

**STATE OF CALIFORNIA**

**REPORT OF THE  
CALIFORNIA LAW  
REVISION COMMISSION**

**To the Governor and the Legislature of the State of  
California at the Legislative Session of 1960**

**March 1960**

## LETTER OF TRANSMITTAL

To HIS EXCELLENCY EDMUND G. BROWN  
*Governor of California*  
and to the Members of the Legislature

The California Law Revision Commission, created in 1953 to examine the common law and statutes of the State and to recommend such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law and to bring the law of this State into harmony with modern conditions (Government Code Sections 10300 to 10340), herewith submits this report of its activities during the year 1959.

ROY A. GUSTAFSON, *Chairman*  
JOHN R. McDONOUGH, JR., *Vice Chairman*  
JAMES A. COBEY, *Member of the Senate*  
CLARK L. BRADLEY, *Member of the Assembly*  
LEONARD J. DIEDEN  
GEORGE G. GROVER  
CHARLES H. MATTHEWS  
HERMAN F. SELVIN  
THOMAS E. STANTON, JR.  
RALPH N. KLEPS, *Legislative Counsel, ex officio*

JOHN H. DEMOULLY  
*Executive Secretary*

March 1960



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# REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1959

## I. FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission, created in 1953,<sup>1</sup> 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 an ex officio nonvoting member.

The principal duties of the Law Revision Commission are to:<sup>2</sup>

(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.

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. Most 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 in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter, a printed pamphlet is published that contains the official report and recommendation of the Commission together with a draft of any legislation necessary to effectuate the recommendation and the research study upon which the recommendation is based. This pamphlet is 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>4</sup> Thus, a large and representative number of

<sup>1</sup> See Cal. Stat. 1953, ch. 1445, p. 3036; 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> See CAL. GOVT. CODE § 10333.

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.

In 1955, 1957 and 1959, the Commission submitted to the Legislature recommendations for legislation accompanied by bills prepared by the Commission. The Commission also submitted a number of reports on topics as to which, after study, it concluded that (1) the existing law did not need to be revised or (2) the topic was one not suitable for study by the Commission.

A total of 33 bills<sup>5</sup> and one Constitutional Amendment, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. Twenty-three of these bills became law—three in 1955,<sup>6</sup> seven in 1957<sup>7</sup> and thirteen in 1959.<sup>8</sup> The Constitutional Amendment was approved by the 1959 Legislature and will be voted upon by the people in 1960.

## II. PERSONNEL OF COMMISSION

Honorable Clark L. Bradley of San Jose, Member of the Assembly for the Twenty-eighth Assembly District, was reappointed the Assembly Member of the Commission.

Mr. Bert W. Levit of San Francisco resigned from the Commission effective January 1, 1959, after his appointment as Director of the California Department of Finance. Mr. Leonard J. Dieden of Oakland was appointed to the Commission by Governor Brown in April 1959 to fill the vacancy created by the resignation of Mr. Levit.

Mr. Stanford C. Shaw of Ontario resigned from the Commission effective January 1, 1959, after assuming the duties as Member of the Senate for the Thirty-sixth Senatorial District. Mr. Frank S. Balthis of Los Angeles was appointed to the Commission by the Governor in February 1959, for a term to expire on October 1, 1959, to fill the

<sup>5</sup>Two Commission bills failed to become law the first time they were introduced in the 1957 Session, but revised bills on the same topics were prepared by the Commission and enacted as law at the 1959 Session.

<sup>6</sup>Cal. Stat. 1955, ch. 799, p. 1400. (Revision to various sections of the Education Code relating to the Public School System.)  
Cal. Stat. 1955, ch. 877, p. 1494. (Revision to various sections of the Education Code relating to the Public School System.)  
Cal. Stat. 1955, ch. 1183, p. 2193. (Revision of Probate Code Sections 640 to 646—setting aside estates.)

<sup>7</sup>Cal. Stat. 1957, ch. 456, p. 1308. (Recodification Fish and Game Code.)  
Cal. Stat. 1957, ch. 139, p. 733. (Maximum period of confinement in a county jail.)  
Cal. Stat. 1957, ch. 540, p. 1539. (Notice of application for attorney's fees and costs in domestic relations actions.)  
Cal. Stat. 1957, ch. 490, p. 1520. (Rights of surviving spouse in property acquired by decedent while domiciled elsewhere.)  
Cal. Stat. 1957, ch. 102, p. 678. (Elimination of obsolete provisions in Penal Code, Sections 1377 and 1378.)  
Cal. Stat. 1957, ch. 249, p. 902. (Judicial notice of the law of foreign countries.)  
Cal. Stat. 1957, ch. 1498, p. 2824. (Bringing new parties into civil actions.)

<sup>8</sup>Cal. Stat. 1959, ch. 470, p. 2405. (Suspension of absolute power of alienation.)  
Cal. Stat. 1959, ch. 468, p. 2403. (Effective date of an order on motion for new trial.)  
Cal. Stat. 1959, ch. 1715, p. 4115 and chs. 1724-1728, pp. 4133-4166. (Presentation of claims against public entities.)  
Cal. Stat. 1959, ch. 528, p. 2496. (Mortgages to secure future advances.)  
Cal. Stat. 1959, ch. 122, p. 2005. (Doctrine of worthier title.)  
Cal. Stat. 1959, ch. 469, p. 2404. (Time within which motion for new trial may be made.)  
Cal. Stat. 1959, ch. 501, p. 2443. (Codification of laws relating to grand juries.)  
Cal. Stat. 1959, ch. 500, p. 2441. (Procedure for appointing guardians.)

vacancy created by the resignation of Mr. Shaw. Prior to the expiration of his term, Mr. Balthis was appointed judge of the Superior Court by Governor Brown. In October 1959, Mr. Herman F. Selvin of Los Angeles was appointed by the Governor to the Commission to succeed Honorable Frank Balthis.

The term of Mr. John D. Babbage expired October 1, 1959; he was succeeded by Mr. George G. Grover of Corona who was appointed to the Commission by the Governor in October 1959.

The term of Professor Samuel D. Thurman expired October 1, 1959; he was succeeded by Professor John R. McDonough, Jr., of Stanford who was appointed to the Commission by the Governor in October 1959.

As of the date of this report the membership of the Law Revision Commission is:

		<i>Term expires</i>
Roy A. Gustafson, Ventura.....	Chairman	October 1, 1961
John R. McDonough, Jr., Stanford.....	Vice Chairman	October 1, 1963
Hon. James A. Cobey, Merced.....	Senate Member	*
Hon. Clark L. Bradley, San Jose.....	Assembly Member	*
Leonard J. Dieden, Oakland.....	Member	October 1, 1961
George G. Grover, Corona.....	Member	October 1, 1963
Charles H. Matthews, Los Angeles.....	Member	October 1, 1959
Herman F. Selvin, Los Angeles.....	Member	October 1, 1963
Thomas E. Stanton, Jr., San Francisco.....	Member	October 1, 1961
Ralph N. Kleps, Sacramento.....	Ex officio Member	**

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

\*\* The Legislative Counsel is an ex officio nonvoting member of the Law Revision Commission.

Professor John R. McDonough, Jr., a member of the law faculty of Stanford University, resigned as Executive Secretary of the Commission August 1, 1959, to resume a full-time position as a member of the law school faculty at Stanford. He had served as Executive Secretary of the Commission on a one-half time basis since the Commission was organized in 1954. In October 1959 Professor McDonough was appointed as a member of the Commission by Governor Brown.

Mr. John H. DeMouly, formerly the Chief Deputy Legislative Counsel of Oregon, was appointed Executive Secretary by the Commission to fill the vacancy created by the resignation of Professor McDonough. Mr. DeMouly serves as Executive Secretary of the Commission on a three-fourth time basis and serves as a member of the law faculty of Stanford University on a one-fourth time basis. This change in the position of the Executive Secretary from a one-half time basis to a three-fourth time basis reflects the expansion of the Commission's program over the past several years and the realization, which this development has brought, that the position of its Executive Secretary is virtually a full time position.

On January 19, 1959, Mr. Glen E. Stephens of Menlo Park was appointed temporary Assistant Executive Secretary of the Commission. Mr. Joseph B. Harvey of Sacramento was appointed Assistant Executive Secretary of the Commission on September 1, 1959, to fill the vacancy created by the expiration of the temporary appointment of Mr. Stephens.



### III. SUMMARY OF WORK OF COMMISSION

During 1959 the Law Revision Commission was engaged in four principal tasks:

- (1) Presentation of its 1959 legislative program to the Legislature.<sup>9</sup>
- (2) Work on various assignments given to the Commission by the Legislature.<sup>10</sup>
- (3) Consideration of various topics for possible future study by the Commission.<sup>11</sup>
- (4) 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>12</sup>

The Commission held eleven two-day meetings and one three-day meeting in 1959.

### IV. 1959 LEGISLATIVE PROGRAM OF COMMISSION

#### A. TOPICS SELECTED FOR STUDY

Honorable Clark L. Bradley, the Assembly Member of the Commission, introduced at the 1959 Session of the Legislature a concurrent resolution requesting legislative authorization to continue the studies currently in progress by the Law Revision Commission.<sup>13</sup> Mr. Bradley also introduced a concurrent resolution requesting legislative authorization for the Commission to expand its study of the provisions of the Code of Civil Procedure and the Probate Code relating to confirmation of partition sales and probate sales, authorized in 1956,<sup>14</sup> to include a study of whether the various sections of the Code of Civil Procedure relating to partition should be revised.<sup>15</sup> Both of these concurrent resolutions were adopted.<sup>16</sup>

#### B. OTHER MEASURES

In 1959 the Law Revision Commission's second substantial legislative program was presented to the Legislature. Seventeen bills and one Constitutional Amendment prepared by the Commission were introduced by its legislative members. Of these, thirteen became law and the Constitutional Amendment was approved by the Legislature. The other four bills did not become law. The following is a brief summary of the legislative history of these bills:

*Suspension of the Absolute Power of Alienation*: Senate Bill No. 165, which was drafted by the Commission to effectuate its recommendation on this subject,<sup>17</sup> was introduced by Senator James A. Cobey, the Senate Member of the Commission. After minor amendment the bill was

<sup>9</sup> See Part IV of this report *infra* at 10.

<sup>10</sup> See Part V A of this report *infra* at 12.

<sup>11</sup> See Part V B of this report *infra* at 15.

<sup>12</sup> See Part VI of this report *infra* at 15.

<sup>13</sup> Cal. Stat. 1959, res. ch. 98, p. 5577.

<sup>14</sup> Cal. Stat. 1956, res. ch. 42, p. 263.

<sup>15</sup> Cal. Stat. 1959, res. ch. 218, p. 5792.

<sup>16</sup> See notes 13 and 15 *supra*.

<sup>17</sup> See *Recommendation and Study relating to Suspension of the Absolute Power of Alienation*, 1 CAL. LAW REVISION COMM'N REP. REC., & STUDIES at G-1, XI (1957); 1959 REP. CAL. LAW REVISION COMM'N 14; 1958 REP. CAL. LAW REVISION COMM'N 13.

passed by the Legislature and signed by the Governor, becoming Chapter 470 of the Statutes of 1959.

*Effective Date of Order Ruling on Motion for New Trial:* Senate Bill No. 163, which was drafted by the Commission to effectuate its recommendation on this subject,<sup>18</sup> was introduced by Senator Cobey. The bill was passed by the Legislature and signed by the Governor, becoming Chapter 468 of the Statutes of 1959.

*Presentation of Claims Against Public Entities:* Assembly Constitutional Amendment No. 16 and Assembly Bills Nos. 405, 406, 407, 408, 409 and 410, which were drafted by the Commission to effectuate its recommendation on this subject,<sup>19</sup> were introduced by Mr. Bradley. After minor amendment, Assembly Constitutional Amendment No. 16 was approved by the Legislature, becoming Chapter 231 of the Statutes of 1959. It will be voted upon by the people at the 1960 General Election. After the Commission carefully considered a number of questions relating to various provisions of the claims procedures in Assembly Bill No. 405, it made extensive amendments to Assembly Bill No. 405 and technical amendments to Assembly Bills Nos. 406, 407, 408, 409 and 410. These bills were passed by the Legislature and signed by the Governor, becoming Chapters 1724, 1715, 1725, 1726, 1727 and 1728 of the Statutes of 1959, respectively.

*Right of Nonresident Aliens To Inherit:* Senate Bill No. 160, which was drafted by the Commission to effectuate its recommendation on this subject,<sup>20</sup> was introduced by Senator Cobey. The bill was referred to the Senate Judiciary Committee. This Committee recommended that the bill be referred to the Committee on Rules to be assigned to an appropriate interim committee. No further action was taken on this bill.<sup>21</sup>

*Mortgages To Secure Future Advances:* Senate Bill No. 167, which was drafted by the Commission to effectuate its recommendation on this subject,<sup>22</sup> was introduced by Senator Cobey. After several amendments, primarily of a technical character, had been made to the bill it was passed by the Legislature and signed by the Governor, becoming Chapter 528 of the Statutes of 1959.

*Doctrine of Worthier Title:* Senate Bill No. 166, which was drafted by the Commission to effectuate its recommendation on this subject,<sup>23</sup> was introduced by Senator Cobey. The bill was passed by the Legislature and signed by the Governor, becoming Chapter 122 of the Statutes of 1959.

*Overlapping Provisions of Penal and Vehicle Codes:* Assembly Bills Nos. 400 and 402, which were drafted by the Commission to effectuate

<sup>18</sup> See *Recommendation and Study relating to the Effective Date of an Order Ruling on a Motion for New Trial*, 1 CAL. LAW REVISION COMM'N REP. REC., & STUDIES at K-1, XI (1957); 1959 REP. CAL. LAW REVISION COMM'N 16; 1958 REP. CAL. LAW REVISION COMM'N 14.

<sup>19</sup> See *Recommendation and Study relating to The Presentation of Claims Against Public Entities*, REC. & STUDY CAL. LAW REVISION COMM'N A-1 et seq. (1959).

<sup>20</sup> See *Recommendation and Study relating to The Right of Nonresident Aliens To Inherit*, REC. & STUDY CAL. LAW REVISION COMM'N E-1 et seq. (1959).

<sup>21</sup> See 1959 CALIFORNIA LEGISLATURE FINAL CALENDAR OF LEGISLATIVE BUSINESS 178.

<sup>22</sup> See *Recommendation and Study relating to Mortgages To Secure Future Advances*, REC. & STUDY CAL. LAW REVISION COMM'N C-1 et seq. (1958).

<sup>23</sup> See *Recommendation and Study relating to The Doctrine of Worthier Title*, REC. & STUDY CAL. LAW REVISION COMM'N D-1 et seq. (1959).

its recommendation on this subject,<sup>24</sup> were introduced by Mr. Bradley. Assembly Bill No. 400 died in the Assembly Committee on Criminal Procedure.<sup>25</sup> Assembly Bill No. 402 was passed by the Assembly, was given a do-pass recommendation by the Senate Judiciary Committee, but failed to pass the Senate.<sup>26</sup> No further action was taken on these bills.

*Time Within Which Motion for New Trial May Be Made:* Senate Bill No. 164, which was drafted by the Commission to effectuate its recommendation on this subject,<sup>27</sup> was introduced by Senator Cobey. The bill was amended and passed by the Legislature and was signed by the Governor, becoming Chapter 469 of the Statutes of 1959.

*Notice to Shareholders of Sale of Corporate Assets:* Assembly Bill No. 403, which was drafted by the Commission to effectuate its recommendation on this subject,<sup>28</sup> was introduced by Mr. Bradley. The bill was passed by the Assembly but died in Senate Judiciary Committee.<sup>29</sup> No further action was taken on this bill.

*Codification of Laws Relating to Grand Juries:* Assembly Bill No. 404, which was drafted by the Commission to effectuate its recommendation on this subject,<sup>30</sup> was introduced by Mr. Bradley. After several technical amendments had been made to the bill it was passed by the Legislature and signed by the Governor, becoming Chapter 501 of the Statutes of 1959.

*Procedure for Appointing Guardians:* Assembly Bill No. 401, which was drafted by the Commission to effectuate its recommendation on this subject,<sup>31</sup> was introduced by Mr. Bradley. After several amendments had been made to the bill, it was passed by the Legislature and signed by the Governor, becoming Chapter 500 of the Statutes of 1959.

## V. CALENDAR OF TOPICS SELECTED FOR STUDY

### A. STUDIES IN PROGRESS

During 1959 the Commission worked on the topics listed below, each of which it had been authorized and directed by the Legislature to study.

#### Studies Which the Legislature Has Directed the Commission To Make<sup>32</sup>

1. Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference

<sup>24</sup> See *Recommendation and Study relating to Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving*, REC. & STUDY CAL. LAW REVISION COMM'N E-1 *et seq.* (1958).

<sup>25</sup> See 1959 CALIFORNIA LEGISLATURE FINAL CALENDAR OF LEGISLATIVE BUSINESS 387.

<sup>26</sup> *Id.* at 388.

<sup>27</sup> See *Recommendation and Study relating to Time Within Which Motion for New Trial May Be Made*, REC. & STUDY CAL. LAW REVISION COMM'N F-1 *et seq.* (1958).

<sup>28</sup> See *Recommendation and Study relating to Notice to Shareholders of Sale of Corporate Assets*, REC. & STUDY CAL. LAW REVISION COMM'N G-1 *et seq.* (1959).

<sup>29</sup> See 1959 CALIFORNIA LEGISLATURE FINAL CALENDAR OF LEGISLATIVE BUSINESS 388.

<sup>30</sup> 1959 REP. CAL. LAW REVISION COMM'N 20.

<sup>31</sup> 1959 REP. CAL. LAW REVISION COMM'N 21.

<sup>32</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 found in the following:

Nos. 1 through 3: Cal. Stat. 1956, res. ch. 42, p. 263.

No. 4: Cal. Stat. 1956, res. ch. 35, p. 256. See *Recommendation and Study relating to The Presentation of Claims Against Public Entities*, REC. & STUDY CAL. LAW REVISION COMM'N A-1 at A-11 (1959).

Nos. 5 through 8: Cal. Stat. 1957, res. ch. 202, p. 4589.

No. 9: Cal. Stat. 1957, res. ch. 287, p. 4744.

- of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.
2. Whether the law respecting habeas corpus proceedings, in the trial and appellate courts, should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.
  3. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.
  4. Whether the various provisions of law relating to the filing of claims against public officers and employees should be revised.
  5. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.
  6. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.
  7. Whether changes in the Juvenile Court Law or in existing procedures should be made so that the term "ward of the juvenile court" would be inapplicable to nondelinquent minors.
  8. Whether a trial court should have the power to require, as a condition of denying a motion for a new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.
  9. Whether the laws relating to bail should be revised.

#### Topics Authorized by the Legislature Upon the Recommendation of the Commission <sup>33</sup>

1. 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.<sup>34</sup>
2. Whether the provisions of the Civil Code relating to rescission of contracts should be revised to provide a single procedure for rescinding contracts and achieving the return of the consideration given.<sup>35</sup>
3. Whether the law relating to escheat of personal property should be revised.<sup>36</sup>
4. Whether the law relating to the rights of a putative spouse should be revised.<sup>37</sup>
5. Whether the law respecting post conviction sanity hearings should be revised.<sup>38</sup>

<sup>33</sup> Section 10335 of the Government Code requires the Commission to file a report at each regular session of the Legislature containing, *inter alia*, a list of topics intended for future consideration, and authorizes the Commission to study the topics listed in the report which are thereafter approved for its study by concurrent resolution of the Legislature.

The legislative authority for the studies in this list is:

No. 1: Cal. Stat. 1955, res. ch. 207, p. 4207.

Nos. 2 through 8: Cal. Stat. 1956, res. ch. 42, p. 263.

Nos. 9 through 22: Cal. Stat. 1957, res. ch. 202, p. 4589.

Nos. 23 through 25: Cal. Stat. 1958, res. ch. 61, p. 135.

No. 26: Cal. Stat. 1959, res. ch. 218, p. 5792; Cal. Stat. 1956, res. ch. 42, p. 263.

<sup>34</sup> For a description of this topic, see 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1955 REPORT at 28 (1957). For the legislative history, see 1958 REP. CAL. LAW REVISION COMM'N 13.

<sup>35</sup> See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1956 REPORT at 22 (1957).

<sup>36</sup> *Id.* at 25.

<sup>37</sup> *Id.* at 26.

<sup>38</sup> *Id.* at 28.

6. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.<sup>39</sup>
7. Whether the Arbitration Statute should be revised.<sup>40</sup>
8. Whether the law in respect of survivability of tort actions should be revised.<sup>41</sup>
9. Whether the law relating to the inter vivos rights of one spouse in property acquired by the other spouse during marriage while domiciled outside California should be revised.<sup>42</sup>
10. Whether the law relating to attachment, garnishment, and property exempt from execution should be revised.<sup>43</sup>
11. Whether a defendant in a criminal action should be required to give notice of the prosecution of his intention to rely upon the defense of alibi.<sup>44</sup>
12. Whether the Small Claims Court Law should be revised.<sup>45</sup>
13. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised.<sup>46</sup>
14. Whether the separate trial on the issue of insanity in criminal cases should be abolished or whether, if it is retained, evidence of the defendant's mental condition should be admissible on the issue of specific intent in the trial on the other pleas.<sup>47</sup>
15. Whether partnerships and unincorporated associations should be permitted to sue in their common names and whether the law relating to the use of fictitious names should be revised.<sup>48</sup>
16. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.<sup>49</sup>
17. Whether the provisions of the Penal Code relating to arson should be revised.<sup>50</sup>
18. Whether Civil Code Section 1698 should be repealed or revised.<sup>51</sup>
19. Whether minors should have a right to counsel in juvenile court proceedings.<sup>52</sup>
20. 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.<sup>53</sup>
21. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.<sup>54</sup>
22. Whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support.<sup>55</sup>
23. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court.<sup>56</sup>

<sup>39</sup> *Id.* at 29.

<sup>40</sup> *Id.* at 33.

<sup>41</sup> *Ibid.*

<sup>42</sup> See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1957 REPORT at 14 (1957).

<sup>43</sup> *Id.* at 15.

<sup>44</sup> *Id.* at 16.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Id.* at 17.

<sup>47</sup> *Id.* at 18.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Id.* at 19.

<sup>50</sup> *Id.* at 20.

<sup>51</sup> *Id.* at 21.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Id.* at 23.

<sup>54</sup> *Id.* at 24.

<sup>55</sup> *Id.* at 25.

<sup>56</sup> See 1958 REP. CAL. LAW REVISION COMM'N 18.

24. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised.<sup>57</sup>
25. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.<sup>58</sup>
26. 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.<sup>59</sup>

## B. TOPICS INTENDED FOR FUTURE CONSIDERATION

Pursuant to Section 10335 of the Government Code the Commission reported 23 topics that it had selected for study to the 1955 Session of the Legislature; 16 of these topics were approved. The Commission reported 15 additional topics which it had selected for study to the 1956 Session, all of which were approved. The 1956 Session of the Legislature also referred four other topics to the Commission for study. The Commission reported 14 additional topics which it had selected for study to the 1957 Session, all of which were approved. The 1957 Session of the Legislature also referred seven additional topics to the Commission for study. The Commission reported five additional topics which it had selected for study to the 1958 Session of the Legislature; three of these topics were approved. The legislative members of the Commission did not introduce a concurrent resolution at the 1959 Session of the Legislature requesting legislative authorization for the Commission to undertake additional studies.

The Commission still has a full agenda of studies in progress<sup>60</sup> that will require all of its energies during the current fiscal year and during fiscal year 1960-61. For this reason the legislative members of the Commission will not introduce at the 1960 Session of the Legislature a concurrent resolution requesting legislative authorization for the Commission to undertake additional studies.

## VI. 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

<sup>57</sup> *Id.* at 20.

<sup>58</sup> *Id.* at 21.

<sup>59</sup> See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1956 REPORT at 21 (1957) and p. 10 of this report.

<sup>60</sup> See Par V A of this report *supra* at 12.

Court of California handed down since the Commission's 1959 Report was prepared.<sup>61</sup> It has the following to report:

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

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

(3) In *Vallerga v. Dept. Alcoholic Bev. Control*,<sup>62</sup> the Supreme Court of California held Section 24200(e) of the Business and Professions Code unconstitutional. Section 24200(e) authorizes the suspension or revocation of a liquor license where the premises are a resort for illegal possessors or users of narcotics, prostitutes, pimps, panders or sexual perverts and provides that the character of such premises may be proved by general reputation.

In *People v. Chessman*,<sup>63</sup> the Supreme Court of California, in its opinion, indicated that, if noncompliance with the provision of Government Code Section 1060(g) were construed as foreclosing justices of the Supreme Court from deciding cases, such provision would be unconstitutional. In the *Chessman* case, Chessman asserted that the "justices of this court are 'jurisdictionally foreclosed' from deciding this (or any other) case because they have not complied with the provision of section 1060 of the Government Code that they 'shall reside at and keep their offices in the City of Sacramento.'" In answer to this contention the Supreme Court said:

The state Constitution (art. VI, § 23) provides that "No person shall be eligible to the office of a Justice of the Supreme Court, or of a district court of appeal, or of a judge of a superior court, or of a municipal court, unless he shall have been admitted to practice before the Supreme Court of the State for a period of at least five years immediately preceding his election or appointment to such office . . ." This constitutional requirement is generally regarded as exclusive and legislative attempts to add qualifications have been held unconstitutional. [Citations omitted.] When a candidate for justice meets the requirement of section 23 of article VI and, after election or appointment, qualifies by taking the oath provided by section 3 of article XX, the Legislature cannot properly require, by way of additional qualification, anything (such as change of residence) which has no reasonable relation to the performance of his duties.<sup>64</sup>

<sup>61</sup> This study has been carried through 53 *Advance California Reports* 503 (1960) and 80 *Supreme Court Reporter* 386 (1960).

<sup>62</sup> 53 A.C. 314, 1 *Cal. Rptr.* 494 (1959).

<sup>63</sup> 52 A.C. 481, 341 P.2d 679 (1959).

<sup>64</sup> *Id.* at 513, 341 P.2d at 700.

## VII. RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed in Part V A of this report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of Section 24200(e) of the Business and Professions Code.

Respectfully submitted,

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