#39.160 1/27/77

Memorandum 77-1

Subject: Study 39.160 - Attachment

The Attachment Law became operative on January 1, 1977. After the bill revising the Attachment Law (A.B. 2864--Cal. Stats. 1976, Ch. 437) had been passed and since it has become operative, we have received several comments concerning potential problems. If the Commission decides that corrective legislation is needed as an urgent matter, we will prepare a bill for introduction in this session of the Legislature.

§ 481.050. "Chose in action" defined; attachment of insurance policy

In Javorek v. Superior Court, 17 Cal.3d 629, 552 P.2d 728, 131 Cal. Rptr. 768 (1976), the California Supreme Court held that the obligation to indemnify and defend under an automobile liability insurance policy did not provide a basis for quasi in rem jurisdiction over a nonresident defendant insurance company. (See Exhibit 2.) This decision was on the basis of the interim attachment statute, which is no longer in effect. The court declined to consider the question in the light of the Attachment Law since it had not yet gone into effect. (See Exhibit 2, n.12 at 741.) Plaintiffs apparently were prepared to argue that the result would be different under the Attachment Law. This is because of the definition of "chose in action" in Section 481.050:

> 481.050. "Chose in action" means any right to payment which arises out of the conduct of any trade, business, or profession and which (a) is not conditioned upon further performance by the defendant or upon any event other than the passage of time, (b) is not an account receivable, (c) is not a deposit account, and (d) is not evidenced by a negotiable instrument, security, chattel paper, or judgment. The term includes an interest in or a claim under an insurance policy and a right to payment on a nonnegotiable instrument which is otherwise negotiable within Division 3 (commencing with Section 3101) of the Commercial Code but which is not payable to order or to bearer. [Emphasis added.]

Mr. James S. Graham has written the Commission concerning the intent of the last sentence of Section 481.050. (See Exhibit 1.) The staff has also discussed the matter with Mr. Graham on the telephone and has indicated to him that it is not the Commission's practice to issue statements of intent, the Commission's intent being reflected in the printed recommendation and the Comments to the sections.

The staff has traced the development of this provision from its first appearance in Memorandum 72-24 (March 29, 1972) through the Recommendation Relating to Revision of the Attachment Law, 13 Cal. L. Revision Comm'n Reports 801, 815 (1976). We find no express or implied intent to adopt the doctrine of Seider v. Roth, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966), in California.

Insofar as interests in and claims under insurance policies are concerned, the provision first read as follows:

> (d) "Chose in action" means any right to payment of a fixed or reasonably ascertainable amount which is not an account and is not evidenced by a negotiable instrument, security, chattel paper, or judgment, or based on an interest in or a claim under an insurance policy. [Memorandum 72-24, Exhibit I, p. 1.]

In the Second Supplement to Memorandum 72-35 (Exhibit I, p. 1), this provision was revised to include, rather than exclude, such interests:

> (d) "Chose in action" means any right to payment of a fixed or reasonably ascertainable amount which is not an account receivable and is not evidenced by a negotiable instrument, security, chattel paper, or judgment. The term includes an interest in or a claim under an insurance policy.

The definition was derived in part from Commercial Code Section 9106, but the Comment to the definition of "chose in action" in the draft statute considered at the June 1972 meeting drew the following distinction:

> Comment. Section 480.050 defines "chose in action" as the term is used in this title. It should be noted that, in contrast with the term "contract right" under the Commercial Code, the right must be earned and must be in a fixed or reasonably ascertainable amount. Compare Com. Code § 9106 ("'contract' right means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper;" "'general intangibles' means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents, and instruments. Any interest or claim in or under any policy of insurance is a general intangible.").

It appears from this early Comment that the requirement that the right to payment not be conditioned on further performance applied to all choses in action, including interests in and claims under insurance policies. The Comment to the section as enacted in 1974 is less clear, but we are certain that no change in meaning was intended:

Comment. Section 481.050 defines "chose in action" as the term is used in this title. It should be noted that the right must not be conditioned on the further performance of the defendant. Moreover, the phrase "which arises out of the conduct of any trade, business, or profession" limits the term to business-oriented debts. See Section 487.010 and Comment thereto.

Hence, the staff concludes that the obligation sought to be attached in Javorek would not meet the requirements of Section 481.050 because it is contingent. (See Exhibit 2, pp. 733-739.)

Another aspect of the development of the definition of "chose in action" bears on its intent. As indicated above, the definition of "general intangible" played a part in the development of this definition although "chose in action" was limited by the requirement that the right to payment not be conditioned on anything but the passage of time. Note 11 in Javorek (see Exhibit 2, p. 741) rejects the notion that the obligations to indemnify and defend under an insurance policy are included in the Commercial Code language since the "types of interests in insurance policies included in California Uniform Commercial Code section 9106 are only those contractual and property rights which are used or may become customarily used as a commercial security." (Citing the Comment to Com. Code § 9106.)

The sentence concerning insurance was deleted from Commercial Code Section 9106 by Cal. Stats. 1974, Ch. 997, § 11, operative January 1, 1976. However, this deletion does not bear on the definition of "choses in action" in the Attachment Law. The question before the Commission is whether you believe the section is likely to cause an unacceptable amount of confusion and, if so, how it should be amended to clarify its meaning.

The staff proposes to amend Section 481.050 as follows:

481.050. (a) "Chose in action" means any right to payment which arises out of the conduct of any trade, business, or profession and which ~~(a)~~ is not conditioned upon further performance by the defendant or upon any event other than the passage of ~~time, (b) is not~~ time.

(b) "Chose in action" does not include an account receivable, ~~(c) is not~~ a deposit account, ~~and (d) is not~~ or a right to payment evidenced by a negotiable instrument, security, chattel paper, or judgment. ~~The term~~ Subject to subdivision (a), "chose in action" includes an interest in or a claim under an insurance policy and a right to payment on a nonnegotiable instrument which is otherwise

negotiable within Division 3 (commencing with Section 3101) of the Commercial Code but which is not payable to order or to bearer.

Comment. Section 481.050 is amended to make clear that interests in and claims under an insurance policy are subject to the requirement that the right to payment thereunder not be conditioned upon further performance by the defendant or upon any event other than the passage of time. Accordingly, the obligations of a liability insurer to defend and indemnify do not provide a basis for jurisdictional attachment under Chapter 12 (commencing with Section 492.010). See Javorek v. Superior Court, 17 Cal.3d 629, 552 P.2d 728, 131 Cal. Rptr. 768 (1976).

[§ 482.060]. Court commissioners

Mr. Joseph Wein reports that he has had to appear before a judge to obtain issuance of an ex parte writ whereas under former law such writs were issued by commissioners. (See Exhibit 3.) Mr. Jon F. Hartung has also written us concerning the lack of provision for court commissioners.

As you no doubt recall, the legislation introduced in 1974 (A.B. 2948) contained a provision designating the judicial duties under the Attachment Law as subordinate judicial duties suitable to be performed by court commissioners. (Section 482.060.) This provision was opposed by the State Bar in a report of the State Bar Ad Hoc Committee on Attachments (dated December 24, 1973) that was approved by the Board of Governors (March 11, 1974). This view was shared by the Assembly Committee on Judiciary and the provision was deleted from the bill. In 1975, the Commission decided to introduce a bill (A.B. 919) to restore this provision. However, this proposal again encountered opposition, and its constitutionality was questioned by the Legislative Counsel's office. In an opinion requested by Assemblyman McAlister, dated June 16, 1975, the Legislative Counsel concluded that the proposed designation would be unconstitutional. Accordingly, the Commission decided in July 1975 not to attempt to achieve the enactment of this provision.

We have been informed that commissioners will continue to be used in Los Angeles County, at least, by stipulation of the parties and through judicial order on a case-by-case basis. We assume that some other counties may also determine to use court commissioners on the same basis.

In view of this history, does the Commission wish to provide either general authority for court commissioners to perform the judicial duties

under the Attachment Law or specific authority to handle matters other than the determination of exemptions and the determination of liability for wrongful attachment, which were singled out as constitutionally suspect by the Legislative Counsel's opinion?

§ 486.110. Lien of temporary protective order

Mr. Joseph Wein also inquires about the relation between the lien of a temporary protective order and a general assignment for the benefit of creditors and bankruptcy proceedings. This question was first raised in a letter from Mr. Harold Marsh, dated September 24, 1975, on behalf of the Credit Managers Associations of California. The Commission considered the problem at that time. The Minutes for the November 1975 meeting report that the Commission declined to provide for the expiration of the lien of the temporary protective order when the defendant makes a general assignement for the benefit of creditors or where proceedings for the liquidation or rehabilitation of an insolvent debtor's estate are commenced before the lien is perfected because

> general assignments may prefer some creditors over others and . . . the Bankruptcy Act, the National Bank Act, and the state laws concerning liquidation, conservatorship, reorganization and dissolution of banks void attachments. Furthermore, it was noted that Section 486.050 permitted the temporary protective order to prohibit any transfer by the defendant (with certain exceptions) which would preclude a general assignment.

Does the Commission wish to reconsider this matter?

§§ 488.320, 488.360, 688. Use of keeper to operate going business after judgment

We have not received any written complaints, but--as reported on page 7 of Memorandum 77-3 (pertaining to draft Section 707.330)--there is doubt in some quarters about whether a keeper can be used to operate a going business after judgment. Section 688 incorporates for the purposes of levy of a writ of execution the levy procedures provided by the Attachment Law "except that tangible personal property in the possession of the judgment debtor shall always be levied upon in the manner provided by Section 488.320." Hence, after judgment, Section 488.320--which provides that tangible personal property in the possession of the defendant shall be taken into custody by the levying officer--supplants the 10-day keeper and lien provisions of Section 488.360 which apply to

a levy on inventory of a going business and farm products. However, the manner of taking property into custody is provided by Section 488.045:

> Except as otherwise provided by statute, where a levying officer is directed to take property into custody, he may do so either by removing the property to a place of safekeeping or by installing a keeper.

The staff is of the view that, liberally construed, this section, in conjunction with the others discussed, permits the operation of the business by stipulation of the parties. However, we are informed that the sheriff's office in at least one county is interpreting these provisions in a manner that precludes the use of a keeper to operate the business after a postjudgment levy. In view of this development, the staff recommends that Section 688 be amended along the lines suggested in draft Section 703.330 (attached to Memorandum 77-3) to permit a keeper to operate the business for a minimum of two days upon the instructions of the judgment creditor and if the judgment debtor consents.

§ 488.360(c). Lien on inventory by filing in office of Secretary of State

At the urging of and in consultation with the Secretary of State's office, subdivision (c) of Section 488.360 was amended in 1976 to provide as follows:

> **§ 488.360**
>
> * * * * *
>
> (c) Notwithstanding the provisions of subdivision (a), upon the election and the instructions of the plaintiff, the levying officer shall attach farm products or inventory of a going business by filing a notice in the form prescribed by the Secretary of State which indicates that the plaintiff has acquired an attachment lien on the farm products or inventory of the defendant and, where permitted by the writ of attachment or court order, on identifiable cash proceeds (as that term is used in Section 9306 of the Commercial Code) or after-acquired property, or both. The notice shall state the name and mailing address, if known, of both the plaintiff and the defendant and shall describe the property attached and state whether identifiable cash proceeds or after-acquired property, or both, are attached. When the property is growing crops or timber to be cut, the notice shall be recorded in the office of the county recorder in the county where the real property on which the crops are growing or on which the timber is standing is located. Where, on the date of recording, the real property on which the

crops are growing or on which the timber is standing stands upon the records of the county in the name of a person other than the defendant, the recorder shall index such attachment when recorded in the names of both the defendant and such other person identified in the writ. In all other cases, the notice shall be filed in the office of the Secretary of State. The fee for filing and indexing each notice of attachment, notice of extension, or notice of release in the office of the Secretary of State is three dollars ($3). Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file, on the date and hour stated therein, any notice of attachment, naming a particular person, and if a notice is on file, giving the date and hour of filing of each notice and the name of the plaintiff. The fee for the certificate issued by the Secretary of State is two dollars ($2). A combined certificate may be issued pursuant to Section 7203 of the Government Code. Upon request, the Secretary of State shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for a fee of one dollar ($1) per page. A lien acquired by filing or recording a notice pursuant to this subdivision provides the plaintiff with the same rights and priorities in the attached property as would be obtained by a secured party who perfects a security interest (other than a purchase money security interest) in such property by filing a financing statement at such time and place. Promptly after filing or recording and in no event more than 15 days after the date of filing or recording pursuant to this subdivision, the levying officer shall send by registered or certified mail, return receipt requested, a copy of the writ and the notice of attachment to the defendant and, in the case of crops growing or timber standing on real property, to any other person identified in the writ in whose name the real property stands upon the records of the county at the address of such other person as shown by the records of the office of the tax assessor of the county where the property is located.

Comment.

Subdivision (c) is amended to provide specifically that the lien obtained by filing the notice pursuant to this subdivision may apply to after-acquired property and proceeds from the sale or exchange of attached inventory or farm products. The second sentence, providing for the contents of the notice, is added to make clear that the plaintiff who desires to attach proceeds or after-acquired property, or both, must so state in the notice filed with the Secretary of State or county recorder. Compare Com. Code §§ 9203(3), 9204. The next-to-last sentence of subdivision (c) is amended to make clear that a plaintiff who attaches property by filing a notice pursuant to subdivision (c) describing farm products or inventory, including proceeds or after-acquired property, or both, has the same rights and priorities as he would have if he had perfected a security interest (other than a purchase money security interest) in such property by filing a financing statement at the time and place he filed the notice under subdivision (c). See Com. Code § 9312(5), (6) (priority where special rules applicable to purchase money security interests do not apply).

Immediately preceding final passage of A.B. 2864, Mr. Bill Holden, in the Secretary of State's office, wrote the Commission staff that this amendment to Section 488.360(c) apparently accomplished an unintended change. Section 488.360(c) gives the plaintiff who files the prescribed notice the same rights as would be obtained by a secured party who perfects a security interest (other than a purchase money security interest) in such property by filing a financing statement at such time and place. The difficulty arises because Section 9102(4) of the Commercial Code provides that there cannot be a security interest in the inventory of a retail merchant unless the inventory consists of "durable goods having a unit retail value of at least five hundred dollars ($500) or motor vehicles, housetrailers, trailers, semitrailers, farm and construction machinery and repair parts thereof, or aircraft." Section 9102(4) does not apply to a merchant that is a cooperative agricultural association or a fish marketing association or that meets the requirements of the last sentence of Section 9102(4) ("a person whose sales for resale exceeded 75% in dollar volume of his total sales of all goods during the 12 months preceding the attachment of the security interest"). It was the insertion of the parenthetical language "other than a purchase money security interest" that results in the incorporation of the qualification provided in Commercial Code Section 9102(4). This language was added, as the Comment indicates, to incorporate the priority rules provided in Commercial Code Section 9312(5), (6).

Research into old memoranda does not reveal whether the staff and the Commission were aware of this aspect of Commercial Code Section 9102(4). It appears that the assumption was that the attaching plaintiff would be able to obtain a lien on any inventory. Hence, although Section 488.360(c) works since it is linked with the Commercial Code provisions, it is deceptive since the limitation incorporated thereby is nowhere noted.

Of course, this does not leave the plaintiff without a remedy. The plaintiff may place a keeper on the defendant's business premises with the defendant's consent. If the defendant does not consent or at the end of the 10-day keeper period, if no arrangement has been worked out between the plaintiff and the defendant, he may direct the levying officer to take possession of the attached property. In proper cases,

the plaintiff may use the filing method provided by subdivision (c). Several people have expressed their belief that creditors will probably not resort to the filing provisions of subdivision (c) in great numbers, but instead will rely on the bird-in-hand measures of putting a keeper in the business or taking custody of the property.

It would perhaps be inappropriate to recommend an amendment to subdivision (c) that would have the effect of making the attachment lien obtained by filing broader in scope than are consensual security interests although this would restore the Commission's original intent (albeit an intent based on the assumption that consensual security interests other than purchase money security interests were not so limited in the case of retail merchants). The consequence of leaving subdivision (c) alone is minor, except that an unknowledgeable plaintiff may assume that he has a lien on all the inventory of a retail merchant, when in fact his lien is limited by Commercial Code Section 9102(4). Should subdivision (c) of Section 488.360 be amended to put plaintiffs on notice of this limitation?

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

Memorandum 77-1

EXHIBIT I

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December 14, 1976

John H. DeMoully, Esq.
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear Mr. DeMoully:

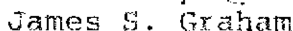
The purpose of this letter is to request a Statement of Intent from the Commission regarding certain legislative recommendations made by the Commission to the Legislature concerning the Attachment Law which will become effective on January 1, 1977. Specifically, my question is whether Code of Civil Procedure §§481.050 and 492.040 permit the Attachment of an insurance policy as a means of securing jurisdiction over a non-resident defendant. This is a question which was recently decided in the negative in Javorek v. Superior Court, 17 Cal. 3d 629 (1976). However, that result was reached solely on the ground that the interim Attchment legislation in Code of Civil Procedure §537.3(c) did not authorize the Attachment of an insurance policy. In contrast, the new legislation in Code of Civil Procedure §481.050 states that choses in action are attachable and that term "includes an interest in or a claim under an insurance policy." It therefore appears that the new legislation has effectively mooted the Javorek decision.

I have carefully read and reviewed the Recommendation Relating to Prejudgment Attachment, 11 Cal. L. Revision Comm'n Reports 701 (1973); and the Recommendation Relating to Revision of the Attachment Law, 13 Cal. L. Revision Comm'n Reports 803 (1975). Those documents do not contain any indication that the Commission considered this specific question.

It can readily be determined from the comment at page 751 of the 1973 Recommendation that if such Attachments were permitted, they would be proper only where the claim arose out of the conduct by the defendant of a trade or business. This, of course, would prohibit an Attachment in cases where, as in Javorek, the defendant was operating his vehicle for pleasure unrelated to the conduct of any business. Nevertheless, this limitation would not be enough to prohibit an Attachment in a case where the Plaintiff was injured on the business premises of the non-resident defendent.

I wish to emphasize that in Javorek the Court held only that the duty of an insurer to indemnify and defend was not subject to Attachment under the interim legislation. The Court expressly declined to address itself to the question as it might arise under the new legislation. See 17 Cal. 3d at 646 fn. 12. This is the task which I now request the Commission to discuss. Of course, I request no opinion in reference to the constitutional question of whether Attachment of an insurance policy in order to obtain jurisdiction over a non-resident defendant is permissible. This question was not reached in the Javorek decision either. Your assistance in this matter would indeed be appreciated.

Very truly yours,



James S. Graham

JSG:lil
12-27-76

cc: John D. Grathwohl

terest of vindicating statutory public policy. Some minor delay may be incurred in determining if plaintiff's motive was retaliatory; but as the Supreme Court has noted, "Some delay, of course, is inherent in any fair-minded system of justice. . . . Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home." (*Pernell v. Southall Realty* (1974) 416 U.S. 363, 385, 94 S.Ct. 1723, 1734, 40 L.Ed.2d 198.) We therefore conclude that the defense presented in this case may be raised in an unlawful detainer proceeding.

[12] This conclusion is unaltered by the fact that in the present case the housing agreement between plaintiff and defendants specified that shelter was provided only for employees. To state that a landlord may evict a tenant who is not an employee adds little or nothing to the powers landlords already have. A landlord may normally evict a tenant for any reason or for no reason at all, but he may not evict for an improper reason: here, retaliation for the tenant's efforts to vindicate an important statutory right.[8]

The judgment is reversed.

WRIGHT, C. J., and McCOMB, TOBRINER, SULLIVAN, CLARK and RICHARDSON, JJ., concur.

131 Cal.Rptr. 768

Frank J. JAVOREK et al., Petitioners,

v.

The SUPERIOR COURT OF MONTEREY COUNTY, Respondent;

Jack Bradford LARSON, Sr., et al., Real Parties in Interest.

S. F. 23324.

Supreme Court of California.

Aug. 2, 1976.

Nonresident defendants in automobile accident case sought writ of mandate to quash service of summons for lack of jurisdiction. The Supreme Court, Sullivan, J., held that neither obligation of nonresident defendants' automobile liability insurer to indemnify the defendants nor its obligation to defend them was subject to attachment or garnishment so that that those two obligations did not give rise to basis for establishing quasi in rem jurisdiction over the nonresident defendants; and that, since trial court had already determined that it lacked in personam jurisdiction over the nonresident defendants, defendants were entitled to have service of process quashed for lack of jurisdiction.

Writ of mandate issued.

Opinion, Cal.App., 122 Cal.Rptr. 18, vacated.

8. In addition to their valid claim based on the intent behind the federal act, defendants and amici curiae have raised a number of additional contentions in support of the second affirmative defense: (1) the use of the judicial system to effect evictions in this case constitutes state action abridging defendants' First Amendment right to litigate (see discussion in *Edwards v. Habib* (1968) supra, 130 U.S.App.D.C. 126, 397 F.2d 687, 690–698); (2) even if no state action is found, the purported evictions amount to an impermissible private infringement on defendants' right to petition the government, a right that emanates from the very creation of the Constitution (see *id.* at pp. 696–698); (3) the evictions would violate the Unruh Act (Civ. Code, § 51), which prohibits arbitrary discrimination by a business establishment (see *In re Cox* (1970) 3 Cal.3d 205, 90 Cal.Rptr. 24, 474 P.2d 992); (4) plaintiff's actions not only tend to frustrate the purposes of the federal act, but are in direct violation of 7 U.S.C. § 2050b, which proscribes discrimination against a person in retaliation for filing suit for just cause under the act. As defendants prevail for the reasons already stated, we need not decide the validity of these additional contentions.

1. Appeal and Error ⚪99
Mandamus ⚪4(3)

Order discharging or refusing to discharge a writ of attachment is appealable and would not be reviewed on petition for writ of mandamus. West's Ann.Code Civ. Proc. §§ 904.1(e), 1086.

2. Courts ⚪21

Theoretically and traditionally, exercise of "quasi in rem jurisdiction" depends entirely upon the presence of the property of the defendant in the forum; residence of the plaintiff is irrelevant; theory is that, because property is situated in the state, courts of the state have power over to determine the relative rights of the plaintiff and the defendant therein.

See publication Words and Phrases for other judicial constructions and definitions.

3. Garnishment ⚪25

California law permits a garnishment of debts and other intangibles. West's Ann.Code Civ.Proc. § 543.

4. Garnishment ⚪13

It is not necessary that garnishee have in his possession the actual money of the defendant; it is enough that he owe a debt to defendant; general test is whether the defendant has an enforceable claim against the garnishee. West's Ann.Code Civ.Proc. § 543.

5. Garnishment ⚪42

For purposes of determining whether debt is too uncertain and continued to be subject to garnishment, distinction exists between situations in which the amount of liability is uncertain and those in where the fact of liability is uncertain; in the former situation the debt is not so contingent as to preclude garnishment whereas in the second situation it is too contingent to permit garnishment. West's Ann.Code Civ.Proc. §§ 537.3(c), 543.

6. Garnishment ⚪42

Automobile insurer's obligation to indemnify insureds, who had not been held liable in court of law for any negligence in connection with the operation of their automobiles, was contingent upon more than just the determination of the amount of liability; it was in fact contingent upon the determination of the fact of liability and thus not subject to garnishment. West's Ann.Code Civ.Proc. §§ 537 et seq., 543.

7. Courts ⚪21

There must be a determination of insured's liability before insurer's obligation to indemnify matures to the extent that it is subject to attachment for purposes of establishing quasi in rem jurisdiction over the nonresident insured; disapproving to the extent that it is inconsistent. Turner v. Evers, 31 Cal.App.3d Supp. 11, 107 Cal. Rptr. 390.

8. Courts ⚪21

Insurer's obligation to indemnify and defend nonresident insureds was so contingent and uncertain prior to any judgment being rendered against the nonresident insureds as to render the obligation not subject to garnishment in California so that it could not be used to establish quasi in rem jurisdiction over the nonresident insureds in action arising out of automobile accident. West's Ann.Code Civ.Proc. § 537 et seq.

9. Courts ⚪21

Implied covenant of good faith and fair dealing in automobile policy did not make insurer's obligation to indemnify the insureds certain prior to the filing of suit and determination of insureds' liability so as to permit attachment of that obligation and use of that attachment to establish quasi in rem jurisdiction over the nonresident insureds. West's Ann.Code Civ.Proc. § 537 et seq.

10. Courts ⚪21

Implied covenant of good faith and fair dealing in automobile policy could not be itself attached as basis for establishing quasi in rem jurisdiction over nonresident insureds.

11. Insurance ⚪514.2

Although insurer, in discharging its duty of good faith to the insured, may, un-

der certain circumstances, be required to settle claim against insured within policy limits, that specific obligation is contingent upon there being substantial likelihood of a recovery in excess of the policy limits.

12. Courts ⇐21

Automobile insurer's obligation to defend nonresident insureds was not subject to attachment and thus could not be used to establish quasi in rem jurisdiction over the nonresident insureds. West's Ann. Code Civ.Proc. § 537 et seq.

13. Courts ⇐21

Even if insurer's obligation to defend insureds was sufficiently certain to be subject to attachment, where, under the terms of the policy, the insurer was to provide the defense with attorneys of its own choosing and there was no obligation to provide money to the insureds, so that any dollar value which could be put on the obligation would be reduced, as costs of the defense were paid during trial, to zero at the conclusion of the trial, the promise to defend did not represent an asset out of which any judgment could be satisfied so that attachment of that obligation could not give rise to quasi in rem jurisdiction over nonresident insureds.

14. Judgment ⇐528, 812(3)

Any judgment rendered against nonresident insured after quasi in rem jurisdiction was obtained against the nonresident insured through attachment of insurer's obligation to defend could not be an in personam judgment, even though the insured appeared and defended on the merits, and could not be given collateral estoppel effect in any subsequent proceeding.

15. Attachment ⇐49

Term "property" as used in statute permitting attachment of a nonresident defendant's property in the state does not include interests which are contingent in the sense that they may never become due and payable. West's Ann.Code Civ.Proc. § 537.3.

See publication Words and Phrases for other judicial constructions and definitions.

16. Attachment ⇐227

Although motion to discharge attachment under statute lies only to assert that the writ was irregularly or improperly issued, courts have the power to quash levy of a writ of attachment where the writ has been levied upon property not subject to attachment. West's Ann.Code Civ.Proc. § 556.

17. Process ⇐158

Since trial court had already determined that it lacked in personam jurisdiction over nonresident defendants, and where, with levy of writ of attachment quashed, no property of the nonresident defendants was before the court upon which quasi in rem jurisdiction could be based, defendants were entitled to have service of summons on them quashed on the grounds of lack of jurisdiction. West's Ann.Code Civ.Proc. § 418.10(a)(1).

Nagle, Vale, McDowall & Cotter and Vernon V. Vale, San Mateo, for petitioners.

Robert E. Friedrich and Jay R. Mayhall, San Francisco, as amici curiae on behalf of petitioners.

No appearance for respondent.

Holbrook & Van Noy, James G. Van Noy, Jr., Allan C. Van Noy, Salinas, Hardy, Erich & Brown and Anthony D. Osmundson, Sacramento, for real parties in interest.

SULLIVAN, Justice.

In this proceeding for a writ of mandate brought under section 418.10, subdivision (c), of the Code of Civil Procedure,[1] we must decide whether quasi in rem jurisdiction over nonresident defendants may be

1. Hereafter, unless otherwise indicated, all section references are to the Code of Civil Procedure.

obtained in this state by attaching the obligations of their liability insurer to defend and indemnify them. We are thus called upon to consider the much discussed rule of *Seider v. Roth* (1966), 17 N.Y.2d 111, 269 N.Y.S.2d 99, 216 N.E.2d 312.

On January 25, 1974, real parties in interest, Jack Bradford Larson, Sr., et al.[2] (hereafter plaintiffs) commenced against petitioners Frank J. Javorek and Bonita Rae Javorek (hereafter defendants)[3] the underlying action for damages for personal injuries and wrongful death arising out of an automobile accident occurring in the State of Oregon on December 28, 1973. The complaint alleges in substance that plaintiff Jack Bradford Larson, Sr., sustained personal injuries and his wife Juanita Larson died as the result of the negligence of defendant Frank Javorek and the negligence of codefendant Marion Brice in the operation of their respective automobiles. Plaintiffs are residents of the County of Monterey. Defendants Javorek and the individual codefendants are residents of the State of Oregon. Defendant El Estero Motors is a corporation licensed to do, and doing, business in the County of Monterey.

Plaintiffs attempted to serve summons and complaint on defendants in Oregon by mail pursuant to Code of Civil Procedure section 415.40. Defendants have never been personally served in California nor have they made a general appearance in the action.

On July 22, 1974, plaintiffs applied to respondent court for the issuance of a writ of attachment to be levied on all property in Sonoma County of defendants "as per CCP 537.3(c), including the contract obligations of State Farm Mutual Automobile Insurance Company (State Farm) to defend and indemnify each and/or both of these defendants against a debt owing to each and/or all of the plaintiffs . . . ." State Farm, an Illinois corporation doing business in California, had issued an automobile liability insurance policy to the Javoreks in Oregon. The writ of attachment was issued, and together with a notice of garnishment, was served on State Farm at its California regional office in Santa Rosa, California.

[1] In August 1974 defendants made a special appearance before respondent court and moved pursuant to section 556 to discharge the attachment on the ground that it was issued without the filing of a written undertaking with two or more sufficient sureties. (§ 539.) It appeared that, contrary to rule 242(b) of the California Rules of Court, both sureties were members of the State Bar of California. Plaintiffs thereupon filed an amended undertaking and respondent court denied defendants' motion.[4]

On September 25, 1974, defendants, again appearing specially, filed a "Motion to Quash Service of Summons for Lack of Personal Jurisdiction, Motion to Quash the Attachment, Motion to Discharge the Attachment, Motion to Vacate the Attachment, and Motion to Stay or Dismiss Action on the Grounds of Inconvenient Forum." On November 4, 1974, the motions were denied. Defendants then sought a writ of mandate in the Court of Appeal to compel respondent court to grant their motions. The Court of Appeal granted an al-

2. Real parties in interest and plaintiffs below are Jack Bradford Larson, Sr., Jack Bradford Larson, Jr., Juanita Marie Searle and Jack Mark Larson.

3. Also named as defendants were Marion Elisabeth Brice, Jennie Catherine Bucks and El Estero Motors, a corporation (hereafter codefendants). Said codefendants are not parties to this proceeding in mandamus.

4. Defendants seek review of this order in the instant proceedings. However an order discharging or refusing to discharge a writ of attachment pursuant to section 556 is appealable. (§ 904.1, subd. (e).) Defendants apparently have not pursued that remedy nor have they demonstrated its inadequacy. No such showing having been made and a plain, speedy and adequate remedy at law apparently having been available, we decline to review the order in question. (§ 1086; see 5 Witkin, Cal.Procedure (2d ed. 1971) pp. 3807–3808, 3875–3876.)

ternative writ but thereafter discharged it and denied defendants' petition for a writ of mandate. We granted a hearing in this court upon defendants' petition.[5]

We turn at once to examine the case of *Seider v. Roth, supra,* 17 N.Y.2d 111, 269 N.Y.S.2d 99, 216 N.E.2d 312, which upon facts similar to those in the case at bench, grounded the exercise of quasi in rem jurisdiction upon the attachment of an intangible. In *Seider* the plaintiffs, husband and wife, residents of New York, were injured in an automobile accident in Vermont allegedly through the negligence of the defendant Lemiux, a resident of Quebec. Lemiux was insured under an automobile liability policy issued to him in Quebec by the Hartford Accident and Indemnity Company (Hartford) which was an insurer also doing business in the State of New York. The plaintiffs commenced an action for damages in New York and obtained an order of attachment directing the sheriff to levy upon the contractual obligation of Hartford to defend and indemnify Lemiux under the policy. The attachment papers were served on Hartford in New York; Lemiux was personally served with summons and complaint in Quebec.

A sharply divided court, in a four to three decision, upheld the attachment as a basis of quasi in rem jurisdiction. "The whole question" according to the court, was whether Hartford's contractual obligation to defendant was a debt or cause of action subject to attachment. Observing that the policy required Hartford to defend Lemiux in any automobile negligence action and to indemnify him, if judgment were rendered against him, the majority reasoned that "as soon as the accident occurred there was imposed on Hartford a contractual obligation which should be considered a 'debt' within the meaning" of the New York attachment statutes. (17 N.Y. 2d at p. 113, 269 N.Y.S.2d at p. 101, 216 N.E.2d at p. 314.) The majority rested their decision on *Matter of Riggle* (1962), 11 N.Y.2d 73, 226 N.Y.S.2d 416, 181 N.E. 2d 436.

In *Riggle*, Mabel Wells, a resident of New York, was injured in an automobile accident in Wyoming while she was a passenger in an automobile driven by Riggle, a resident of Illinois. Wells brought a negligence action against Riggle and effected personal service of the summons and complaint upon him in New York. Riggle died and to continue the action against his estate Wells sought the appointment in New York of an administrator of Riggle's estate, which could be made only if Riggle left real or personal property in New York. The only property allegedly left by Riggle in the State of New York was the personal obligation of an indemnity insurance carrier to defend him as an additional insured under a liability policy issued in New York upon the automobile involved in the accident to Walter Wells, its owner. The New York Court of Appeals concluded that this obligation constituted " 'a debt owing to a decedent by a resident of' " New York which was regarded as personal property under the Surrogate's Court Act sufficient for the appointment of an ancillary administrator. (11 N.Y.2d at p. 76, 226 N.Y.S.2d at p. 417, 181 N.E.2d at p. 437.) In *Seider*, therefore, the majority reasoned that if the obligation of the insurance carrier was a debt which could be *administered,* it was also a

5. While respondent court purported to deny these motions, it made the following additional order: "The Court further finds, however, AND ORDERS that the jurisdiction of this Court is not *in personam* but is rather, *quasi in rem* and arises solely out of the service of the Writ of Attachment heretofore issued by this Court; IT IS FURTHER ORDERED that plaintiffs have no personal jurisdiction of FRANK J. JAVOREK or BONITA RAE JAVOREK and that their appearance herein to defend the action on the basis of *quasi in rem* jurisdiction, whether said appearance is personal or by counsel, will not confer jurisdiction on the persons of FRANK J. JAVOREK or BONITA RAE JAVOREK." Plaintiffs have not sought review of this additional order and it appears from the record before us that the only basis upon which they claim jurisdiction over defendants is the purported attachment of the obligations of State Farm to indemnify and defend.

debt which could be *attached* for the purpose of establishing quasi in rem jurisdiction. (17 N.Y.2d at p. 114, 269 N.Y.S.2d 99, 216 N.E.2d 312.)

A vigorous dissent in *Seider* maintained that the debt which the plaintiff sought to attach as a basis for quasi in rem jurisdiction was a mere promise by the insurer to defend and indemnify the nonresident defendant "*if a suit is commenced* and *if damages are awarded* against the insured. Such a promise is contingent in nature. It is exactly this type of contingent undertaking which does not fall within the definition of attachable debt" under New York law. (17 N.Y.2d at p. 115, 269 N.Y.S.2d at p. 1103, 216 N.E.2d at p. 315; Burke, J. dissenting; italics in original.) There followed a statement which has become the basis for much criticism of the *Seider* rule: "[T]he plaintiffs indulge in circular ratiocination. The jurisdiction, they assert, is based upon a promise which evidently does not mature until there is jurisdiction. The existence of the policy is used as a sufficient basis for jurisdiction to start the very action necessary to activate the insurer's obligation under the policy. In other words, the promise to defend the insured is assumed to furnish the jurisdiction for a civil suit which must be validly commenced before the obligation to defend can possibly accrue. 'This is a bootstrap situation.'" (*Id.*) The dissent distinguished *Riggle* on two bases. First it pointed out that in *Riggle* an action had already been brought against Riggle in his lifetime and personal service of summons and complaint had been made on him, so that the insurer's obligation to defend him had already matured. Secondly, the dissent reasoned, while an obligation to defend, even if contingent in nature, might constitute the estate of the decedent within the statute governing the appointment of an administrator, it could not, under other pertinent statutes, be the basis of an attachment so as to supply jurisdiction. (*Id.* at p. 116, 269 N.Y.S.2d 99, 216 N.E.2d 312.)

The New York Court of Appeals had occasion to reconsider its *Seider* decision in *Simpson v. Lochmann* (1967), 21 N.Y.2d 305, 287 N.Y.S.2d 633, 234 N.E.2d 669, motion for reargument den., 21 N.Y.2d 990, 290 N.Y.S.2d 914, 238 N.E.2d 319. There an infant, resident of New York, had been injured in Connecticut by the propeller of a boat owned by the defendant, a resident of Connecticut. The infant and his father sued the defendant in New York and sought to obtain jurisdiction by attaching the liability insurance policy issued to the defendant by the Insurance Company of North America, a Pennsylvania corporation which did business in New York. The defendant in addition to requesting that the court reconsider its holding in *Seider* raised certain constitutional objections. A sharply divided court reaffirmed its holding in *Seider* and rejected the defendant's constitutional arguments.

Chief Judge Fuld, writing for the court, declared, "It was our opinion when we decided [*Seider*], and it still is, that jurisdiction in rem was acquired by the attachment in view of the fact that the policy obligation was a debt to the defendant. And we perceive no denial of due process since the presence of that debt in this State (see, e. g., *Harris v. Balk*, 198 U.S. 215, 25 S.Ct. 625, 49 L.Ed. 1023, *supra*)—contingent or inchoate though it may be—represents sufficient of a property right in the defendant to furnish the nexus with, and the interest in, New York to empower its courts to exercise an in rem jurisdiction over him." (*Id.* at p. 310, 287 N.Y.S.2d at p. 636, 234 N.E.2d at p. 671.) Judge Keating concurred in an opinion in which he analogized the procedure approved of in *Seider* to a direct action against the insurer. Judge Breitel, who had joined the court after *Seider*, concurred solely on the constraint of that decision. "Only a major reappraisal by the court, rather than the accident of a change in its composition, would justify the overruling of that precedent." (*Id.* at p. 314, 287 N.Y.S.2d at

p. 640, 234 N.E.2d at p. 674.) He went on, however, to comment on what he perceived to be the theoretical unsoundness and undesirable practical consequences of *Seider* so as to "hasten the day of its overruling or its annulment by legislation." (*Id.*) The dissent, written by the author of the *Seider* dissent, maintained that New York lacked a sufficient interest in and relationship to the insurance contract to constitutionally exercise quasi in rem jurisdiction by means of an attachment of the insurer's contingent obligations.

In denying reargument, the *Simpson* court imposed a significant limitation on the scope of quasi in rem jurisdiction employed in *Seider*. First the court quoted its statement from *Simpson v. Loehmann, supra*, 21 N.Y.2d 305, 310, 290 N.Y.S.2d 914, 915, 238 N.E.2d 319, 320, that "neither the *Seider* decision nor the present one purports to expand the basis for in personam jurisdiction in view of the fact that the recovery is necessarily limited to the value of the assets attached, that is, the liability insurance policy. For the purpose of pending litigation, which looks to an ultimate judgment and recovery, such value is its face amount and not some abstract or hypothetical value." Additionally, in a statement which one commentator has called "miraculous" (Siegel, Practice Commentaries, N.Y.Civ.Prac.Law & Rules, § 5201 at p. 15 (McKinney Supp.1968); but see *Minichiello v. Rosenberg* (2d Cir. 1968) 410 F.2d 106, 111, fn. 7), the court declared "This, it is hardly necessary to add, means that there may not be any recovery against the defendant in this sort of case in an amount greater than the face value of such insurance policy *even though he proceeds with the defense on the merits.*" (21 N.Y.2d at p. 990, 290 N.Y.S.2d at p. 916, 238 N.E.2d at p. 320; italics added.) The Court of Appeals thereby swept away a serious objection to the *Seider* procedure, namely that it forced the nonresident defendant to choose between, on the one hand, remaining outside the state thereby risking a default judgment and possible noncompliance with his contractual obligation to cooperate with his insurer in the defense of the action, and, on the other hand, defending the action on the merits, thereby exposing himself to personal liability on an adverse judgment in an amount in excess of his policy limit.

To say the very least, *Seider* has not been well received by the commentators and the courts. Noting Judge Burke's dissent in that case (17 N.Y.2d at pp. 115–118, 269 N.Y.S.2d 99, 216 N.E.2d 312), commentators have condemned *Seider* for its circularity of reasoning: the action in which the attachment of the insurer's obligation to defend is relied upon to establish quasi in rem jurisdiction, is itself the precondition for the accrual of the obligation being attached. (Comment, *Garnishment of Intangibles: Contingent Obligations and the Interstate Corporation* (1967) 67 Colum.L.Rev. 550, 555.) *Seider* has been criticized for establishing an exception to the usual rule that contingent obligations are not subject to attachment because it foreshadows the possibility that a general creditor of the insured—that is, one whose claim arises out of circumstances other than those covered by the policy—will be able to attach the obligation of the insurer even though contingent. As a result, the injured plaintiff—in a sense the intended beneficiary of the coverage—may be deprived of the proceeds of the policy. (Comment, *Quasi In Rem Jurisdiction Based on Insurer's Obligations* (1967) 19 Stanford L.Rev. 654, 658–659.) The constitutionality of *Seider* has also been questioned on the ground that the presence of his insurer is an insufficient nexus between the insured and the forum upon which to base jurisdiction over him. (Stein, *Jurisdiction by Attachment of Liability Insurance* (1968) 43 N.Y.U.L.Rev. 1075.)

The *Seider* rule has not been widely accepted by courts in our sister states. Only two courts have actually followed it—the Supreme Court of New Hampshire in *Forbes v. Boynton* (1973), 113 N.H. 617,

313 A.2d 129,[6] and a United States District Court purporting to apply Minnesota law in *Rintala v. Shoemaker* (1973), 362 F. Supp. 1044. At least eight states and two federal courts have rejected the Seider doctrine by name or in principle.[7] Almost all of these jurisdictions have rejected *Seider* on the ground that obligations of an insurer under a liability policy are contingent "debts" or property rights which cannot be attached or garnished.

[2] The United States Supreme Court has never reviewed the constitutionality of the *Seider* procedure despite the constitutional objections raised by the dissent in *Simpson* and the numerous law review articles which have questioned its validity. The leading authority on the constitutionality of *Seider* is *Minichiello v. Rosenberg, supra*, 410 F.2d 106, which, in an opinon by Judge Friendly, upheld it against a due process challenge. The *Seider* procedure was analogized to Louisiana's direct action statute sustained in *Watson v. Employers Liability Assurance Corp.* (1954), 348 U.S. 66, 75 S.Ct. 166, 99 L.Ed. 74. Although *Minichiello* upheld the *Seider* rule, it nevertheless indicated, as did *Farrell v. Piedmont Aviation, Inc.* (2d Cir. 1969), 411 F. 2d 812 (in an opinion also by Judge Friendly), that *Seider* would be subject to serious "constitutional doubt" unless its application were limited in three important ways. These limitations were explained as follows: First, *Seider* may be applied only in favor of a plaintiff who is a resident of the forum; a nonresident may not avail himself of such rule in the State of New York where many insurers have offices, so as to obtain jurisdiction over a nonresident defendant.[8] Second, as the New York

6. While the reasoning in *Forbes* indicates that New Hampshire has adopted the *Seider* rule without reservation, there is a curious last paragraph in the opinion which suggests that the court upheld a *Seider* exercise of jurisdiction in this case where the defendant was a New York resident in retaliation against New York's adoption of the rule. "We are not holding that the *Seider* rule is to be applied generally to all cases of foreign motorists insured by a company with an office in this State and licensed to do business in New Hampshire. We are merely holding that under the circumstances of this case in a suit by a resident of New Hampshire against a resident of New York where the *Seider* rule prevails the trial court properly denied the defendant's motion to dismiss plaintiff's action." (313 A.2d at p. 133.) In a subsequent decision, a United States District Court applying New Hampshire law refused to follow *Seider* where the defendant was not a New Yorker, but a resident of Connecticut which had not adopted *Seider*, and where the cause of action arose not out of an automobile accident but out of an accident in the defendant's home. (*Robitaille v. Orcutt* (D. N.H.1974) 382 F.Supp. 977.)

7. *Robinson v. Shearer & Sons, Inc.* (3d Cir. 1970), 429 F.2d 83 (considering rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Cases, Fed.Rules Civ. Proc.); *Ricker v. LaJoie* (D.Vt.1970), 314 F.Supp. 401 (applying Vermont law); *Werner v. Werner* (1974), 84 Wash.2d 360, 526 P.2d 370 (dictum); *Johnson v. Farmers Alliance Mutual Insurance Company* (Okl.1972), 499 P.2d 1387; *Kirchman v. Mikula* (La.App. 1972), 258 So.2d 701; *Missouri ex rel. G. E. I. C. O. v. Lasky* (Ct.App.Mo.1970), 454 S.W.2d 942; *Howard v. Allen* (1970), 254 S.C. 455, 176 S.E.2d 127; *De Rentiis v. Lewis* (R.I.1969), 258 A.2d 464; *Housely v. Anaconda Co.* (1967), 19 Utah 2d 124, 427 P.2d 390; *Jardine v. Donnelly* (1964), 413 Pa. 474, 198 A.2d 513 (per curiam opn.).

8. This limitation sharply distinguishes the *Seider* procedure from all other forms of quasi in rem jurisdiction and indicates that *Seider* is far removed from its basis in *Harris v. Balk* (1905), 198 U.S. 215, 25 S.Ct. 625, 49 L.Ed. 1023. Theoretically and traditionally, an exercise of quasi in rem jurisdiction depends entirely upon the presence of property of the defendant in the forum; the residence of the plaintiff is irrelevant. The theory is that because property is situated in the state, courts of the state have power over it to determine the relative rights of the plaintiff and defendant therein. In *Balk*, *supra*, the Supreme Court held that the presence of the garnishee-debtor in the state was sufficient to give the state the power to adjudicate rights in the liquidated debt which he owed to the defendant. While the plaintiff, Epstein, was a resident of the forum, the Supreme Court neither mentioned that fact nor appears to have considered it significant in determining whether the forum could exercise jurisdiction over the debt. The *Minichiello* court seemed to feel that the mere presence of an insurance carrier did not provide the state with a sufficient interest in or relationship to the *contingent* obligations of the insurance contract

Court of Appeals had indicated in its per curiam opinion denying reargument in *Simpson*, there may be no recovery in excess of the policy limits even though the nonresident defendant appears and defends on the merits. Finally, ". . . neither New York nor any other state could constitutionally give collateral estoppel effect to a *Seider* judgment when the whole theory behind this procedure is that it is in effect a direct action against the insurer and that the latter rather than the insured will conduct the defense." (*Minichiello v. Rosenberg, supra,* 410 F.2d at p. 112.)

There is only one reported decision in this state in which the validity of a *Seider* attachment as a basis for quasi in rem jurisdiction has been considered. In *Turner v. Evers* (1973), 31 Cal.App.3d Supp. 11, 107 Cal.Rptr. 390, the plaintiffs, California residents, while temporarily in the State of Washington had their automobile serviced by the defendant in preparation for their return trip. After they had driven but a short distance, the vehicle became totally inoperative. Claiming that the defendant had failed to service it properly, the plaintiffs brought an action against him in California alleging breach of contract, negligence and fraud. In order to obtain jurisdiction over the defendant, they caused a writ of attachment to be levied against the obligations of the defendant's liability insurance carrier, which had an office in this state, to defend and indemnify him. As we explain *infra,* we disagree with the holding of the *Turner* court that a *Seider* type attachment is permissible under California law.

In the case at bench, the crucial question whether the attachment was valid and therefore the quasi in rem jurisdiction properly invoked must be determined in the light of California's interim attachment law. (§ 537 et seq.) Section 537 authorizes an attachment in the following circumstances: "The plaintiff, in an action specified in Section 537.1, at the time of issuing the summons, or at any time afterward, may have the property specified in Section 537.3 of a defendant specified in Section 537.2 attached in accordance with the procedure provided for in this chapter, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, as provided for in this chapter." The relevant sections permit the attachment of "all property" (§ 537.3, subd. (c)) of a defendant "not residing in this state" (§ 537.2, subd. (d)), in "an action . . . for the recovery of money" (§ 537.1, subd. (b)).[9]

for it to require the defendant to appear and litigate rights in the policy absent some other connection with the forum such as the plaintiff being a resident.

Admittedly such approach is not unlike our own in *Atkinson v. Superior Court* (1957), 49 Cal.2d 338, 316 P.2d 960, where we applied general principles of fair play and substantial justice governing jurisdiction over property and persons to the question of jurisdiction over an intangible. In *Atkinson,* however, the contacts with the forum were significantly greater than those in *Seider* and *Minichiello,* specifically, the activities out of which a cause of action arose against the obligor and the out of state defendant had all occurred in California.

9. Section 537 et seq. were enacted by the Legislature in 1972 (Stats.1972, ch. 550, p. 942) to meet the constitutional infirmities of the former law as set forth in *Randone v. Appellate Department* (1971), 5 Cal.3d 536, 96 Cal.Rptr. 709, 488 P.2d 13. (2 Witkin, Cal.Procedure (1970) Provisional Remedies, § 298A (1975 Supp. p. 132).) The former section 537 permitted the attachment of the "property of the defendant" without limitation as to type and therefore the cases interpreting that section can be and will be referred to in interpreting the current law.

Section 537 et seq. were originally scheduled to expire December 31, 1975, (Stats.1972, ch. 550, p. 952) and to be repealed as of January 1, 1976. (Stats.1974, ch. 1516.) The expiration date has now been postponed to December 31, 1976, with repeal to be effective on January 1, 1977. (Stats.1975, ch. 200.) In place of these sections, an entirely new and revised attachment scheme will become operative. This new attachment law resulted from a comprehensive study and recommendations relating to prejudgment attachment by the California Law Revision Commission. Known as "The Attachment Law" (§ 482.010), this law will be contained in a new title 6.5, Attachment, of part 2, Civil Actions of the Code of Civil Procedure.

Plaintiffs have purported to attach "[a]ll property of each defendant as per CCP 537.3(c), including the contract obligations of State Farm Mutual Automobile Insurance Company . . . to defend and indemnify . . . these defendants against a debt owing to . . . the plaintiffs . . . ." Defendants are persons not residing in this state, and, therefore, the issue before us is whether "the contract obligations of State Farm Mutual Automobile Insurance Company . . . to defend and indemnify . . . these defendants . . ." constitute "property" of the defendants under the above sections of our Code of Civil Procedure.

[3-5] California law permits the garnishment of debts and other intangibles and section 543 prescribes the procedure for levying a writ of attachment where the property of the defendant to be attached is not in his possession but consists of credits or other personal property in the possession of a third person (the garnishee) or debts owing to the defendant by such third person. It has been said that it is not necessary that the garnishee have in his possession the actual money of the defendant, that "It is enough that he *owes a debt* to the defendant. And the general test is whether the defendant has an enforceable claim against the garnishee." (2 Witkin, Cal.Procedure (1970) Provisional Remedies, § 219, p. 1616, italics in original, citing *Walker v. Doak* (1930) 210 Cal. 30, 36, 290 P. 290.) While earlier cases required that the defendant have an accrued cause of action against the garnishee—that the debt be due at the time the writ is levied —such is no longer the law. (*Id.* at p. 1617.) "[I]t is now established in this state that a present right of action upon the obligation is not essential to a valid garnishment," (*Brunskill v. Stutman* (1960) 186 Cal.App.2d 97, 104, 8 Cal.Rptr. 910, 915) but a "'debt which is uncertain and contingent in the sense that it may never become due and payable, is not subject to garnishment.'" (*Id.*; see also *Hustead v. Superior Court* (1969) 2 Cal.App.3d 780, 786, 83 Cal.Rptr. 26, 29; *Dawson v. Bank of America* (1950) 100 Cal.App.2d 305, 309, 223 P.2d 280.) A distinction exists between situations where only the *amount* of liability is uncertain and those where the fact of *liability* is uncertain. "'Where there is no contingency as to the garnishee's liability, the only contingency being as to the amount thereof, and where the amount of the liability is capable of definite ascertainment in the future, there is no such contingency as prevents garnishment of the claim, even though, it has been held, it may be that eventually it will be found that nothing is due.'" (*Brunskill v. Stutman, supra,* 186 Cal.App.2d 97, 105, 8 Cal.Rptr. 910, 916, see also *Hustead v. Superior Court, supra,* 2 Cal.App.3d 780, 786, 83 Cal.Rptr. 26; *Meacham v. Meacham* (1968) 262 Cal.App.2d 248, 252, 68 Cal. Rptr. 746.)

In the instant case, defendants' liability insurance policy provides that State Farm agrees with the insured "in consideration of the payment of the premium . . . *[t]o pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages* because of (A) bodily injury sustained by other persons, and, (B) property damage, caused by accident arising out of the ownership, maintenance or use, including loading or unloading, of the owned motor vehicle; *and to defend, with attorneys selected by and compensated by the company, any suit against the insured alleging such bodily injury or property damage and seeking damages which are payable hereunder even if any of the allegations of the suit are groundless, false or fraudulent;* but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient." (Italics added.) It is these obligations which plaintiffs have purported to attach.

[6] Taking up, first, State Farm's obligation to indemnify defendants, we observe that it is clearly contingent upon more than a determination of the amount of liability. The insurer has no duty to pay un-

til the insured becomes "legally obligated to pay as damages" a sum of money. In other words, State Farm has no liability to pay until defendants' liability has been determined. If it is determined that they have no liability, the insurer's liability never accrues.

[7] Some commentators have argued that the obligation of an insurer to indemnify under policy language such as that involved in the instant case "implied a valid in personam judgment against the insured." (Siegel, Supplementary Practice Commentaries, N.Y.Civ.Prac.Law & Rules, § 5201, 1965 com. pt. I, at p. 72 (McKinney Supp. (1972)); see also Comment, *Attachment of Liability Insurance Policies* (1968) 53 Cornell L.Rev. 1108, 1112.) Thus, the insurer's obligations would never accrue where the only possible judgment would be one in rem. We need not resolve this point. It is enough to say that, on the basis of the authorities cited above, there must first be a determination of the insured's liability before the insurer's obligation to indemnify matures to the extent that it becomes subject to attachment. We therefore disagree with, and disapprove to the extent that it is inconsistent with this opinion, *Turner v. Evers, supra*, 31 Cal.App.3d Supp. 11, 107 Cal.Rptr. 390, wherein it was stated, inter alia, that "the obligation to indemnify requires only the *possibility* of a valid judgment either against the insured personally or depriving him of his property" in order for it to be attachable. (*Turner, supra*, at p. 18, 107 Cal.Rptr. at p. 395, italics added.)

Our attention has also been directed to *Brainard v. Rogers* (1925), 74 Cal.App. 247, 239 P. 1095. There the plaintiff creditor brought an action for goods sold and delivered against the defendant who had sustained a complete loss by fire of his merchandise, furniture and fixtures. The plaintiff garnished the proceeds in the hands of the insurer of two policies of fire insurance covering the loss before the defendant had even presented his proof of loss—a condition precedent to recovery under the policies—or adjusted the loss. The court upheld the levy despite the fact that no proofs of loss had been filed since the creditor could make the proofs if the insured failed to do so. Commenting on *Brainard*, this court in *Dept. of Water & Power v. Inyo Chem. Co.* (1940), 16 Cal.2d 744, 751, 108 P.2d 410, 415, articulated its rule to be as follows: "[W]here *liability* already exists and the policy furnishes the required standard by which the *amount* of the liability can be ascertained and fixed, then such liability is a debt 'owing' to the insured within the meaning of the attachment sections of the Code of Civil Procedure." (Italics in original.)[10] It is important that in *Brainard*, involving an insured's direct claim against his insurer, the only condition precedent to the duty to pay was proof of the fact of loss together with the amount thereof. However, in the instant case of a claim by a third party, liability of the insurer is contingent upon the determination of the *liability* of the *insured*, as well as proof of the fact of loss and the amount thereof. We find *Brainard* markedly distinguishable from the case at bench.

[8] Accordingly, in resolving the question whether State Farm's obligation to indemnify defendants is subject to garnishment and may therefore constitute a basis for quasi in rem jurisdiction, we reject the rule announced in *Seider*. We are unpersuaded by the rationale of the majority in that case because of what we perceive to be a pervasive circularity of reasoning. Indeed, the dissent criticized the rule as "circular ratiocination" and "bootstrap reasoning." (17 N.Y.2d at p. 115, 269 N.Y.S. 2d 99, 216 N.E.2d 312.) To accept its logic it is first necessary to assume its conclu-

10. The precise question at issue in *Brainard v. Rogers, supra*, 74 Cal.App. 247, 239 P. 1095, was whether the garnishee was a person "owing debts" to the defendant as that term is used in sections 542–545, which describe the means by which such obligations may be levied upon. That is essentially the same question before this court in the instant case.

sion. Its thesis in essence is this: *If* there is a valid judgment, in personam or in rem, against the insured, *then* the insurer is obligated to indemnify. *Therefore*, the court will permit the attachment of this obligation as a source of quasi in rem jurisdiction so that the judgment can be entered. We can discern no logic in this thesis since the hard fact remains that the insurer's obligation to indemnify upon which the court's jurisdiction to hear the case depends, does not come into existence until the insured's liability has been determined in the very case itself. We conclude that State Farm's obligation to indemnify is so contingent and uncertain that it is not subject to garnishment under California statutes and the cases discussed by us above.

[9] Plaintiffs, however, seek to avoid the settled rule that contingent obligations are not subject to attachment by arguing that the implied covenant of good faith and fair dealing, recognized by recent decisions of this court (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 108 Cal.Rptr. 480, 510 P.2d 1032; *Crisci v. Security Ins. Co.* (1967) 66 Cal.2d 425, 58 Cal.Rptr. 13, 426 P.2d 173; *Communale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 328 P.2d 198), makes certain the insurer's obligation to indemnify prior to the filing of suit and the determination of the insured's liability. We do not agree.

[10] We first note that plaintiffs could not attach the covenant of good faith and fair dealing itself as a basis for quasi in rem jurisdiction. Clearly that obligation is not a debt or other species of property subject to attachment. It is a duty owed to the insured personally which, like the duty of reasonable care, does not even give rise to a cause of action until there has been a breach and which does not obligate the insurer to pay money to the insured until the former's liability for a breach has been determined. It is therefore an obligation which is "uncertain and contingent in the sense that it may never become due and payable . . . ." (*Brunskill v. Stutman*, *supra*, 186 Cal.App.2d 97, 104, 8 Cal.Rptr. 910, 915.)

[11] Because the implied covenant of good faith and fair dealing is itself contingent, it cannot make the insurer's express obligation to indemnify sufficiently certain to be subject to attachment. While the insurer in discharging its duty of good faith to the insured may under certain circumstances be required to settle a claim against its insured within policy limits (*Johansen v. California* (1975) 15 Cal.3d 9, 123 Cal.Rptr. 288, 538 P.2d 744; *Crisci v. Security Ins. Co., supra*, 66 Cal.2d 425, 58 Cal.Rptr. 13, 426 P.2d 173; *Communale v. Traders & General Ins. Co., supra*, 50 Cal.2d 654, 328 P.2d 198), that specific obligation is contingent upon there being a substantial likelihood of a recovery in excess of policy limits (*Johansen, supra*, 15 Cal.3d at p. 15, 123 Cal.Rptr. 288, 538 P.2d 744; *Communale, supra*, 50 Cal.2d at p. 659, 328 P.2d 198) and upon the willingness of the claimant to accept a settlement. Moreover, the contingent implied covenant of good faith and fair dealing, with its obligation to settle under certain circumstances, is in addition to the express obligation to indemnify and matures independently. "That responsibility is not the requirement mandated by the terms of the policy itself—to defend, settle, or pay. It is the obligation, deemed to be imposed by the law, under which the insurer must act fairly and in good faith in discharging its contractual responsibilities." (*Gruenberg v. Aetna Ins. Co., supra*, 9 Cal.3d 566, 573–574, 108 Cal.Rptr. 480, 485, 510 P.2d 1032, 1037.) Thus, the indemnification obligation which plaintiffs purported to attach is not rendered any less contingent by the separate and distinct duty of good faith and fair dealing.

[12] Having concluded that the trial court's exercise of quasi in rem jurisdiction cannot be based on the insurer's obligation to indemnify, we now take up plaintiffs' contention that nevertheless it can be based on the insurer's obligation to *defend* which is clearly subject to attachment.

Contrary to plaintiffs' claim, we find this asserted basis of jurisdiction vulnerable to the same objections just discussed.

Under the automobile liability policy issued by it to defendant State Farm agreed "to defend, with attorneys selected by and compensated by the comapny, any suit against the insured." Prior to the commencement of the underlying action, there was a mere executory promise to defend the insured which might never have ripened into a present duty had the action never been filed. Again, this is an obligation which, "contingent in the sense that it may never become due and payable, is not subject to garnishment." (*Brunskill v. Stutman, supra,* 186 Cal.App.2d 97, 104, 8 Cal.Rptr. 910, 915.) The argument that the obligation to defend is subject to attachment because it matures upon the commencement of the action in which attachment is relied on as a basis of quasi in rem jurisdiction, involves the same type of circular reasoning employed with respect to the obligation to indemnify.

[13] Even assuming arguendo that this executory promise to defend is a sufficiently certain, presently existing obligation, it is not the type of interest which is subject to attachment. Under the terms of the policy, State Farm is obligated only to provide a defense with attorneys of its own choosing. There is no obligation to pay money to the insureds so that they may provide their own defense. Such an obligation to provide personal services is not capable of transfer so as to satisfy the claims of an attaching creditor. (See Comment, *Quasi in Rem Jurisdiction Based on Insurer's Obligations, supra,* 19 Stanford L.Rev. 654, 655–656.) If it is assumed that the obligation to defend could be translated into a monetary equivalent, how is that to be done? "What . . . is the value of this duty to a potential purchaser at execution sale? Because the insurance carrier could not be obligated to defend a stranger to the contract by such a sale, we cannot conceive what there is to be sold. Rather, we are convinced that whatever value inheres in the contractual duty of the insurer is personal to the insured." (*Robinson v. Shearer & Sons, Inc., supra,* 429 F.2d 83, 86; *Missouri ex rel. G. E. I. C. O. v. Lasky, supra,* 454 S.W.2d 942, 950.)

[14, 15] To the argument that the duty to defend is incapable of valuation, it is no answer to say that some estimate can be made at the outset of litigation as to the insurer's potential cost in attorney's fees and court costs. If the insurer fulfills its obligation, these expenditures will be made and as the lawsuit reaches a conclusion, the so-called value of this obligation will approach zero, until the obligation will have been completely extinguished. At the point at which plaintiffs have obtained a judgment, there will no longer exist an asset out of which that judgment can be satisfied. Furthermore, plaintiffs will not then be able to satisfy their judgment out of the proceeds of the policy. Since any quasi in rem judgment must be satisfied solely from the garnished property (*First National Bank v. Eastman* (1904) 144 Cal. 487, 491–492, 77 P. 1043), and since only the obligation to defend could under this theory be garnished to provide quasi in rem jurisdiction, plaintiffs could not then reach the obligation to indemnify up to the policy limits as a means of satisfying their judgment. Such a judgment would be meaningless. Under the constitutional limitations set forth in *Minichiello,* this judgment could not be in personam even though the defendants had appeared and defended on the merits, and it could not be given collateral estoppel effect in any subsequent proceeding. The law will simply not countenance such an idle act. (Civ. Code, § 3532.) [11]

11. Plaintiffs make two other arguments which we reject briefly. First, they contend that under Probate Code sections 301 and 721 a policy of indemnity insurance comprises an estate subject to administration thus supporting the appointment of a local administrator wherever the insurer is found so as to establish jurisdiction for suit against the estate. By analogy, they argue, an indemnity insurance policy is subject to attachment for quasi

We conclude that in the case at bench the obligations of defendants' liability insurer to defend and indemnify defendants are not of such a nature as to be subject to attachment so as to confer on the court below quasi in rem jurisdiction. We reject as inapplicable in California the rule announced in *Seider v. Roth, supra,* 17 N.Y. 2d 111, 269 N.Y.S.2d 99, 216 N.E.2d 312, and cases following it, and we disapprove, to the extent that it is inconsistent with the views herein expressed, *Turner v. Evers, supra,* 31 Cal.App.3d Supp. 11, 107 Cal. Rptr. 390. In view of these conclusions, we need not reach defendants' contention that the rule of *Seider* is unconstitutional.[12]

[16, 17] Defendants are entitled to a writ of mandate directing the trial court to quash the levy of the writ of attachment and to quash service of summons. Under current California law, there is no statutory procedure for challenging an attachment by special appearance on the ground that the property levied upon is not subject to attachment. A motion to discharge the attachment under section 556 lies only to assert that the writ was irregularly or improperly issued. Nonetheless, it has been recognized that our courts have the power to quash the levy of a writ of attachment where the writ has been levied upon property not subject to attachment. (*Burke v. Superior Court* (1969) 71 Cal.2d 276, 279, fn. 3, 78 Cal.Rptr. 481, 455 P.2d 409; *Holmes v. Marshall* (1905) 145 Cal. 777, 783, 79 P. 534; *Property Research Financial Corp. v. Superior Court* (1972) 23 Cal.App.3d 413, 416, 100 Cal.Rptr. 233; 2 Witkin, Cal.Procedure (2d ed. 1970) Provisional Remedies, § 205.) With the levy of the writ of attachment quashed, no property of defendants is before the court upon which quasi in rem jurisdiction may be based. There is therefore "no basis of judicial jurisdiction existing between such defendant[s] and this state . . . . ." (Judicial Council comment to § 418.10 in Li, Attorney's Guide to Cal. Jurisdiction

in rem jurisdiction. This is the argument based upon *Matter of Riggle, supra,* 11 N.Y. 2d 73, 226 N.Y.S.2d 416, 181 N.E.2d 436, which was advanced in *Seider* and was also asserted in *Turner v. Evers, supra,* 31 Cal. App.3d Supp. 11, 107 Cal.Rptr. 390. Nonetheless, no published California decision has ever held that a policy of indemnity insurance is a basis for local administration. Moreover, we believe that there are sufficiently different factors and considerations involved in the situation where the nonresident defendant is deceased, as opposed to the instant case where the defendants are alive, that the argument in favor of the existence of an estate for purposes of probate jurisdiction is not persuasive as to whether contingent obligations of an insurer are attachable. (See *Seider v. Roth, supra,* 17 N.Y.2d at p. 116, 269 N.Y.S.2d 99, 216 N.E.2d 312; Burke, J. dissenting.)

Second, plaintiffs argue that since section 537.3, subdivision (c), permits attachment of all property of a nonresident defendant, that section necessarily authorizes attachment of the specific forms of property for which attachment is permitted in limited circumstances under section 537.3, subdivision (b). By reference to the California Uniform Commercial Code, section 537.3, subdivision (b), permits the attachment of interests in or claims under insurance policies. (Cal.U.Com.Code, § 9106.) We first note that section 9106 of the California Uniform Commercial Code was amended effective January 1, 1976, which amendment deleted the sentence relating to insurance policies, although such amendment is of course not applicable to this case where the attachment was levied in 1974. Nonetheless, the types of interests in insurance policies included in California Uniform Commercial Code section 9106 are only those contractual and property rights which are used or may become customarily used as a commercial security. (Comment, Uniform Com.Code, § 9106.) While we do not intend hereby to suggest any final definition of interests in insurance contracts which may become the subject of security interests, we seriously doubt if the obligations at issue are the types of interests which would ever be the subject of a security interest. In any event, we conclude that "property" for purposes of section 537.3, subdivision (c), does not include interests which are contingent in the sense that they may never become due and payable.

12. Plaintiffs urge us to apply to the case before us the new attachment statutes which become operative January 1, 1977. We decline to do so since they do not apply to the writ of attachment issued in the instant case. (See Stats.1974, ch. 1516; Stats.1975, ch. 200.)

and Process (Cont. Ed. Bar 1970) § 1.38, p. 95) since the trial court has already determined that it lacks in personam jurisdiction over defendants (see fn. 5, *ante*). Defendants are thus entitled to have service of summons quashed "on the ground of lack of jurisdiction of the court over [them]." (Code Civ.Proc., § 418.10, subd. (a)(1).)

Let a peremptory writ of mandate issue directing respondent superior court to quash the levy of the writ of attachment and to quash the service of summons in accordance with the views expressed in this opinion.

WRIGHT, C. J., and McCOMB, TOBRINER, MOSK, CLARK and RICHARDSON, JJ., concur.

181 Cal.Rptr. 782
The PEOPLE, Plaintiff and Respondent,
v.
Alvin Leon COLLINS, Defendant and Appellant.
Cr. 19365.

Supreme Court of California.
Aug. 6, 1976.

Rehearing Denied Sept. 8, 1976.

Defendant was convicted in the Superior Court, San Diego County, Fiorenzo V. Lopardo, J., of first-degree robbery, and he appealed. The Supreme Court, Wright, C. J., held that substitution of alternate juror for original juror after commencement of deliberations was constitutionally proper where just cause for dismissal of original juror existed; that just cause existed for dismissal of original juror who stated that she could not decide case on evidence and on law; and that trial court's failure to instruct jury that they were to begin deliberations anew because of the discharge of original juror and substitution of alternate juror after commencement of deliberations was error but harmless and nonprejudicial error in light of strong case against defendant.

Affirmed.

Opinion, Cal.App., 127 Cal.Rptr. 601, vacated.

1. Jury ⇨143

Substitution of alternate for original juror is constitutionally permissible after deliberations have begun when good cause has been shown for substitution and jury has been instructed to begin deliberations anew. U.S.C.A.Const. Amends. 6, 14; West's Ann.Const. art. 1, § 16; West's Ann.Code Civ.Proc. § 194; West's Ann. Pen.Code, § 1089.

2. Jury ⇨10

Right to trial by jury is guaranteed as it existed at common law at time State Constitution was adopted and may not be abridged by act of the legislature. West's Ann.Const. art. 1, § 16.

3. Jury ⇨10

Legislature may establish reasonable regulations or conditions on enjoyment of right to trial by jury as long as essential elements of trial by jury are preserved. West's Ann.Const. art. 1, § 16.

4. Jury ⇨32(2, 4)

Among essential elements of right to trial by jury are the requirements that a jury in a felony prosecution consists of 12 persons and that its verdict be unanimous. West's Ann.Const. art. 1, § 16; West's Ann.Code Civ.Proc. § 194.

5. Jury ⇨32(4)

Requirement that 12 persons reach unanimous verdict in a felony prosecution is not met unless those 12 persons reach their concensus through deliberations which are the common experience of all of them. West's Ann.Const. art. 1, § 16; West's Ann.Code Civ.Proc. § 194.

6. Criminal Law ⇨872½

A defendant may not be convicted except by 12 jurors who have heard all the evidence and argument and who together

Memorandum 77-1

EXHIBIT 3

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PLEASE REFER YOUR REPLY TO:
JOSEPH WEIN
LOS ANGELES OFFICE

January 13, 1977

Stan G. Ulrich
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear Stan:

I trust you will recall our telephone conversation of some time ago regarding California's new attachment statute and in particular, some of the problems that are arising by reason of some inconsistencies, etc., with regard to the statutory language. You asked me to advise you from time to time those areas where we encounter problems so that steps might be taken to correct them on an emergency basis.

We have already obtained two ex parte writs and found that it took considerable time to get the orders signed becuase we had to see a judge in lieu of a court commissioner. I believe that the interim attachment law provided that a judge or commissioner could act, whereas the permanent law does not include "commissioner". We would strongly recommend that the statute be amended to include "commissioner" so that the entire process can be speeded up. If it is going to be necessary to have judges review and sign all of the papers, I am certain that the procedures will be very slow and require time beyond that which is ordinarily necessary.

You will recall that under the interim law, Section 542b of the Code of Civil Procedure provided that the lien of the

temporary restraining order was dissolved upon the defendant executing an assignment for the benefit of creditors or filing a petition under the Bankruptcy Act. Under the present statute, Section 486.110, this language has been removed. It would seem to us that the language as contained in the interim statute should be incorporated into Section 486.110. Certainly, if bankruptcy proceedings by or against a defendant were filed within four months from creation of the lien of the temporary protective order, the Bankruptcy Court would have the power to set it aside. This means that extra effort would be required when it should, in fact, not be necessary. Furthermore, we consider that the lien of the temporary protective order is a different creature than the lien that would be protected by a writ of attachment. As to an assignment for the benefit of creditors, the failure to include the language in the permanent law may preclude and limit many of the remedies of creditors and debtors alike and force more bankruptcies when, in fact, the matters could be more efficiently handled through an assignment.

It is my opinion that since the grounds for obtaining a temporary protective order are identical to the grounds for obtaining an ex parte writ, most plaintiffs would probably opt for an ex parte writ and that we will not see too many temporary protective orders issued. We do believe that the lien of the temporary protective order should fall on the making of an assignment or bankruptcy. I would appreciate your comments concerning the same.

It is my understanding that the Law Revision Commission is working on changes with regard to execution and that one of the proposals is to provide a method whereby a judgment creditor could cause a receiver to be appointed to take custody of a liquor license and cause it to be sold for the benefit of the judgment creditor. This proposal concerns us particularly in view of Section 24074 of the California Business and Professions Code and the California case Grover Escrow Corp. vs. Gole, (1969) 71 Cal. 2d 61.

I would appreciate if you would let me know whether legislation in connection with the same has already been introduced and further, if the Law Revision Commission intends to pursue this avenue.

I want to take this opportunity to thank you in advance for your comments and responses and I will look forward to hearing from you.

My best personal regards.

Sincerely,

BUCHALTER, NEMER, FIELDS & SAVITCH

By
JOSEPH WEIN

JW:jm