to study the new topic listed on page 60 of this report, and to drop from its calendar of topics the three topics listed on page 60 of this report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends that the Legislature take appropriate action to effect the repeal of Article I, Section 26, of the California Constitution (submitted by the initiative and approved by the electors, November 3, 1964), and the repeal of Section 3205 of the Government Code to the extent that Section 3205 has been held unconstitutional.

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