

**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 1961**

**January 1961**

## 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, herewith submits this report of its activities during the year 1960.

HERMAN F. SELVIN, *Chairman*  
JOHN R. McDONOUGH, JR., *Vice Chairman*  
JAMES A. COBEY, *Member of the Senate*  
CLARK L. BRADLEY, *Member of the Assembly*  
JOSEPH A. BALL  
GEORGE G. GROVER  
SHO SATO  
VAINO H. SPENCER  
THOMAS E. STANTON, JR.  
RALPH N. KLEPS, *Legislative Counsel, ex officio*

JOHN H. DEMOULLY  
*Executive Secretary*

January 1961



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# REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1960

## I. 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. 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.<sup>4</sup> This pamphlet is distributed to the Gov-

<sup>1</sup> See Cal. Stat. 1953, ch. 1445, p. 3036; CAL. GOVT. CODE §§ 10300-10340. And see Cal. Stat. (1st Ex. Sess.) 1960, ch. 61, which revises Section 10303 of the Government Code.

<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. This lack of unanimity is not reported in the Commission's recommendation to the Legislature.

ernor, 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.

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 the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

A total of 33 bills 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, seven in 1957 and thirteen in 1959.<sup>6</sup> The Constitutional Amendment, favorably voted upon by the 1959 Legislature, was approved and ratified by the people in 1960.

<sup>5</sup> See CAL. GOVT. CODE § 10333.

<sup>6</sup> For the complete list of bills enacted upon the recommendation of the Commission, see 1960 REP. CAL. LAW REVISION COMM'N, 6 nn.6-8.

## II. PERSONNEL OF COMMISSION

The term of Mr. Charles H. Matthews expired October 1, 1959. In June 1960, Mrs. Vaino H. Spencer of Los Angeles was appointed by the Governor to the Commission to succeed Mr. Matthews.

Mr. Leonard J. Dieden resigned from the Commission effective August 1960 after his appointment as judge of the Superior Court by Governor Brown. In December, 1960, Professor Sho Sato of Berkeley was appointed to the Commission by the Governor to fill the vacancy created by the resignation of Honorable Leonard Dieden.

Mr. Roy A. Gustafson resigned from the Commission effective November 1960. In December 1960, Mr. Joseph A. Ball of Long Beach was appointed to the Commission by the Governor to fill the vacancy created by the resignation of Mr. Gustafson.

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

	<i>Term expires</i>
Herman F. Selvin, Los Angeles, Chairman .....	October 1, 1963
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.....	*
Joseph A. Ball, Long Beach, Member .....	October 1, 1961
George G. Grover, Corona, Member.....	October 1, 1963
Sho Sato, Berkeley, Member.....	October 1, 1961
Vaino H. Spencer, 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 ex officio a nonvoting member of the Commission.

The Law Revision Commission held its fourth election of officers in January 1960. Mr. Roy A. Gustafson was elected Chairman and Professor John R. McDonough, Jr., was elected Vice Chairman. The Commission in December 1960 elected Mr. Herman F. Selvin Chairman to fill the vacancy created by the resignation of Mr. Gustafson.

### III. SUMMARY OF WORK OF COMMISSION

During 1960 the Law Revision Commission was engaged in three principal tasks:

- (1) Work on various assignments given to the Commission by the Legislature.<sup>7</sup>
- (2) Consideration of various topics for possible future study by the Commission.<sup>8</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>9</sup>

The Commission held five three-day meetings, six two-day meetings and one one-day meeting in 1960.

<sup>7</sup> See Part IV A of this report *infra*.

<sup>8</sup> See Part IV B of this report *infra*.

<sup>9</sup> See Part V of this report *infra*.

## IV. CALENDAR OF TOPICS SELECTED FOR STUDY

### A. STUDIES IN PROGRESS

During 1960 the Commission's agenda consisted of the thirty-five studies listed below, each of which it had been authorized and directed by the Legislature to study.

#### Studies on Which the Commission Expects To Submit a Recommendation to the 1961 Legislature <sup>10</sup>

1. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.
2. Whether the various provisions of law relating to the filing of claims against public officers and employees should be revised.
3. 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.
4. 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>11</sup>
5. Whether the Arbitration Statute should be revised.<sup>12</sup>
6. Whether the law in respect of survivability of tort actions should be revised.<sup>13</sup>
7. 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>14</sup>
8. Whether a defendant in a criminal action should be required to give notice to the prosecution of his intention to rely upon the defense of alibi.<sup>15</sup>
9. Whether minors should have a right to counsel in juvenile court proceedings.<sup>16</sup>

<sup>10</sup> The legislative authority for the studies in this list is as follows:

No. 1: Cal. Stat. 1956, res. ch. 42, p. 263.

No. 2: Cal. Stat. 1956, res. ch. 35, p. 256. See *Recommendation and Study relating to the Presentation of Claims Against Public Entities*, 2 CAL. LAW REVISION COMM'N REP., REC. & STUDIES A-1, at A-11 (1959).

No. 3: Cal. Stat. 1957, res. ch. 202, p. 4589.

Nos. 4 through 6: Cal. Stat. 1956, res. ch. 42, p. 263.

Nos. 7 through 9: Cal. Stat. 1957, res. ch. 202, p. 4589.

<sup>11</sup> See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1956 REPORT at 22 (1957).

<sup>12</sup> *Id.* at 33.

<sup>13</sup> *Ibid.*

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

<sup>15</sup> *Id.* at 16.

<sup>16</sup> *Id.* at 21.

### Other Studies in Progress

#### *Studies Which the Legislature Has Directed the Commission To Make*<sup>17</sup>

1. Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference 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 doctrine of sovereign or governmental immunity in California should be abolished or revised.
4. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.
5. 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.
6. Whether the laws relating to bail should be revised.

#### *Studies Authorized by the Legislature Upon the Recommendation of the Commission*<sup>18</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>19</sup>
2. Whether the law relating to escheat of personal property should be revised.<sup>20</sup>
3. Whether the law relating to the rights of a putative spouse should be revised.<sup>21</sup>
4. Whether the law respecting postconviction sanity hearings should be revised.<sup>22</sup>

<sup>17</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 and 2: Cal. Stat. 1956, res. ch. 42, p. 263.

Nos. 3 through 5: Cal. Stat. 1957, res. ch. 202, p. 4589.

No. 6: Cal. Stat. 1957, res. ch. 287, p. 4744.

<sup>18</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 5: Cal. Stat. 1956, res. ch. 42, p. 263.

Nos. 6 through 16: Cal. Stat. 1957, res. ch. 202, p. 4589.

Nos. 17 through 19: Cal. Stat. 1958, res. ch. 61, p. 135.

No. 20: Cal. Stat. 1959, res. ch. 218, p. 5792; Cal. Stat. 1956, res. ch. 42, p. 263.

<sup>19</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 2 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1958 REPORT at 13 (1959).

<sup>20</sup> See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1956 REPORT at 25 (1957).

<sup>21</sup> *Id.* at 26.

<sup>22</sup> *Id.* at 28.

5. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.<sup>23</sup>
6. Whether the law relating to attachment, garnishment, and property exempt from execution should be revised.<sup>24</sup>
7. Whether the Small Claims Court Law should be revised.<sup>25</sup>
8. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised.<sup>26</sup>
9. 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>27</sup>
10. 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>28</sup>
11. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.<sup>29</sup>
12. Whether the provisions of the Penal Code relating to arson should be revised.<sup>30</sup>
13. Whether Civil Code Section 1698 should be repealed or revised.<sup>31</sup>
14. 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>32</sup>
15. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.<sup>33</sup>
16. 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>34</sup>
17. 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>35</sup>
18. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised.<sup>36</sup>
19. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.<sup>37</sup>
20. 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 per-

<sup>23</sup> *Id.* at 29.

<sup>24</sup> See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1957 REPORT at 15 (1957).

<sup>25</sup> *Id.* at 16.

<sup>26</sup> *Id.* at 17.

<sup>27</sup> *Id.* at 18.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Id.* at 19.

<sup>30</sup> *Id.* at 20.

<sup>31</sup> *Id.* at 21.

<sup>32</sup> *Id.* at 23.

<sup>33</sup> *Id.* at 24.

<sup>34</sup> *Id.* at 25.

<sup>35</sup> See 2 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1958 REPORT at 18 (1959).

<sup>36</sup> *Id.* at 20.

<sup>37</sup> *Id.* at 21.

sons 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>38</sup>

### B. STUDIES FOR FUTURE CONSIDERATION

Pursuant to Section 10335 of the Government Code the Commission has reported 57 topics that it had selected for study to the Legislature since 1955. Forty-seven of these topics were approved. The Legislature has also referred fourteen other topics to the Commission for study.

A total of 33 bills and one Constitutional Amendment, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. The Commission has also submitted four reports on topics on which, after study, it concluded either that the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

The Commission has an agenda consisting of 35 studies in progress,<sup>39</sup> some of which are of substantial magnitude, that will require all of its energies during the current fiscal year and during the fiscal year 1961-62. For this reason the legislative members of the Commission will not introduce at the 1961 Session of the Legislature a concurrent resolution requesting legislative authorization for the Commission to undertake additional studies.

<sup>38</sup> See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1956 REPORT at 21 (1957) and 1960 REP. CAL. LAW REVISION COMM'N 8 at notecalls 14, 15.

<sup>39</sup> See Part IV A of this report *supra*.

## V. 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 1960 Report was prepared.<sup>40</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) Two decisions of the Supreme Court of California holding statutes of the State unconstitutional in part have been found.

In *In re Newbern*,<sup>41</sup> the Supreme Court unanimously held subdivision 11 of Section 647 of the Penal Code unconstitutional, on the ground that the definition that categorizes "every common drunkard" as a vagrant is vague, uncertain and incapable of being uniformly enforced.

In *Forster Shipbldg. Co. v. County of Los Angeles*,<sup>42</sup> the Supreme Court unanimously held the first paragraph of Section 107.1 of the Revenue and Taxation Code invalid on the ground that Section 14 of Article XIII of the California Constitution does not authorize the Legislature to declare a possessory interest arising out of a lease of exempt property to be personal property.

<sup>40</sup> This study has been carried through 54 *Advance California Reports* 893 (1960) and 80 *Supreme Court Reporter* 1639 (1960).

<sup>41</sup> 53 *Cal.2d* 786, 350 *P.2d* 116, 3 *Cal. Rptr.* 364 (1960).

<sup>42</sup> 54 *A.C.* 443, 353 *P.2d* 736, 6 *Cal. Rptr.* 24 (1960).

## VI. RECOMMENDATIONS

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

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of subdivision 11 of Section 647 of the Penal Code and the repeal of the first paragraph of Section 107.1 of the Revenue and Taxation Code.

Respectfully submitted,

HERMAN F. SELVIN, *Chairman*  
JOHN R. McDONOUGH, JR., *Vice Chairman*  
JAMES A. COBEY, *Member of the Senate*  
CLARK L. BRADLEY, *Member of the Assembly*  
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THOMAS E. STANTON, JR.  
RALPH N. KLEPS, *Legislative Counsel, ex officio*

JOHN H. DEMOULLY  
*Executive Secretary*

# LEGISLATIVE HISTORY OF MEASURES INTRODUCED IN 1961 SESSION ON RECOMMENDATION OF CALIFORNIA LAW REVISION COMMISSION

## Calendar of Topics for Study

Assembly Concurrent Resolution No. 19 was introduced by Honorable Clark L. Bradley, the Assembly Member of the Law Revision Commission. This resolution requested legislative authorization for the Commission to continue its study of topics previously approved by the Legislature.<sup>1</sup> The resolution was adopted by the Legislature, becoming Resolution Chapter 95 of the Statutes of 1961.

### Evidence in Eminent Domain Proceedings

Senate Bill No. 205 was introduced by Senator James A. Cobey, the Senate Member of the Law Revision Commission, to effectuate the recommendation of the Commission on this subject.<sup>2</sup> The bill passed the Legislature in an amended form but was pocket vetoed by the Governor.

A number of amendments were made to the bill in the Senate. Except as noted below in paragraphs (5) and (7), all of the amendments were made on recommendation of the Commission. Some of the amendments are of a minor or technical nature and are self-explanatory. The following, however, warrant some comment:

(1) Section 1248.1 of the Code of Civil Procedure was amended to delete the provision that the owner of the property being condemned is presumed to be qualified to express an opinion as to the value of the property. This provision was deleted because of concern that a jury instruction might be given in the language of the statute and thus give undue emphasis to the opinion of the owner. In lieu of the deleted provision, Section 1248.1 was amended to state that an opinion as to the value of the property may be expressed by the owner. The effect of this change is to permit the owner to express his opinion even if he is not otherwise qualified to do so. After balancing this result against the danger that the jury might be confused by a jury instruction phrased in the language of the bill as introduced, the Commission concluded that the change was desirable, for the fact that the owner's opinion may be unsound can be shown on cross examination.

(2) Objection was made to the bill as introduced on the ground that it would permit an appraiser to consider noncompensable items of value, damage or injury in forming his opinion. Two amendments were

<sup>1</sup> Section 10335 of the Government Code provides that the Commission shall confine its studies to those topics set forth in the calendar of topics contained in its last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The section also requires that the Commission study any topic which the Legislature, by concurrent resolution, refers to it for such study.

<sup>2</sup> See Recommendation and Study, *supra* at A-1.

made to eliminate any possibility that such a construction would be given the statute. Section 1248.2 was amended to require that the data relied upon by an appraiser be relevant to the item of value, damage or benefit concerning which the appraiser is giving his opinion. Section 1248.3(f) was revised to make it clear that an opinion of value, damage or injury may not be based on noncompensable factors.

(3) As originally introduced, Section 1248.2 permitted an appraiser to base an opinion of value upon, inter alia, "the capitalized value of the reasonable net rental value attributable to the [subject] property . . . , including reasonable net rentals customarily fixed by a percentage or other measurable portion of gross sales or gross income of a business which may reasonably be conducted on the premises . . . ." The question was raised whether this language would permit an appraiser to attribute a reasonable net rental value to unimproved property or to property not improved for its highest and best use based upon the reasonable net rental which could be derived from the property if it were improved for its highest and best use. To avoid any misunderstanding as to the meaning of Section 1248.2, subdivisions (c), (d) and (e) were amended to make it clear that an appraiser could do so.

(4) Subdivision (g) was added to Section 1248.2 to include in the bill the substance of the last sentence of Section 1845.5 which the bill proposed to repeal.

(5) As originally introduced, Section 1248.3 did not permit an expert witness to base his opinion of value upon *any* offer because of the difficulty of laying an adequate foundation for an offer and because of the ease of fabricating an oral offer. Objection was made to the exclusion of bona fide written offers upon the property being condemned on the ground that the Commission's objection to written offers generally—that the range of collateral inquiry would be too great when weighed against the value of the evidence—is not valid insofar as bona fide offers to purchase the property being valued are concerned. The Senate Judiciary Committee amended Section 1248.3 to permit an expert to consider an offer to purchase or lease which included the property or property interest to be taken, damaged or benefited if such offer is a bona fide, open market transaction, not affected by the acquisition or proposed improvement, is made in writing by a person ready, willing and able to buy or lease at the time the offer was made and is introduced by the owner of the property or property interest for which the offer to purchase or lease was made.

(6) Objection was made that under Section 1248.3(d) an appraiser could not consider actual or estimated taxes in determining the reasonable net rental value of the property being taken, damaged or benefited. To meet this objection, Section 1248.3(d) was amended so that it would be clear that taxes, as distinguished from the assessed value of the property could be considered for this purpose.

(7) The Senate Judiciary Committee amended Section 1248.3(e) to provide that an appraiser could apportion the price of a particular comparable sale between land and improvements for the purpose of comparison with the property being taken, damaged or benefited.

## Taking Possession and Passage of Title in Eminent Domain Proceedings

Senate Bills Nos. 204 and 206 were introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.<sup>3</sup>

### Senate Bill No. 204

Senate Bill No. 204, which in amended form became Chapter 1612 of the Statutes of 1961, relates to proration and refund of property taxes when property is taken by eminent domain.

The bill was amended in the Senate (1) to require that the condemner reimburse the condemnee for the condemner's pro rata share of prepaid property taxes and (2) to permit the condemner to obtain a refund of such taxes in the same manner as taxes erroneously collected if the condemner is a public agency that would be entitled to have such taxes cancelled if unpaid. The bill as introduced did not provide for reimbursement to the condemnee of such prepaid property taxes by the condemner in cases where the condemner is a public agency but instead permitted the condemnee to obtain a refund. The amendment was made because it was thought that the condemner rather than the condemnee should have the burden of invoking the procedures necessary to obtain the tax refund.

Senate Bill No. 204 also was amended in the Senate to provide that any party to an eminent domain proceeding may have the property sought to be taken separately valued for property tax purposes by the taxing officials. Under this amendment the property owner may in the case of a partial taking obtain a determination of the precise amount of taxes due on the part remaining. He can then pay this amount and avoid having to pay the property taxes on the entire parcel in order to prevent the accrual of penalties and interest on the taxes allocable to the property remaining.

### Senate Bill No. 206

Senate Bill No. 206, which in amended form became Chapter 1613 of the Statutes of 1961, relates to the procedure for taking possession and passage of title.

The bill was substantially amended in the Senate. Many of the amendments were technical or clarifying amendments. The following are the principal amendments of a substantive nature:

(1) Section 1243.5 as introduced authorized the court to permit the condemner to serve the order for immediate possession by mail in lieu of personal service. The bill was amended to permit the condemner to make such service without obtaining a prior court order upon filing an affidavit in the proceeding showing why personal service could not have been made. The change was made to relieve the condemner of the expense of making a court appearance in order to serve by mail in lieu of personal service.

(2) Section 1243.5 was amended to provide that prior to judgment the amount deposited may not be reduced to an amount less than that already withdrawn.

<sup>3</sup> See Recommendation and Study, *supra* at B-1.

(3) The provision in Section 1243.5 for a court order delaying the effective date of immediate possession was deleted. The public agencies objected to this provision as unnecessary on the ground that before a person can be dispossessed under an order of immediate possession, the condemner must obtain a writ of assistance and that, as a matter of practice, a court will issue the writ only upon a showing of necessity and with the imposition of reasonable conditions.

(4) The provision in Section 1243.5 for the vacation of an order of immediate possession by the trial or appellate court was deleted. The public agencies objected to this provision as unnecessary on the ground that the trial court can vacate any order for immediate possession where it is shown that the condemner does not have the right to take the property or does not have the right to take immediate possession and that, if the trial court refuses to do so, the intervention of an appellate court may be secured by a petition for an appropriate writ. The public agencies stated that the writ procedure is more expeditious than an appeal because it is unnecessary to have a record prepared and transmitted to the appellate court.

(5) The provision in Section 1243.7 for withdrawal of the deposit was amended to *require* that an applicant seeking to withdraw any of the deposit in excess of the amount originally deposited file an undertaking and to provide that the applicant filing the undertaking is entitled to recover the premium paid for the undertaking, but not to exceed two percent of the face value of the undertaking, as a part of the recoverable costs in the eminent domain proceeding. The changes were made to provide more adequate protection to the condemner in case of an excess withdrawal.

(6) A provision was added to Section 1243.7 giving the court authority to require the filing of an undertaking when one person seeks to withdraw any portion of a deposit which another person claims.

(7) The bill as introduced deleted the last sentence of Section 1249 and inserted the substance of that sentence in Section 1249.1. The bill was amended to restore the deleted sentence to Section 1249 to avoid any implication that Senate Bill No. 206 was intended to affect the meaning of that sentence.

(8) Section 1254 was amended to incorporate a change made in that section by a bill previously enacted at the 1961 legislative session.

### **Extension of Right of Immediate Possession**

Senate Constitutional Amendment No. 6 and Senate Bill No. 207 were introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.<sup>4</sup> Both died in the Senate Judiciary Committee.

<sup>4</sup> See Recommendation and Study, *supra* at B-1.

## Reimbursement for Moving Expenses When Property Is Acquired for Public Use

Senate Bill No. 203 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.<sup>5</sup> The Senate Judiciary Committee recommended that the bill be referred to the Committee on Rules to be assigned to an appropriate interim committee. The bill was referred to the Senate Fact Finding Committee on Judiciary. Before this action was taken, the bill was amended in the Senate to make the following changes:

(1) Two additional limitations on reimbursement of moving expenses were added to the bill. First, reimbursement was limited to a maximum of \$250 for a single family residential unit and \$2,500 for any other type of property. Second, reimbursement under the proposed statute was prohibited in any case where relocation payments are authorized to be made under Section 33270.1 of the Health and Safety Code in connection with a redevelopment project. The dollar limits on reimbursement for moving expenses were accepted by the Commission when it became apparent that the bill would not otherwise be acceptable so that the principle of reimbursement for moving expenses could be established in California. The Commission anticipated that if the bill were enacted the dollar limitations on reimbursement would be reviewed after experience had been acquired under the statute.

(2) Provisions of the proposed statute relating to reimbursement when real property is taken for a term only were deleted. The insertion of dollar limits on reimbursement would have made it necessary to include in the bill very complex provisions dealing with reimbursement when real property is taken for a term only. The introduction of such complex provisions into the bill was considered undesirable in view of the very few occasions when they would be applicable.

(3) The bill was amended to provide that negotiated settlements of the amount of reimbursement for moving expenses may be based on the estimated amount of moving and storage costs incurred or to be incurred and that negotiated settlements are subject to limitations set out in the bill on the amount of reimbursement. The original bill provided that the limitations on reimbursement did not apply when the parties determined the amount of reimbursement by agreement. This change was made because the public agencies suggested that this would facilitate administration.

(4) A provision permitting the person acquiring the property to elect to move and store the property at its own expense was deleted from the bill. Representatives of condemnees objected to this provision. None of the public agencies that appeared before the Senate Judiciary Committee on the bill believed that the provision was necessary.

(5) The above amendments made the definition of "acquisition" unnecessary and this definition was deleted.

<sup>5</sup> See Recommendation and Study, *supra* at C-1.

## Rescission of Contracts

Assembly Bills Nos. 466 and 467 were introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.<sup>6</sup>

Assembly Bill No. 467, a comprehensive rescission statute, was passed by the Assembly without amendment. A technical amendment was made to the bill in the Senate. As thus amended, the bill was passed by the Legislature and signed by the Governor, becoming Chapter 589 of the Statutes of 1961.

Assembly Bill No. 466 relates to rescission of a release. The bill was passed by the Assembly, but the Senate Judiciary Committee recommended that the bill be referred to the Committee on Rules to be referred to an appropriate interim committee. The bill was referred to the Assembly Committee on Rules but that committee did not assign the bill to an interim committee for study.

## Right to Counsel and the Separation of the Delinquent From the Nondelinquent Minor in Juvenile Court Proceedings

Senate Bills Nos. 219 and 220 were introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.<sup>7</sup> The substance of these bills was enacted as Chapter 1616 of the Statutes of 1961.

Both Senate Bill No. 219 and Senate Bill No. 220 were drafted on the basis of the then existing law relating to juvenile court proceedings. However, Senate Bill No. 332, a comprehensive revision of the Juvenile Court Law, was introduced at the 1961 Session upon recommendation of the Governor's Special Study Commission on Juvenile Justice. Accordingly, the Law Revision Commission made no effort to secure enactment of Senate Bills Nos. 219 and 220.

Senate Bill No. 219 was introduced to effectuate the recommendation of the Law Revision Commission that the juvenile court should adjudge a juvenile to be a "ward" only if the court's jurisdiction over the juvenile is based upon the juvenile's misconduct and that a juvenile should be adjudged a "dependent child" if he is under the jurisdiction of the juvenile court merely because he lacks proper supervision or care. Senate Bill No. 332 as introduced made no such distinction between wards and dependent children. At the request of the Senate Judiciary Committee the Law Revision Commission drafted amendments to Senate Bill No. 332 to provide for the designation of a juvenile as a "ward" or "dependent child." These amendments were adopted in the Senate.

Senate Bill No. 219 also specified the range of permissible disposition of juveniles who are adjudged to be wards or dependent children, providing that the court should not have the power to place a dependent child on probation, to detain him in the county jail or to commit him to the Youth Authority or to a local correctional institution unless the dependent child is also adjudged to be a ward because of his misconduct. Sections 725 to 781 of the Welfare and Institutions Code as enacted by Senate Bill No. 332 provide for substantially the same range of permissible disposition of juveniles who are adjudged to be

<sup>6</sup> See Recommendation and Study, *supra* at D-1.

<sup>7</sup> See Recommendation and Study, *supra* at E-1.

wards or dependent children and, accordingly, effectuate the recommendation of the Law Revision Commission on this matter.

Senate Bill No. 220 was introduced to effectuate the recommendation of the Law Revision Commission concerning the right to counsel in juvenile court proceedings. Sections 633 and 634 of the Welfare and Institutions Code as enacted by Senate Bill No. 332 are basically the same as the recommendation of the Law Revision Commission contained in Senate Bill No. 220 and, accordingly, effectuate the recommendation of the Law Revision Commission on this matter.

Inasmuch as the substance of the recommendation of the Law Revision Commission contained in Senate Bills Nos. 219 and 220 was either contained in or added to Senate Bill No. 332, Senate Bills Nos. 219 and 220 were not acted upon by the Legislature. Senate Bill No. 332 was enacted as Chapter 1616 of the Statutes of 1961.

### Survival of Actions

Senate Bill No. 202, which in amended form became Chapter 657 of the Statutes of 1961, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.<sup>8</sup> The bill was amended in the Senate as follows:

(1) The proposed comprehensive survival statute—Section 573 of the Probate Code—was amended to provide that damages for “pain, suffering or disfigurement” cannot be recovered when a person having a cause of action dies before judgment.

(2) Section 376 of the Code of Civil Procedure was amended to provide that in an action maintained under that section after the death of the child or ward or against the executor or administrator of the person causing the injury, “the damages recoverable shall be as provided in Section 573 of the Probate Code.”

### Arbitration

Assembly Bill No. 832 (Chapter 461 of the Statutes of 1961) was introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.<sup>9</sup> The bill was enacted without amendment.

### Presentation of Claims Against Public Officers and Employees

Senate Bill No. 208 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.<sup>10</sup> The bill was given a do-pass recommendation by the Senate Judiciary Committee, but failed to pass the Senate. Senator Cobey moved that the Senate reconsider the vote whereby Senate Bill No. 208 was refused passage and reconsideration was granted. However, the bill was subsequently re-referred to the Senate Judiciary Committee and died in that committee.

<sup>8</sup> See Recommendation and Study, *supra* at F-1.

<sup>9</sup> See Recommendation and Study, *supra* at G-1.

<sup>10</sup> See Recommendation and Study, *supra* at H-1.

## **Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere**

Assembly Bill No. 465 (Chapter 636 of the Statutes of 1961) was introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.<sup>11</sup> The bill was enacted without amendment.

### **Notice of Alibi in Criminal Actions**

Assembly Bill No. 464 was introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.<sup>12</sup> The Assembly Committee on Criminal Procedure recommended that the bill be referred to the Committee on Rules to be assigned to an appropriate interim committee. The bill was referred to the Assembly Committee on Rules but that committee did not assign the bill to an interim committee for study.

<sup>11</sup> See Recommendation and Study, *supra* at I-1.

<sup>12</sup> See Recommendation and Study, *supra* at J-1.