

7/3/70

Memorandum 70-71

Subject: Study 71 - Joinder of Parties

The tentative recommendation relating to joinder of causes provides for unlimited joinder of causes subject only to the restrictions imposed by the rules governing joinder of parties. The staff has, therefore, reviewed the latter area of the law to determine whether revision is also needed here if a clear, concise, integrated statutory scheme relating to joinder is to be provided. Our conclusion is that such revision is needed. We have accordingly prepared explanatory material and proposed legislation which we recommend be incorporated into the tentative recommendation attached to Memorandum 70-65. The explanatory material is attached hereto as Exhibit I ("Preliminary Portion of Recommendation"--pink). We believe that it accurately summarizes the present law and demonstrates the need for revision. Our confidence in this view is bolstered inasmuch as both the analyses of the existing law and the suggestions for change conform generally to those of Messrs. Chadbourn, Grossman, Van Alstyne, and Witkin. Moreover, the material has been reviewed and approved, with one exception, by Professor Friedenthal. The proposed legislation is based upon the federal rules (Rule 20) and is practically identical to that proposed by the San Francisco Bar Association to the 1970 Conference of State Bar Delegates. As noted above, we asked Professor Friedenthal to review these materials, and it is possible that he will also be able to supplement his present study with material relating to the permissive joinder of parties. However, if he is able to do the latter at all, it will not be ready before the September meeting.

As noted above, Professor Friedenthal generally approved the attached materials as a major improvement over the existing scheme. However, he

suggested that consideration be given to amending Section 379c (renumbered Section 379.2--page 6 on yellow). This section provides:

379c. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, with the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined between the parties.

Section 379c has no federal counterpart no doubt because the joinder of defendants permitted under Federal Rule 20(a) is broad enough to encompass any situation covered by Section 379c. Since we have amended Sections 378 and 379 to conform substantially to Federal Rule 20(a), we could perhaps simply repeal Section 379c, pointing out in a Comment that the repeal works no change in the prior law--what could formerly have been done under Section 379c can now be done under the new Section 379. Alternatively, Professor Friedenthal suggested that Section 379c be revised to provide explicitly that, where persons are either entitled to relief in the alternative (e.g., injury to property where landlord and tenant dispute who is entitled to the recovery) or are alternatively liable to another (e.g., only one of two or more tortfeasors was responsible for plaintiff's injury), such persons may be joined in one action. The difficulty with the suggestion is that, the longer the staff struggled with the drafting of such a section, the more obvious it became that the section would do no more than duplicate the substance of Sections 378 and 379. Accordingly, we suggest that Section 379.2 either be left as is to become undoubtedly a useless, but innocuous, remnant or that the section be repealed.

We hope that, at the July 1970 meeting, materials relating to joinder of parties can be approved for inclusion in the tentative recommendation.

Respectfully submitted,

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PRELIMINARY PORTION OF RECOMMENDATION

JOINDER OF PARTIES

Introduction

If every case involved but one plaintiff and one defendant, the rules governing permissive joinder of causes of action could be dealt with in isolation. However, in modern litigation, such a situation is probably the exception rather than the rule. It is essential, therefore, that the rules relating to joinder of parties be considered together with those relating to joinder of causes. Two separate situations require consideration: First, the circumstances under which parties may be joined at the option of the plaintiff or plaintiffs, i.e., permissive joinder and the effect of misjoinder; second, the circumstances under which a person should or must be joined, i.e., compulsory joinder and the effect of nonjoinder.

Permissive Joinder of Plaintiffs

Any persons may be joined as plaintiffs under Section 378 of the Code of Civil Procedure if (1) they claim a right to relief with respect to the same transaction or series of transactions, or they have an interest in the subject of the action and (2) there are common questions of law or fact which would have to be resolved if separate actions were brought.¹ Section 378

1. Section 378 of the Code of Civil Procedure provides:

378. All persons may be joined in one action as plaintiffs who have an interest in the subject of the action or in whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate actions any question of law or fact would arise which are common to all the parties to the action; provided, that if upon the application of any party it shall appear that such joinder may embarrass or delay the trial of the action, the court

seems to have operated satisfactorily since its amendment in 1927 and needs no basic revision. However, it is already strikingly similar to Federal Rule 20(a) which provides in part:

All persons may join in one action as plaintiffs if they assert any right to relief . . . in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.

It should be noted that the "interest in the subject of the action" clause is omitted in the federal rule. It was predicted that this alternative ground for joinder in California "may become a dead letter."² In view of the broad scope granted the "transaction" clause,³ and the apparent failure of any California appellate court to rely upon the "interest in the subject" clause for more than 35 years, the prophecy seems fulfilled. The Commission accordingly recommends that Section 378 be rephrased in conformity with Rule 20(a) and the present California practice.

Permissive Joinder of Defendants

Permissive joinder of defendants is governed generally by Sections 379 and 379a of the Code of Civil Procedure. These sections provide in part that any person may be joined as a defendant "who has or claims an interest in the controversy adverse to the plaintiff" (Section 379) or "against whom the right to any relief is alleged to exist" (Section 379a). Conspicuously

may order separate trials or make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for the relief to which he or they may be entitled.

2. 2 Witkin, California Procedure Pleading § 91 at 1069 (1954).
3. Colla v. Carmichael U-Drive Autos, Inc., 111 Cal. App. Supp. 784, 294 P. 378 (1930) ("any occurrence between persons that may become the foundation of an action").

absent are the joinder requirements for plaintiffs that the right to relief arise out of the same transaction and that common questions of law or fact be involved. These latter restrictions have, however, been imported by judicial decision.⁴ Nevertheless, the existing statutory deficiency and the inherent ambiguity and overlap in Sections 379 and 379a have been justly criticized.⁵

In contrast, Federal Rule 20(a) explicitly provides the same substantive test for joinder of defendants as for joinder of plaintiffs. It states in part:

All persons . . . may be joined in one action as defendants if there is asserted against them . . . any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

The substitution of a test for the permissive joinder of defendants based on Federal Rule 20(a) would not change existing California practice but would provide clear and concise statutory guidelines. The Commission recommends that this be done.

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4. See *Hoag v. Superior Court*, 207 Cal. App.2d 611, 24 Cal. Rptr. 659 (1962), quoting with approval a statement from Chadbourn, Grossman, and Van Alstyne that "the holdings seem to demand that there be some sort of factual 'nexus' connecting or associating the claims pleaded against the several defendants."
5. Chadbourn, Grossman, and Van Alstyne state that, "it would seem to be desirable to amend the provisions governing joinder of defendants so that whatever requirements are intended will be express and not hidden in the implications of decisional law." California Practice § 618 at 536 (1961).

Mr. Witkin comments, "that we have liberal joinder rules [as to defendants], but too many of them and little integration." 2 Witkin, California Procedure Pleading § 93 at 1071 (1954).

More outspoken is the San Francisco Bar Association. The Association has proposed a resolution to the 1970 Conference of State Bar Delegates which would substitute provisions for permissive joinder of parties similar to Federal Rule 20. In support of their resolution, they state:

The present statutory rules are impossible for the practicing attorney to follow without unnecessary guesswork and extensive legal research. The Code of Civil Procedure should be a clear and concise guide for the attorney drafting pleadings and planning litigation.

Special Statutory Provisions for Permissive Joinder

Section 378 was amended⁶ and Section 379a was added⁷ in 1927 to liberalize the then existing statutory rules. The old restrictive provisions were subject to several express statutory exceptions set out in Sections 381,⁸ 383,⁹ and 384.¹⁰ These sections are now simply deadwood inasmuch as they merely authorize joinder that is permissible under Sections 378, 379, and 379a.¹¹ Any comprehensive revision of the statute relating to joinder of parties should include the elimination of these vestiges of an earlier day, and the Commission recommends that these three sections be repealed.

6. Cal. Stats. 1927, Ch. 386, p. 631.

7. Cal. Stats. 1927, Ch. 259, p. 477.

8. Section 381 of the Code of Civil Procedure Provides:

381. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, coparceners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or if [of] establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

9. Section 383 of the Code of Civil Procedure provides:

383. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action, at the option of the plaintiff; and all or any of them join as plaintiffs in the same action, concerning or affecting the obligation or instrument upon which they are severally liable. Where the same person is insured by two or more insurers separately in respect to the same subject and interest, such person, or the payee under the policies, or the assignee of the cause of action, or other successor in interest of such assured or payee, may join all or any of such insurers in a single action for the recovery of a loss under the several policies, and in case of judgment a several judgment must be rendered against each of such insurers according as his liability shall appear.

10. Section 384 of the Code of Civil Procedure provides:

384. TENANTS IN COMMON, ETC., MAY SEVER IN BRINGING OR DEFENDING ACTIONS. All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

11. See 1 Chadbourn, Grossman & Van Alstyne, California Practice § 615 (1961); 2 Witkin, California Procedure Pleading §§ 92, 93 (1954).

Separate Trials

The liberal rules of permissive joinder permit parties to be brought together in one action who are not interested in all of the issues to be tried. Situations can and do arise where joinder might cause undue hardship to a party or create unnecessary confusion or complexity at trial.¹² Accordingly, the provisions governing joinder of both plaintiffs¹³ and defendants¹⁴ provide for judicial control through severance where necessary.¹⁵ Similarly where the scope of these rules has been exceeded and misjoinder occurs, the court will order severance for trial.¹⁶ No substantive change in these rules is required or desirable, but the Commission recommends that the present provisions be consolidated.

Compulsory Joinder

We turn now from the question of who may be joined if the plaintiff chooses to the question who must or should, if possible, be joined in an action. In

12. See generally 1 Chadbourn, Grossman & Van Alstyne, California Practice § 622 (1961); 2 Witkin, California Procedure Pleading § 98 (1954).

13. Section 378, dealing with joinder of plaintiffs, provides in part:

[I]f upon the application of any party it shall appear that such joinder may embarrass or delay the trial of the action, the court may order separate trials or make such other order as may be expedient

14. Section 379b, dealing with joinder of defendants, provides in part:

[T]he court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

15. A similar rule with respect to discretionary severance prevails under the Federal rules. Rule 20(b) provides:

The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

16. See Hoag v. Superior Court, 207 Cal. App.2d 611, 24 Cal. Rptr. 659 (1962).

California, two separate statutes deal with the question. Section 382 of the Code of Civil Procedure sets forth the old common law rule as follows:

Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants

Section 389 attempted to restate the developing California case law as follows:

A person is an indispensable party to an action if his absence will prevent the court from rendering any effective judgment between the parties or would seriously prejudice any party before the court or if his interest would be inequitably affected or jeopardized by a judgment rendered between the parties.

A person who is not an indispensable party but whose joinder would enable the court to determine additional causes of action arising out of the transaction or occurrence involved in the action is a conditionally necessary party. . . .

Neither provision appears satisfactory. Section 382 does not even make clear that it contemplates the joinder of additional parties. But more critical is the fact that as a guide it is both incomplete and unsafe. Thus, on the one hand, one can be an indispensable or necessary party in the absence of a unity in interest.¹⁷ On the other hand, the presence of a unity in interest¹⁸ does not always render a person either indispensable or necessary.

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17. See *Child v. State Personnel Board*, 97 Cal. App.2d 467, 218 P.2d 52 (1950). In an action brought by an unsuccessful candidate against the members of the Personnel Board, to cancel a civil service examination and eligibility lists based thereon, all the successful candidates were held to be indispensable parties. However, they do not seem to have been united in interest in the usual sense of the term with either plaintiff or defendants.
18. See *Williams v. Reed*, 113 Cal. App.2d 195, 204, 248 P.2d 147, (1952) (joint and several obligors may be sued individually). See generally 1 Chadbourn, Grossman & Van Alstyne, *California Practice* § 593 at 517 (1961); 2 Witkin, *California Procedure Pleading* § 76 at 1053 (1954).

Section 389 was amended to its present form in 1957 upon the recommendation of the Law Revision Commission.¹⁹ As indicated above, the amended section merely attempted to clarify and restate existing case law.²⁰ However, the section was, with some merit, critically received.²¹ For example, the second paragraph directs the joinder of persons whenever it would enable the court "to determine additional causes of action arising out of the transaction or occurrence involved in the action." It has been noted that a broad literal reading of Section 389 "would mean that every person permitted to be joined would have to be joined."²² The Commission obviously did not intend this language to be so broad, and it has not been so interpreted.²³ The Commission has accordingly reconsidered Section 389 and the purposes compulsory joinder should serve. Section 389 presently attempts not only to avoid prejudice to the parties but also to promote the general convenience of the courts by preventing a multiplicity of suits. The attempt to accomplish these purposes presents not only drafting problems, but problems of enforcement and the possibility of stimulating unnecessary litigation as well. A

19. See Recommendation and Study Relating to Bringing New Parties Into Civil Actions, 1 Cal. L. Revision Comm'n Reports, M-1 to M-24 (1957).

20. See id. at M-5, M-6.

21. See Comments, Bringing New Parties Into Civil Actions in California, 46 Cal. L. Rev. 100 (1958); Joinder of Parties in Civil Actions in California, 33 So. Cal. L. Rev. 428 (1960).

22. Friedenthal, The Need to Revise California Provisions Regarding Joinder of Claims, Counterclaims, and Cross-Complaints 32 (mimeographed draft 1970).

23. See, e.g., Duval v. Duval, 155 Cal. App.2d 627, 318 P.2d 16 (1957).

different approach is offered by Federal Rule 19 as amended in 1966.²⁴

Rule 19 limits compulsory joinder to those situations where the absence of a person may result in substantial prejudice to that person or to the

24. Rule 19 provides:

Rule 19.

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) **Persons to be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) **Determination by Court Whenever Joinder not Feasible.** If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) **Pleading Reasons for Nonjoinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) **Exception of Class Actions.** This rule is subject to the provisions of Rule 23. As amended Feb. 28, 1966, eff. July 1, 1966.

parties already before the court. It is generally recognized that this rule has satisfactorily dealt with one of the most difficult problem areas of civil procedure. On balance the approach of the federal rules appears to be the more desirable one. The Commission accordingly recommends that Section 382 be revised to delete the clause cited above and that Section 389 be revised to conform substantively to Federal Rule 19.

PROPOSED LEGISLATION§ 378. Permissive joinder of plaintiffs

Sec. . Section 378 of the Code of Civil Procedure is amended to read:

378. ~~All persons may be joined in one action as plaintiffs who have an interest in the subject of the action or in whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate actions any question of law or fact would arise which are common to all the parties to the action, provided, that if upon the application of any party it shall appear that such joinder may embarrass or delay the trial of the action, the court may order separate trials or make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for the relief to which he or they may be entitled.~~ All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. It shall not be necessary that each plaintiff shall be interested as to every cause of action or as to all relief prayed for.

Comment. Section 378 is rephrased in conformity with Federal Rule 20(a). However, it continues without substantial change the requirements which must be met by plaintiffs seeking to join together in one action. Section 378 formerly provided in part that persons might be joined as plaintiffs "who have an interest in the subject of the action or in whom any right to relief . . .

arising out of the same transaction . . . is alleged to exist" The first ground has been deleted. However, the failure of any court to rely on this clause for more than 35 years suggests that it has become a "dead letter." See 2 Witkin, California Procedure Pleading § 91 (1954). The power of the court to sever causes where appropriate is now dealt with separately in Section 379.5 (new).

§ 379. Permissive joinder of defendants

Sec. . Section 379 of the Code of Civil Procedure is amended to read:

379. ~~Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. And in an action to determine the title or right of possession to real property which, at the time of the commencement of the action, is in the possession of a tenant, the landlord may be joined as a party defendant.~~ All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. It shall not be necessary that each defendant shall be interested as to every cause of action or as to all relief prayed for.

Comment. Section 379 is amended to provide statutory requirements for joinder of defendants which are comparable to those governing joinder of plaintiffs. Former Sections 379 and 379a provided liberal joinder rules but were strongly criticized for their uncertainty and overlap. See Chadbourn, Grossman & Van Alstyne, California Practice § 618 (1961); 2 Witkin, California Procedure Pleading § 93 (1954). Amended Section 379 substitutes the more understandable "transaction" test set forth in Federal Rule 20(a). However, in so doing, the section probably merely makes explicit what was implicit in prior decisions. See Hoag v. Superior Court, 207 Cal. App.2d 611, 24 Cal. Rptr. 659 (1962). For the power of the court to sever causes where appropriate, see Section 379.5 (new).

§ 379a (Repealed)

Sec. . Section 379a of the Code of Civil Procedure is repealed.

~~379a.--All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, and judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities.~~

Comment. Section 379a is superseded by Section 379.

§ 379b (Repealed)

Sec. . Section 379b of the Code of Civil Procedure is repealed.

~~379b.--It shall not be necessary that each defendant shall be interested as to all relief prayed for, or as to every cause of action included in any proceeding against him; but the court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.~~

Comment. Section 379b is superseded by the last sentence of Section 379 and by Section 379.5.

§ 379.2. Joinder of defendants where doubt as to defendant liable

Sec. . Section 379c of the Code of Civil Procedure is amended
and renumbered to read:

~~379c.~~ 379.2. Where the plaintiff is in doubt as to the person from
whom he is entitled to redress, he may join two or more defendants, with
the intent that the question as to which, if any, of the defendants is
liable, and to what extent, may be determined between the parties.

Comment. Section 379.2 continues without change former Section 379c.

§ 379.5. Separate trials

Sec. . Section 379.5 is added to the Code of Civil Procedure, to read:

379.5. Notwithstanding Sections 378, 379, and 379.2, the court may make such orders as may appear just to prevent any party from being embarrassed, delayed, or put to undue expense, and may order separate trials or make such other order as the interests of justice may require.

Comment. Section 379.5 continues without substantive change the discretion of the court to sever causes where appropriate. See former Sections 378 and 379b. See generally Chadbourn, Grossman & Van Alstyne, California Practice § 622 (1961); 2 Witkin, California Procedure Pleading § 98 (1954).

§ 381 (Repealed)

Sec. . Section 381 of the Code of Civil Procedure is repealed.

~~381.---Any-two-or-more-persons-claiming-any-estate-or-interest-in
lands-under-a-common-source-of-title,-whether-holding-as-tenants-in-com-
mon,-joint-tenants,-coparceners,-or-in-severalty,-may-unite-in-an-action
against-any-person-claiming-an-adverse-estate-or-interest-therein,-for
the-purpose-of-determining-such-adverse-claim,-or-if-[of]-established-such
common-source-of-title,-or-of-declaring-the-same-to-be-held-in-trust,
or-of-removing-a-cloud-upon-the-same.~~

Comment. Section 381 is repealed as unnecessary. Its express statutory authorization of joinder of certain persons as plaintiffs was eclipsed in 1927 by the revision of Section 378. See Chadbourn, Grossman & Van Alstyne, California Practice § 615 (1961); 2 Witkin, California Procedure Pleading § 92 (1954).

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§ 382. Unwilling plaintiffs made defendants; class actions

Sec. . Section 382 of the Code of Civil Procedure is amended to read:

382. ~~Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if~~ If the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the Court, one or more may sue or defend for the benefit of all.

C

Comment. Section 382 is amended to delete the 1872 enactment of the old common law rule of compulsory joinder. This provision has been superseded by Section 389. See Section 389 and Comment thereto. The former rule, while perhaps of some aid in determining whether one was an indispensable or necessary party, was an incomplete and unsafe guide. One could be an indispensable or necessary party in the absence of any unity in interest. Thus, in an action brought by an unsuccessful candidate against the members of the Personnel Board to cancel a civil service examination and eligibility lists based thereon, all the successful candidates were held to be indispensable parties. However, they do not seem to have been united in interest in the usual sense of the term with either plaintiff or defendants. See Child v. State Personnel Board, 97 Cal. App.2d 467, 218 P.2d 52 (1950). On the other hand, the presence of a unity in interest did not always make one either an indispensable or necessary party. See Williams v. Reed, 113 Cal. App.2d 195, 204, 248 P.2d 147, (1952)(joint and several obligors

§ 382

may be sued individually). See generally 1 Chadbourn, Grossman & Van Alstyne, California Practice § 593 at 517 (1961); 2 Witkin, California Procedure Pleading § 76 at 1053 (1954).

§ 383 (Repealed)

Sec. . Section 383 of the Code of Civil Procedure is repealed.

~~383.--Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action, at the option of the plaintiff; and all or any of them join as plaintiffs in the same action, concerning or affecting the obligation or instrument upon which they are severally liable.--Where the same person is insured by two or more insurers separately in respect to the same subject and interest, such person, or the payee under the policies, or the assignee of the cause of action, or other successor in interest of such assured or payee, may join all or any of such insurers in a single action for the recovery of a loss under the several policies, and in case of judgment a several judgment must be rendered against each of such insurers according as his liability shall appear.~~

Comment. Section 383 is repealed. The section is made unnecessary by the liberal rules of permissive joinder set forth in Sections 378 (plaintiffs) and 379 (defendants). See generally 1 Chadbourn, Grossman & Van Alstyne, California Practice § 615 (1961); 2 Witkin, California Procedure Pleading §§ 92, 93 (1954).

§ 384 (Repealed)

Sec. . Section 384 of the Code of Civil Procedure is repealed.

~~384.---All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.~~

Comment. Section 384 is repealed. The section is made unnecessary by the liberal rules of permissive joinder set forth in Sections 378 (plaintiffs) and 379 (defendants). See generally 1 Chadbourn, Grossman & Van Alstyne, California Practice § 615 (1961); 2 Witkin, California Procedure Pleading §§ 92, 93 (1954).