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Foreward

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FOREWORD

This brief foreword will serve as the formal introduction to a new publication, *Cal Law—Trends and Developments*.

The School of Law of Golden Gate College is pleased to present this volume in co-operation with the Bancroft-Whitney Company and to acknowledge the contributions of those members of the bar and the teaching profession without whose scholarship this project could not have been launched. A special debt is owed to Professor Neil Levy, who directed the project for the Law School, and to the staff of students who labored so diligently and so well; without their work, this volume could not have been produced.

Our objective is to provide an annual review of the significant developments in California law as revealed through the workings of the judicial, the legislative, and the administrative processes. With the Supreme Court of California in the first rank of state courts in the importance and quality of its opinions, with the sheer bulk of California decisional law now greater than that of any other state, and with the legislature in annual session, there is need for a synthesis of legal activity, an analysis of trends, a critique of results and, at times, a tentative prognostication of things to come. We hope and trust this work will fulfill these needs.

The current volume covers the period from October 1, 1966 to October 1, 1967. While there were no startling developments, and only one significant explicit overruling of a prior case,¹ there were many judicial opinions during the period which may prove to be springboards for new doctrine. Particularly noteworthy areas to watch for future developments are the liability of an insurer for failure to settle within policy limits,² the application of *res ipsa loquitur* in medical malprac-

1. *Jehl v. Southern Pacific Co.*, 66 Cal.2d 821, 59 Cal. Rptr. 276, 427 P.2d 988 (1967) overruling *Dorsey v. Barba*, 38 Cal.2d 350, 240 P.2d 604 (1952).

2. Discussed *infra*, Seligson, *Insurance*.

tice,³ and the possibility of proceeding on contract and warranty theories in certain types of malpractice cases.⁴

Several of the more important statutory revisions of the past few years, particularly the Uniform Commercial Code⁵ and the 1963 Tort Claims Act,⁶ were the subject of consideration by the courts. The Evidence Code, applicable only to trials commenced after January 1, 1967, is still too new to have produced any appellate cases; however, in a few instances where evidence was found to have been improperly admitted or excluded under the prior law, the courts considered the impact of the code in the event of a reversal and retrial.⁷

In every year there are a few cases, fitting no accepted category and likely to be lost sight of in the general mass of litigation, but which, for some reason, merit special attention. One such case was *Manes v. Wiggins*,⁸ involving the asserted defense of collateral estoppel by a judgment rendered in a criminal proceeding in the Justice Court of Gridley Judicial District. The revelations in that opinion concerning the administration of justice in a purported judicial proceeding that violated every principle of due process should serve as a cogent reminder that we still have Justice Courts, presided over by persons with little or no legal learning; for many citizens, these courts provide the exclusive means for the administration of justice.

In a lighter vein, there were several cases engendered by the efforts of cities and counties to escape the rule of *In re Lane*.⁹ That decision, it will be remembered, held that state legislation had generally pre-empted the field of sexual immorality, rendering invalid local ordinances attempting to regulate the same subject matter. This year, the focus of attention was on the upper part of the female torso. Particularly noteworthy was the ingenious, but unsuccessful, argument of the

3. Discussed infra, Gorfinkel, *Torts*. Cal. App.2d 275, 59 Cal. Rptr. 379

4. Discussed infra, York, *Remedies*. (1967); the cases are discussed infra, Degnan, *Evidence*.

5. Discussed infra, Levy, *Commercial Transactions*. 8, 247 Cal. App.2d 756, 56 Cal.

6. Discussed infra, McKinstry, *State and Local Government*. Rptr. 120 (1966).

7. See, e.g., *Garfield v. Russell*, 251 9. 58 Cal.2d 99, 22 Cal. Rptr. 857, 372 P.2d 897 (1962).

prosecution in *People v. Hansen*¹⁰ that the City of Bellflower ordinance prohibiting “topless” waitresses was for the protection of health and sanitation rather than for public morality, and as such was not pre-empted by state legislation. Los Angeles County was more successful in maintaining that its ordinance merely provided for licensing, as places of entertainment, restaurants employing “topless” waitresses, and therefore did not invade the pre-empted area of morality.¹¹

Finally a word about style and the judicial opinion. Benjamin Nathan Cardozo, in his essay on Law and Literature, wrote:

“The argument strongly put is not the same as the argument put feebly any more than the ‘tasteless tepid pudding’ is the same as the pudding served to us in triumph with all the glory of the lambent flame.”¹²

At the risk of offending others herein unmentioned, we would select two Justices as particularly deserving of an accolade for rescuing us from what might otherwise have been humdrum expositions of “Hornbook Law”—Justice Fleming for his opinion in *Gerhardt v. Weiss*¹³ and Justice Kaus for *Friedman v. Knecht*.¹⁴

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10. 245 Cal. App.2d 689, 54 Cal. Rptr. 311 (1966); discussed infra, McKinstry, *State and Local Government*. But there may have been some merit to the contention of the City of Bellflower; cf. note 3 to the opinion of the court in *People v. Kukkanen*, 248 Cal. App.2d Supp. 899, 905, 56 Cal. Rptr. 620, 624 (App. Dept. Sup. Ct. 1967).

11. *People v. Kukkanen*, 248 Cal. App.2d Supp. 899, 56 Cal. Rptr. 620

(App. Dept. Sup. Ct. 1967); *Robbins v. County of Los Angeles*, 248 Cal. App.2d 1, 56 Cal. Rptr. 853 (1966); the cases are discussed infra, McKinstry, *State and Local Government*.

12. Fallon Publications, 1947 pp. 339–340.

13. 247 Cal. App.2d 114, 55 Cal. Rptr. 425 (1966).

14. 248 Cal. App.2d 455, 56 Cal. Rptr. 540 (1967).

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