MAR 5 1956

PROPOSED AGENDA FOR MEETING OF

LAW REVISION COMMISSION

March 12, 1956

1. Consideration of minutes of January, 1956 meeting.
2. Consideration of suggested schedule for completion of work on matters to be presented to 1957 Session of Legislature. (See Memorandum No. 1)
3. Consideration whether to schedule any topics approved by 1956 Session for study for completion for 1957 Session and, if so which ones.
4. Consideration of method of printing reports on studies. (See Memorandum No. 2)
5. Consideration of arrangement to have Stanford furnish stenographic services to Commission. (See Memorandum No. 3)
6. Consideration of Stanford Law Review problem. (See Memorandum No. 4)
7. Consideration of whether to go forward with Study No. 19: Appointment of an administrator in a quiet title action.
8. Consideration of formal resolution of thanks to Board of Governors of State Bar for cooperation given and courtesies shown.
9. Consideration of Study No. 10: Penal Code § 19a. (See Memorandum No. 5 and items attached thereto) See Study dated 3/5/56 w/ Rpt. & Re.
10. Consideration of Study No. 7: Retention of Venue for Convenience of Witnesses. (See Memorandum No. 6 and items attached thereto) See Study dated 3/5/56 w/ Rpt. & Re.
11. Consideration of Study No. 4: Law governing survival of actions. See Memorandum No. 7 and items attached thereto) See Study file w/ Rpt. & Re. dated 3/5/56

MINUTES OF MEETING

OF

MARCH 12, 1956

Pursuant to the call of the Chairman, the Law Revision Commission met on March 12 at Sacramento, California.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice-Chairman
Honorable Jess R. Dorsey, Senate
Honorable Clark L. Bradley, Assembly
Mr. Stanford C. Shaw
Mr. John Harold Swan
Mr. Ralph N. Kleps, ex officio

ABSENT:

Mr. Joseph A. Ball
Mr. Bert W. Levit
Mr. Samuel D. Thurman

Mr. John R. McDonough, Jr., Executive Secretary of the commission and Mrs. Virginia B. Nordby, Assistant Executive Secretary of the commission, were present.

The minutes of the meeting of the commission on January 6 and 7, 1956 which had been distributed to the members of the commission prior to the meeting, were unanimously approved.

1. Administrative Matters

A. Stenographic Services: The Executive Secretary reported that alt a need has not developed for the second full-time stenographer authorized by

the commission's current budget and the budget for 1956-57, there is nevertheless a need for extra stenographic help for short periods of time -- for example, while preparing material for meetings. He stated that, although there are a number of people available around Stanford for part-time stenographic work on short notice, he had been unsuccessful in attempting to hire a stenographer on an "intermittent, part-time basis" under the civil service regulations because no one is interested in a permanent commitment for such a small amount of work. The problem, he stated, is to work out an arrangement which would allow the hiring of anyone who might be available without the necessity of making a permanent arrangement. The commission discussed this problem and agreed that the Chairman should be authorized to take up the matter with the Personnel Board and other interested State departments and try to arrange a contract or an amendment to the present contract between Stanford and the State whereby Stanford would furnish limited stenographic services to the commission on an intermittent, part-time basis, subject to the understanding that the arrangement would be discontinued as soon as the work is of sufficient volume to make it possible to hire someone under civil service to do it.

B. Stanford Law Review: The Executive Secretary reported that the Stanford Law Review is interested in publishing as a student Note a paper on the testimonial privilege of husband and wife which had been written by a student in a Legislation Seminar which the Executive Secretary is teaching at the Law School. The Executive Secretary stated that the subject of the paper is the same as Study No. 8 on the commission's current agenda and that the seminar paper will be of material assistance to him in preparing a study on this subject for the commission. It was agreed that this assistance should be acknowledged when the study prepared by the staff is published.

C. Method of Printing Commission Reports: The commission considered the method it would use in printing its 1957 Report to the Legislature. In justifying the item of $6000 in the commission's 1956-57 budget for printing, it was estimated that the report will contain approximately seventeen studies and reports thereon and will run about 450 pages. The Executive Secretary pointed out that if all of the material which the commission wishes to submit to the Legislature is placed in a single volume, the 1957 Report will be a rather bulky document, and he suggested that consideration be given to printing separately the material relating to each study. The New York Law Revision Commission, for example, publishes a separate Legislative Document on each study, consisting of the proposed statute, the commission's report and recommendations, and the report of the staff or research consultant. These documents are later combined with the report of the commission in a bound volume.

This matter was discussed by the commission and, although questions as to matters of detail were raised, general approval of the New York procedure was expressed. The Executive Secretary was directed to investigate the feasibility of this procedure within the $6000 allowed for printing in the 1956-57 budget.

D. Copies of Minutes: The Executive Secretary reported that he was having mimeographed complete sets of the minutes of commission meetings and that any member who wished a set could have one.

2. Current Studies

A. Schedule for Completion of Work: The commission considered a proposed schedule for completion of work on studies to be presented to the 1957 Session of the Legislature, which had been prepared by the Executive

Secretary and distributed to the members of the commission prior to the meeting. This schedule set out suggested dates for commission and committee meetings and a suggested agenda of studies to be considered at each meeting. The commission approved the schedule and the members agreed to check their calendars for each of the suggested meeting dates and notify the Executive Secretary of any conflict.

B. Completion Date of Topics Approved by the 1956 Session: The commission discussed whether any of the topics listed in its 1956 report which might be approved by the Legislature for study should be scheduled for completion for the 1957 Session and, if so, which ones. It was agreed that no such study should be scheduled for completion for the 1957 Session except for compelling reasons. The Executive Secretary then reported that representations had been made to Mr. Barrett of the Attorney General's office that Topic No. 8, relating to escheat of personal property, would be completed by 1957 and that the Attorney General's office had stated that for this reason they would not propose any legislation on the matter. A motion was then made by Mr. Shaw, seconded by Mr. Babbage, and adopted, that 1956 Topic No. 8 be scheduled for completion for the 1957 Session of the Legislature.

The Executive Secretary reported that 1956 Topic No. 7, relating to the rights of nonresident aliens to inherit, also presented a special situation because a bill introduced in the 1955 Session on this subject had been referred to the Senate Interim Judiciary Committee and that committee has refrained from investigating the subject because of the commission's interest in it. The commission discussed this matter and concluded that it would be impossible, in view of the volume of other work, to complete this study for the 1957 Session. The Executive Secretary was directed to notify Mr. Bohn, Counsel of the Senate Interim Judiciary Committee, that the commission will not be able

to report on 1956 Topic No. 7 until the 1959 Session of the Legislature.

C. Study No. 14 - Appointment of an Administrator in Quiet Title Actions: The Executive Secretary reported that, pursuant to the direction of the commission at its meeting of January 6 and 7, he had corresponded with Mr. Richard E. Tuttle, Executive Vice-President of the California Land Title Association, about possible alternative procedures to that of appointing a special administrator in quiet title actions involving property in which a deceased person had or claimed an interest. Mr. Tuttle stated that an action under Code of Civil Procedure Sections 738 and 749 is similar to an action under Revenue and Taxation Code Sections 3950 - 3963 in that unknown persons can be bound in either action upon a showing of the exercise of due diligence to find them. However, he expressed serious doubt as to whether unknown heirs and devisees could be bound in either of these actions because the courts have required a showing of a necessity for using substituted service before it may be utilized and in the case of unknown heirs and devisees the possibility of appointing a special administrator eliminates the necessity of using substituted service. He said that title companies would probably not pass title based on substituted service on unknown heirs and devisees until the procedure had been upheld as constitutional by the higher courts.

The Executive Secretary stated that there appeared to be at least two questions still unanswered: (1) whether Code of Civil Procedure Sections 738 and 749 cover all possible situations in which it may be desired to sue unknown heirs and devisees in a quiet title action by substituted service and (2) whether, if not, a statute covering situations not now covered would be constitutional.

The commission discussed this matter and decided that the Executive Secretary, after further discussion with Mr. Tuttle if necessary, should

prepare a memorandum summarizing the questions and problems involved and submit it to the State Bar for consideration and comment.

D. Study No. 10 - Penal Code 19a: The commission considered a draft of a Report and Recommendation to the Legislature relating to this study which embodied the recommendations of the Southern Committee. The action of the commission on the recommendations of the Southern Committee was as follows:

1. The Southern Committee recommended that all California code sections which authorize commitment to a county or city jail or other county detention facility for a period in excess of one year be revised to limit such confinement to a maximum of one year for each offense in all cases, including both misdemeanors and felonies. The commission decided that it would make this recommendation to the Legislature.

2. The Southern Committee recommended that the Legislature determine whether in the case of any of these code sections in which the offense defined is not now made an alternative felony, it should be made a felony or an alternative felony. The commission decided that the Southern Committee should give further consideration to this question and advise the commission whether it should include in its report to the Legislature a recommendation as to whether some or all of these offenses should be made felonies or alternative felonies.

3. The Southern Committee reported that the courts have held that Penal Code § 19a does not apply in certain cases and recommended that the Penal Code be revised to make it applicable in all cases with further provisions that (a) where, in the case of consecutive sentences or otherwise commitment

for a longer period would be required, the prisoner shall be delivered into the custody of the Director of Corrections for imprisonment in a state institution; (b) in such cases of commitment to a state institution after conviction of a misdemenaor or after a declaration by the judge at the time of sentence that the crime of which defendant was convicted is a misdemeanor the offense shall not thereby be made a felony; and (c) the county shall reimburse the state in an amount equal to what it would have cost the county to keep the prisoner.

The commission discussed these recommendations at length and ultimately decided to recommend to the Legislature that the Penal Code be revised to provide that confinement in a county or city jail or other county detention facility shall be limited to one year in all cases, including both misdemeanors and felonies, except in the case of consecutive sentences. The commission also decided that it should report to the Legislature, without recommendation, that an alternative to allowing misdemeanants with consecutive sentences to be confined for more than one year in a county jail would be to send them to the state prison but provide specifically that the offenses shall not thereby be made felonies.

4. The Southern Committee recommended that the Legislature determine whether, in the event that a code section not making the offense an alternative felony is revised to reduce the maximum county jail sentence to one year, the maximum fine provision should in some or all cases be reduced concomitantly. The commission decided that the Southern Committee should reconsider this matter and advise the commission whether it should examine each code section as to which it does not recommend that the offense be made an alternative felony, and include in its report to the Legislature a recommendation as to

whether the fine provided therein should be reduced.

5. The Southern Committee recommended that the Legislature determine whether, in the event that a code section which provides for both fine and imprisonment, or which provides for either fine or imprisonment but not both, is revised to conform to Penal Code Section 19a, it should also be revised to provide for either fine or imprisonment or both. The commission decided that the Southern Committee should reconsider this matter and advise the commission whether it should examine each code section providing for fine and imprisonment or fine or imprisonment but not both and include in its report to the Legislature a recommendation as to whether it should be revised to provide for either fine or imprisonment or both.

A motion was then made by Mr. Swan, seconded by Mr. Babbage and unanimously adopted, that Mr. Cochran, the research consultant on Study No. 10, be thanked for the work he had done and be paid.

E. Study No. 7 - Retention of Venue for Convenience of Witnesses:

The commission decided that the draft of the staff report on this study as revised pursuant to the direction of the Southern Committee at its meeting of February 10 should be further revised to eliminate from the section entitled Analysis of Policy Questions Presented the criticism of the California rule that defendant has a substantial right to trial in the proper court, and that as thus revised the report be accepted for publication and distribution.

The commission considered a draft of a Report and Recommendation to the Legislature relating to this study which embodied the recommendations of the Southern Committee. The Southern Committee proposed that the commission recommend to the Legislature that it:

1. Abolish the requirement that the answer be on file before such a motion can be decided;

2. Authorize the courts to decide such a motion when it comes on for hearing or to continue it until such other time prior to trial, whether before, when, or after the answer is filed, as it becomes ripe for decision;

3. Authorize the courts to entertain and decide other matters in the cause while a motion to change venue and a counter motion to retain venue for the convenience of witnesses which have been continued are pending; and

4. Authorize the courts, in deciding such a motion, to consider affidavits of the parties as to what issues will be pressed at the trial and who the necessary witnesses will be, as well as pleadings and other papers on file.

The Southern Committee also recommended that similar changes be made in Code of Civil Procedure Section 397(3) in the case of motions to change venue for convenience of witnesses.

After the commission had discussed these recommendations, a motion was made by Mr. Swan, seconded by Mr. Bradley, and adopted, (1) that the commission not accept recommendations (2), (3) and (4) of the Southern Committee and recommend to the Legislature only that Code of Civil Procedure Section 396b be revised by striking out the words "if an answer be filed", (2) that no recommendation respecting Code of Civil Procedure Section 397 be made, (3) that no changes be made in the staff report and (4) that the draft of the Report and Recommendation to the Legislature relating to this study be revised to reflect these conclusions. Mr. Shaw voted against this motion.

It was decided that a copy of the staff report and the revised Report and Recommendation to the Legislature should be sent to the State Bar with the request that they examine them and give the commission their views on the matter.

F. Study No. 4 - Grant v. McAuliffe: The commission considered a draft of a Report and Recommendation to the Legislature which embodied the recommendation of the Southern Committee that no legislation be recommended in connection with this study. The commission also considered a memorandum by the Executive Secretary setting out his views as to why the recommendation of the Southern Committee should not be accepted and suggesting a proposed revision of the law to change the rule announced in Grant v. McAuliffe. After the commission had discussed the matter, a motion was made by Mr. Swan, seconded by Mr. Babbage, and adopted, that the recommendation of the Southern Committee be accepted. Mr. Bradley voted against this motion.

There being no further business the meeting was adjourned.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

COPY

COPY

Office of the Executive Vice President

CALIFORNIA LAND TITLE ASSOCIATION

433 South Spring Street - Los Angeles 13

March 5, 1956

Mr. John R. McDonough
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California

Dear John:

I will list the questions as presented in your letter, together with my answers.

(1) Do title companies now pass title where an action has been brought against the heirs of a person rather than having a special administrator appointed?

The general practice is to require the appointment of an administrator. Title based upon an action against the heirs of a person would not be passed.

One problem, as you suggest, is whether or not a decree obtained against all the "heirs" was in fact based upon service upon the heirs. Even though the decree quieting title found that all of the heirs were named and properly served as defendants, such a decree would not be an effective adjudication of this fact. It would, therefore, leave a break in the record chain of title. This defective record title could be the basis for a claim that the title was unmarketable where, for example, the property was subsequently the subject of a contract of sale and the vendee was opposing specific performance. (As you may know, both our lenders' and owners' policies insure marketability.)

(2) Have the title companies had occasion to consider the acceptability of titles based on proceedings under Revenue and Taxation Code Sections 3950 - 3963 and, if so, what position have they taken?

These sections were enacted as part of an extensive legislative program adopted from 1943 to 1949, designed to strengthen tax titles to facilitate the sale of tax deeded lands. This legislation includes curative acts validating procedural defects, conclusive presumptions, and short statutes of limitation. In passing quiet title actions under these sections of the Revenue and Taxation Code the title company has the protection of the intervening tax sale, which in

turn is protected by the legislation referred to. As a practical matter, therefore, a title company need not feel, if it passes a quiet title decree under these sections, that it is placing complete reliance in the validity of the procedure authorized by the statute.

The title companies have taken the position that a company should, if it is unable to insure a tax title because of some defect or irregularity, insist upon a quiet title decree and, for this purpose and to this extent, the validity of such a decree is recognized.

(3) What are your views as to the constitutionality and desirability of a statute similar to Revenue and Taxation Code Sections 3950 - 3963 for general use?

To some extent, these sections provide for a quiet title action comparable to that which could be obtained by combining an action under C.C.P. Sections 738 and 749 et seq. Under Section 749, unknown persons may be served by publication. This is considered both desirable and constitutional, and decrees entered thereunder are regarded as valid by the title companies.

In addition, of course, the Revenue and Taxation Code permits suit against heirs and devisees. It does not appear that under R & T Sec. 3952 the heirs and devisees may be sued as such unless their identity is unknown, and cannot be ascertained after the use of "due diligence" by plaintiff (Sec. 3960). Even this procedure, therefore, would not be of benefit to plaintiff in most cases.

As to those occasions where, after diligent search, the identity of the heirs or devisees cannot be ascertained, there seems to be considerable doubt as to the constitutionality of service by publication. In upholding such service in an "all persons" action, the State Supreme Court emphasized that such service must be reasonable and necessary. Title & Document Restoration Co. v Kerrigan, 150 Cal. 289, involving the McEnerney Act, "All substituted service must rest upon the ground of necessity . . ." (page 312).

It is not clear that it is "necessary" to permit substituted service upon unknown heirs and devisees. One seeking to quiet title against the heirs and devisees of a deceased person can have an administrator appointed, and quiet title against the administrator, obtaining a judgment that will be binding on the heirs and devisees.

(4) If such a statute were enacted for general use, would title companies pass titles based upon it?

As has been suggested in the answer to (3), to a large extent existing law provides for an action comparable to that provided for in the Revenue and Taxation Code sections. As to the matter which is peculiar to those sections, permitting constructive service upon unknown heirs and devisees, I do not believe title companies would be willing to rely upon decrees so obtained until the validity of the legislation has been upheld by higher courts.

I have discussed this matter with attorneys for title companies who have had many occasions to discuss proposed quiet title actions with attorneys for prospective plaintiffs. They do not report that the bar generally regards the prevailing title company requirements as being excessively burdensome. One of the title company attorneys whose experience reaches back to 1930 pointed out that quiet title actions are far less common now than they were twenty years ago, a change which he attributes to the fact that tax titles are supported by so much legislation that they may often be insured without a quiet title action.

Very truly yours,

/s/ Richard E. Tuttle,
Richard E. Tuttle,
Executive Vice-President

Copy Copy

January 11, 1956

Mr. Richard Tuttle
California Land Title Association
433 So. Spring Street
Los Angeles 13, California

Dear Dick:

The Law Revision Commission has a problem with which we hope you can help us.

One of the topics currently under study by the Commission is a study to determine whether a statute should be enacted to make it unnecessary to have an administrator appointed in a quiet title action involving property to which some claim was made by a person since deceased. (See page 30 of our 1955 Report) Our research to date indicates that it is not necessary to have a special administrator appointed in such a case; the plaintiff may, alternatively, serve all of the heirs of the deceased person. We do not know, however, whether title companies decline to pass title in the event that the latter procedure is used because of the danger that some heir may have been overlooked.

In any event, either serving all of the heirs or appointing a special administrator involves considerable effort and expense, often disproportionate to the importance of the claim involved. One question which the Commission is considering is whether a more expeditious procedure than either of these can be devised. We note that Revenue and Taxation Code §§ 3950 - 3963 provide for quieting title, in the circumstances to which they apply, against a claim held by a person since deceased by naming as parties to the action "the heirs of" that person. The Commission has some doubt concerning the constitutionality of this procedure as applied to such heirs. It also has some doubt as to whether a title company will pass a title based on this procedure.

The questions on which I would appreciate your views, then, are the following:

(1) Do title companies now pass title where an action has been brought against the heirs of a person rather than having a special administrator appointed?

(2) Have the title companies had occasion to consider the acceptability of titles based on proceedings under Revenue and Taxation Code Sections 3950 - 3963 and, if so, what position have they taken?

(3) What is your view as to the constitutionality and desirability of a statute similar to Revenue and Taxation Code Sections 3950 - 3963 for general use?

(4) Do you think title companies would pass titles based on proceedings under such a statute?

I would appreciate your views on these questions and any comments you may have concerning the advisability of the study or the direction which it should take.

Sincerely,

John R. McDonough, Jr.
Executive Secretary

JRM:fp

cc: Mr. Thomas E. Stanton, Jr.
Mr. John Harold Swan
Mr. Stanford C. Shaw
Mr. John D. Babbage
Mr. Joseph A. Ball