

MINUTES OF MEETING

OF

NORTHERN COMMITTEE

March 17, 1956
San Francisco

PRESENT

Members

Mr. Bert W. Levit, Chairman
Mr. Thomas E. Stanton, Jr.
Mr. John Harold Swan

Research Consultants

Mr. Harold Marsh
Professor Edward L. Barrett, Jr.
Professor Edward A. Hogan, Jr.

Staff

Mr. John R. McDonough, Jr.
Mrs. Virginia B. Nordby

STUDY NO. 5 - PROBATE CODE SECTION 201.5

The committee considered the research consultant's report on this study which had been distributed to the members of the committee prior to the meeting. The Executive Secretary raised several questions about statements in the report and indicated that he had some additional questions and suggestions noted on his copy of the report. It was decided that he would give his marked copy to the research consultant and that the research consultant would prepare whatever changes in the report he thought necessary.

The committee discussed at length what recommendation it would make to the commission regarding this study. It was decided that, because of the limited authority of the commission, no recommendation should be made concerning the inter vivos disposition of property brought into California

which would have been community property if acquired by persons domiciled in California. However, the committee felt that the commission should place a request for authority to make recommendations on these matters on its calendar of topics selected for study to be submitted to the Legislature for approval in 1957. The committee also felt that the commission should not recommend that the 1917 amendment to Civil Code Section 164 be repealed at the present time but should include this in the agenda topic to be submitted for approval at the 1957 Session.

The committee decided to recommend to the commission that Probate Code Section 201.5 be amended as follows:

1. Section 201.5 should be extended to include real property.
2. Section 201.5 should be limited to apply only on the death of the acquiring spouse.
3. Section 201.5 should provide that the same rules should be applied respecting the right of the surviving spouse to elect to take a statutory share against the will as would be applied if the property were community property.

The committee discussed, but postponed its decision, on the question of whether Section 201.5 should be made applicable to property transferred inter vivos by a gratuitous, will-substitute transfer.

The committee directed the staff to prepare a draft of a Report and Recommendation to the Legislature and of a proposed revision of Section 201.5 incorporating the committee's recommendations and also providing that Section 201.5 applies to property transferred inter vivos by gratuitous, will-substitute transfers.

STUDY NO. 6 - CODE OF CIVIL PROCEDURE SECTION 660

The Executive Secretary stated that he had a few questions and suggestions regarding the research consultant's report on this study, which had been distributed to the members of the committee prior to the meeting. It was agreed that the Executive Secretary would send the research consultant a memorandum indicating his questions and that the research consultant would prepare whatever changes in the report he thought necessary.

The committee discussed at length what recommendation it would make to the commission regarding this study and decided to recommend that the Code of Civil Procedure be revised to provide:

1. That all orders respecting motions for new trial shall be entered in the permanent minutes or signed by the judge and filed and shall not be effective for any purpose until so entered or filed.
2. That a motion has been "determined" within the meaning of Section 660 when it is entered in the permanent minutes, even though that entry expressly directs that a written order be prepared, signed, and filed at a later time.
3. That the entry in the minute book shall in all cases show both the date on which the court made its order and the date on which it was actually entered in the permanent minutes but that failure to indicate either date shall not invalidate the order.

It was agreed that the research consultant would prepare a draft statute incorporating these recommendations.

STUDY NO. 2 - JUDICIAL NOTICE OF FOREIGN COUNTRY LAW

The committee considered the research consultant's report on this study, which had been distributed to the members of the committee prior to the meeting, and agreed that it should be revised to eliminate some of the lengthy quotations and to conform generally to the format which the commission has adopted for purposes of printing research consultants' reports. It was decided that the staff would prepare a revision of the study along these lines for approval by the consultant and the committee.

The committee discussed at length what recommendation it would make to the commission regarding this study and decided that the law should be revised to provide:

1. That the courts should be required to take judicial notice of the law of a foreign country whenever that law is applicable.
2. That any party intending to rely on the law of a foreign country must give reasonable notice to his adversary of such intention before raising the issue and that the court must give reasonable notice to both parties before judicially noticing the law of a foreign country sua sponte.
3. That the courts may take evidence to aid it in determining the law of a foreign country.
4. That the strict rules of admissability should not be applicable to evidence taken by a court to aid it in determining the law

of a foreign country and that consideration be given to repealing Code of Civil Procedure Sections 1900 to 1902.

5. That the question of what the law of a foreign country is shall be decided by the court at the trial level and reviewed as a question of law by the appellate courts.
6. That, if a court cannot determine what the law of a foreign country is, it shall apply the law of California.

The staff was directed to prepare a draft of a Report and Recommendation to the Legislature and a proposed revision of the law incorporating these recommendations.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary