9/18/56

Agenda for Meeting of California
Law Revision Commission

September 20-21, 1956

1. Consideration of minutes of meeting of August 10-11, 1956.

2. Study No. 1 - Suspension Absolute Power of Alienation (a revised draft of the commission's recommendation and a memorandum relating thereto were sent to you August 22).

3. Study No. 13 - Bringing in New Parties (a revised draft of the commission's recommendation was sent to you September 14).

4. Agenda - Selection of Topics for inclusion in Concurrent Resolution to be submitted to 1957 Session (Memorandum No. 1 relating to our agenda, a number of Suggestions for consideration at the September meeting and Stanford reports and memoranda relating to several of them were sent to you September 14).

5. Discussion of Memorandum No. 2 on 1957-58 budget (enclosed).

6. Discussion of Memorandum No. 3 on 1956-57 study program (enclosed).

7. Discussion of Memorandum No. 4, relating to studies for 1957 Session (enclosed).

8. Discussion of Condemnation study with Mr. Burrill.

9. Discussion of Uniform Arbitration Act study with Mr. Kagel.

10. Discussion Revised draft of Report to 1957 Session (sent to you August 28).

11. Fish and Game Code - Progress report.

12. Discussion of State Bar report on five studies sent to them (enclosed).

MINUTES OF MEETING

OF

SEPTEMBER 20 and 21, 1956

Pursuant to the call of the Chairman, the Law Revision Commission met on September 20 and 21 at Los Angeles, California.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice-Chairman
Honorable Jess R. Dorsey
Honorable Clark L. Bradley
Mr. Joseph A. Ball (September 20)
Mr. Bert W. Levit (September 21)
Mr. Stanford C. Shaw
Professor Samuel D. Thurman
Mr. Ralph N. Kleps, ex officio

ABSENT:

Mr. John Harold Swan

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

The minutes of the meeting of August 10 and 11, which had been distributed to the members of the commission prior to the meeting, were unanimously approved.

1. ADMINISTRATIVE MATTERS

A. Reference of Commission Studies and Recommendations to

State Bar: Mr. Herman F. Selvin, a member of the Board of Governors of the State Bar, and Mr. John J. Goldberg, Chairman of the State Bar Committee to Act in Liaison with the Law Revision Commission, were present during a part of the meeting on September 20 and discussed with the commission whether, when and in what form the commission should inform the State Bar of its recommendations for revision of the law. Mr. Selvin explained that the State Bar considers and takes a position on every legislative measure which affects the administration of justice and that it will therefore have occasion at some time to consider most if not all changes in the law proposed by the commission. He urged that the commission inform the State Bar as soon as possible after it decides upon a recommendation so that the State Bar will have time for a more thorough consideration of the matter than would be possible just before or during a legislative session.

The sense of the meeting was that the commission will inform the State Bar of its recommendation as soon as it completes each of its studies and that, when time permits, it will postpone the printing of its recommendations and studies until it receives and considers the views of the State Bar. The commission decided, however, that because of the necessity this year of sending its studies and recommendations to the State Printer as soon as possible in order to avoid the last-minute pre-session rush, it will be necessary to print those studies which have not yet been sent to the State Bar before the State Bar has time to consider them and express

its views.

It was suggested by Messrs. Ball, Goldberg and Selvin that in the future the commission send only one copy of its recommendations and studies to the State Bar and the State Bar will itself reproduce as many copies as it needs.

B. Financial Matters: The Executive Secretary reported that the Department of Finance had declined to give the commission any money from the Emergency Fund for the current year to finance the additional studies assigned to the commission by the Legislature. For this reason it has been necessary to use all available funds in the current budget for research and it will not be possible to add another attorney to the staff this year. Arrangements were made, however, to upgrade Mrs. Nordby's position from Junior Counsel to Assistant Counsel as of October 1, 1956.

The Executive Secretary reported that contracts had already been made with nine research consultants for a total of $10,150 and that $2,500 had already been committed to the Stanford contract, which leaves available $2,930 of the $15,580 budgeted for research for 1956-57. The Executive Secretary reported that research arrangements had not been made for the following studies:

Study No.	Topic	Estimated Cost	Session to be submitted
19	Overlap Penal & Vehicle Code Sections	$ 300	1959
20	Guardians for Nonresidents	300	1959
21	Confirmation Partition Sales	300	1959

22	Cutoff date motions new trial	$ 300	1959
23	Recission of contracts	800	1959
26	Law governing escheat personal property	300	1957
28	Evidence condemnation cases *	--	
29	Post-conviction sanity procedure	600	1959
33	Survival tort actions	600	1959
36	Condemnation law and procedure	1,500	1959
	Total	$ 5,000	

* Consolidated with Study No. 36.

The commission discussed which of these studies should be carried over until fiscal year 1957-58 and which should be commenced as soon as possible. A general preference was expressed for proceeding this year with Study No. 36 (Condemnation), Study No. 23 (Rescission of Contracts), and Study No. 33 (Survival of Tort Actions), but the final decision as to which of the nine studies not yet started should be undertaken was left to the discretion of the Chairman and the Executive Secretary, their decision to be made in light of the availability of research consultants.

The Executive Secretary presented a revised budget for 1957-58. He reported that the denial of Emergency Fund money to cover this year's research deficit had made it necessary to change the commission's proposed budget for 1957-58 fiscal year to include $5,820 to cover the research projects carried over from this year. ($3,750 for the balance of the Uniform Rules of Evidence study and $2,070 for the others). He also stated that he and the Chairman had decided, subject to the approval of the commission, to include $5,000 in the

1957-58 research budget as a reserve for studies which may be assigned by the Legislature even though not recommended by the commission. A similar item in the proposed budget for 1956-57 was not approved by the Department of Finance, but events since then would appear to establish the need for such a fund. The commission approved the revised budget for 1957-58 submitted by the Executive Secretary.

C. Status of Studies to be Completed for the 1957 Legislative Session: The Executive Secretary presented the following table, summarizing the current status of the studies, other than the Fish and Game Code revision, which are presently scheduled for completion for submission to the 1957 legislative session:

I. Studies Assigned by 1955 Session

Study No.	Topic	Not Started	In Process	Completed by Commission	Sent to State Bar	State Bar Report Received	Sent to Printer
1	Suspension Absolute Power Alienation		x				
2	Judicial Notice Foreign Country Law			x	x	x	
3	Dead Man Statute			x	x	x	
4	Law Governing Survival Actions			x	x	x	
5	201.5 Probate Code			x			
6	CCP § 660 - effective date new trial orders			x	x	x	
7	Retention Venue for convenience of witnesses			x	x	x	

Study No.	Topic	Not Started	In Process	Completed by Commission	Sent to State Bar	State Bar Report Received	Sent to Printer
8	Marital testimonial privilege			x			
9	Penal Code §§ 1377, 1378			x			
10	Penal Code § 19a			x	x		x
11	Corporations Code §§ 2201, 3901	x					
12	Jury Instructions			x			
13	Parties to cross-actions		x				
14	Administrator quiet title action	x					
15	Attorneys fees & costs			x			
16	Planning procedure	x					

II. Studies Assigned by 1956 Session

Study No.	Topic	Not started	In process
26	Law governing escheat personal property	x	
32	Uniform Arbitration Act		x
	Uniform Post-Conviction Procedure Act		x

The Executive Secretary stated that, of the studies not yet

started, it is presently contemplated that Nos. 11, 16 and 26 will be done by the commission staff. He reported that No. 14 is in suspension pending a final report by the State Bar Committee on Administration of Justice on its view of the desirability of going forward with the study. He also stated that his office plans to send two studies a week to the State Printer beginning October 1, so that all the studies now completed by the commission will be to the Printer by November 5.

D. 1957 Report: The commission considered a second draft of its 1957 Report which had been distributed to the members prior to the meeting. A few changes were made and the draft was tentatively approved.

E. Revision of Fish and Game Code: The Legislative Counsel reported that of the 500 copies of the draft Fish and Game Code prepared by the State Printer less than 200 copies had been distributed to interested parties. The commission decided that the Executive Secretary should prepare and send to the Legislative Counsel a list of additional persons and groups to whom the remaining copies should be sent, selected from the original master list of 900 names furnished by the Department of Fish and Game.

The Legislative Counsel reported that as of September 17 (1) the Department of Fish and Game had reviewed and prepared comments on a substantial part of the draft code; (2) the Legislative Counsel's staff had reviewed and prepared memoranda on the comments of the Department on 75 pages of the draft code; and (3) the Northern Committee had considered the Department comments and the memoranda prepared by

the Legislative Counsel on 12 pages of the draft code. He stated that his staff will continue to review the comments of the Department as they are received, but when that work is completed (and as the legislative session draws near) he will have to withdraw his staff from Fish and Game Code work completely, except insofar as preparation of a preprint bill to revise the code might be requested by a member of the Legislature.

The Executive Secretary stated his office could not devote any substantial amount of time to the code prior to the end of this year because of the other work remaining to be done for the 1957 Session and reported that the Northern Committee had expressed considerable reluctance about continuing its detailed review of the Fish and Game Department comments on the draft code. He suggested that it might, therefore, be unrealistic to hope that the commission could prepare a satisfactory revision of the code for the 1957 Session.

The Chairman of the commission stated that he had begun a personal review of the code and had prepared a memorandum covering the part of the code which he had reviewed indicating those sections which he felt could be submitted to the Legislature without further review by the commission and those sections which he regarded as presenting problems needing further consideration.

The commission discussed what procedure it should follow in reviewing the various sets of comments and memoranda which are being prepared and otherwise proceeding with its work on the Fish and Game Code. Aside from general agreement that the Chairman should be encouraged to continue his personal review of the draft code, no

decision concerning future Fish and Game Code procedure was reached.

2. AGENDA

The commission considered a number of suggestions for revision of the law which had been received from members of the Bench and Bar, along with the staff reports and Southern Committee recommendations relating to them. The following action was taken:

A. Immediate Study: The commission decided that the following items should be placed on the tentative list of Topics Selected for Immediate Study:

> A study to determine whether the defendant in a criminal action should be required to give notice to the prosecution of his intention to rely upon the defense of alibi and the facts relating thereto. [Suggestions 132(14) and 135(8)]
>
> A study to determine (1) whether the legal definition of "insanity" should be revised, (2) whether the separate trial on the question of insanity should be abolished, and (3) whether, if the separate trial is retained, evidence of insanity should be admissible on the issue of specific intent. [Suggestions 118(1) and 132(15)]
>
> A study to determine whether the law should be clarified concerning the instructions to be given to the jury as to the basis on which its discretion should be exercised in deciding whether punishment should be fixed at death or at life imprisonment. [Suggestion 118(2) and 118(3)]
>
> A study to determine whether the Small Claims Court Law should be revised. [1955 Topic No. 10]
>
> A study to determine what the inter vivos rights of one spouse should be in property acquired by the other spouse while the couple was domiciled outside of California which would have been community property had they been domiciled in California.

B. Consolidate: The following items were consolidated:

Suggestion No.	Consolidated with
131, 144, 149(2)	Suggestion 159
161	1955 Topic 10
132(4)	1956 Topic 1
134	Suggestion 82

C. Postponed: The commission postponed consideration of Suggestion No. 125 until the staff report on Suggestion No. 158(2) is completed.

D. Not Accept: The commission decided that the following Suggestions should not be accepted for study:

111	126(2)	132(12)
112	127	132(13)
113	130	132(16)
114	132(1)	132(17)
115	132(2)	132(19)
117	132(3)	136
118(4)	132(5)	138
119(2)	132(6)	139
120	132(7)	142
122	132(9)	150
123	132(10)	151
126(1)	132(11)	163

The commission decided that the following suggestions not accepted for study should be disposed of as indicated:

Suggestion No.	Disposition
113, 122	Suggest to originator that he may wish to write to the Chairman of the Senate or Assembly Interim Committee on Transportation and Commerce.

Suggestion No.	Disposition
114	Refer to Senator Dorsey for personal handling.
115, 151	Request Mr. Bradley to refer to originator's Assemblyman.
119(2), & 136, 132(2), 132(5), 142	Suggest to Mr. Bradley that he may wish to introduce bills on the matters presented.
120	Suggest to originator that he write to the District Attorneys' and Peace Officers Association about this matter.
123, 132(16), 150	In discretion of the Chairman and the Executive Secretary, refer to the State Bar.
130	Request Mr. Babbage to suggest to originator that he discuss the matter with his Assemblyman.
163	Request Senator Dorsey to refer this to originator's Senator.

On Friday afternoon, September 21, the commission received members of the Bench and Bar who responded to the commission's general invitation to attend the meeting for the purpose of making suggestions for revision of the law. The following suggestions were made:

1. Honorable Irvin Taplin, Judge of the Los Angeles Municipal Court, suggested that the provision in Penal Code Section 311 which makes a second offense under subdivision 1 of that section a felony be revised to make it clear that it is the second violation of the section, not a second conviction, which constitutes a felony. Judge Taplin also urged that the commission study the question of

jurisdiction of Municipal Courts to determine the issue of paternity in prosecutions for nonsupport under Penal Code Section 270.

2. Mr. John Shepard of Monterey suggested that the commission study the venue and procedural rules applicable to the Board of Equalization.

3. Mr. Leo Goodman of Los Angeles presented in written form two suggestions for revision of the Streets and Highways Code. A motion was made by Mr. Bradley, seconded by Mr. Babbage and unanimously adopted that these suggestions be placed on the agenda for consideration at the next meeting of the commission.

4. Mr. W. Howard Hartley, Chief Deputy District Attorney of San Mateo County suggested that the commission study various problems resulting from the decision in People v. Cahan, such as whether California should adopt the Federal procedure of a pretrial motion to suppress illegally obtained evidence and whether the present search warrant procedures should be thoroughly revised. Mr. Hartley also urged that the present requirement that all criminal cases in Municipal Courts must be brought to trial within thirty days be relaxed in cases where defendant has been released on bail.

5. Mr. Lloyd F. Harris of Escondido made a number of suggestions for improvement of small claims court procedure. These included: (a) Increasing the jurisdiction of the Small Claims Courts to $200, or at least to $150; (b) Allowing plaintiffs to appeal from an adverse decision; (c) Requiring litigants to appear without counsel in appeals from the Small Claims Court; and (d) Authorizing an agent of the plaintiff to file the affidavit referred to in Code of

Civil Procedure Sections 117 a, 117 b, and 117 c. Mr. Harris also suggested that in minor traffic cases, before the defendant is required to plead to the charge, the judge should be required to discuss the case with the defendant and advise him whether he should plead guilty or not guilty.

6. Mr. Joseph D. Taylor of Los Angeles advised the commission that he intended to submit in writing a suggestion that the law be revised to require a witness, upon demand, to produce any memoranda he has used to refresh his memory and to allow cross-examination regarding it.

7. Mr. Wilbert Green of Independence urged that the commission study the present rule that a judge has no power to perform any judicial act after expiration of his term of office, pointing out that the rule results in unnecessary expense and delay when a judge is appointed or elected to higher judicial office and is without authority to complete unfinished matters. The commission advised Mr. Green that the State Bar had this matter under consideration. (31 Cal. B. J. 325).

3. CURRENT STUDIES

A. Study No. 1 - Suspension of the Absolute Power of Alienation: The commission dicussed a revised recommendation to the Legislature prepared by the Executive Secretary and Professor Lowell Turrentine, the commission's research consultant, in consultation with Professor Austin W. Scott of the Harvard Law School. It was agreed that the commission should recommend that a statute be enacted to

limit the period for which a private trust may be made nonterminable. A motion was made by Senator Dorsey and seconded by Mr. Thurman that the commission adopt the revised recommendation to the Legislature (except alternative No. 1) and recommend the enactment of the statutes proposed therein, as amended by the commission in the course of discussion. The motion carried:

Ayes - Babbage, Bradley, Dorsey, Shaw, Stanton, Thurman
Noes - None

B. Study No. 10 - Penal Code Section 19a: The Executive Secretary reported that a question had arisen as to whether the revision of Penal Code Section 19a recommended by the commission would change the construction placed upon that section in In re Hays: that when a defendant, convicted of a misdemeanor and granted probation upon condition that he spend a period less than one year in the county jail, is released and then later has his probation revoked and is sentenced to imprisonment in the county jail for one year, such sentence is valid under Section 19a. After this matter was discussed, a motion was made by Mr. Thurman, seconded by Mr. Bradley, and unanimously adopted, that no change in the proposed revision of Section 19a be made but that the recommendation of the commission to the Legislature be revised to state that the proposed revision of Section 19a is not intended to change the rule of In re Hays.

C. Study No.13 - Parties to Cross-actions: The commission considered a revised recommendation to the Legislature relating to this study prepared by the Executive Secretary, the Southern Committee and Professor Stanley Howell, the commission's research consultant

Several changes in the proposed revision were agreed upon. A motion was then made by Mr. Shaw and seconded by Senator Dorsey that the revised recommendation, as amended by the commission, be adopted. The motion carried:

Ayes - Babbage, Bradley, Dorsey, Shaw, Stanton, Thurman
Noes - None

D. Study No. 32 - Uniform Arbitration Act: Mr. Sam Kagel of San Francisco, the research consultant on this study, was present during a part of the meeting on Friday, September 21. He stated that in his report to the commission he plans (1) to present a comparison between the present California statutory and decisional law and the Uniform Act, (2) to summarize the comments of others and to give his own comments on the desirability of the changes which would be involved, pointing out possible additional problems that might arise from the changes, and (3) to point out the areas which are not covered by the Uniform Act. The commission agreed that Mr. Kagel should proceed along the lines indicated.

E. Study No. 36 - Condemnation Law and Procedure: Mr. Stanley S. Burrill of Los Angeles was present during a part of the meeting on Thursday, September 20. The Executive Secretary explained that he had invited Mr. Burrill to serve as research consultant to the commission on this study and had suggested to Mr. Burrill that he discuss the matter with the commission before committing himself to the project. Mr. Burrill described his background and experience in the field of condemnation law and practice and summarized the major points which he thought a research study should

cover. He stated that, although the $1,500 amount suggested by the Executive Secretary would probably not prove to be adequate compensation by ordinary standards for such a major project, his law firm was willing to undertake a study of reasonable proportions for less than ordinary compensation as a public service. It was agreed that Mr. Burrill would prepare a memorandum setting forth his view of the proper scope of this study, that this memorandum would be considered by the Southern Committee, and that the Committee would then determine the scope of the study and the compensation to be paid to Mr. Burrill for it.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

COPY COPY

REPORT OF COMMITTEE ON ADMINISTRATION OF JUSTICE

TO: THE BOARD OF GOVERNORS

This Committee was recently requested to express its views on six matters on the Agenda of the Law Revision Commission and to report to the Board of Governors by September, 1956, if possible.

A report on the views of this Committee, by sections, follows. By reason of time limitations and other factors, it has not been possible for the Committee to attempt to reconcile the varying or opposite views expressed by its Sections on items (2), (3), and (4).

(1) Survival of actions arising in another State when suit is brought in California.

This proposal involves the matter of whether legislation should be introduced by the Commission to change the rule of Grant v. McAuliffe, 41 C. 2d 859. Therein a California resident brought suit against the personal representative of the estate of a California resident on a cause of action for personal injury arising out of an automobile collision in Arizona. It was held that California law, which provides for survival of such cause of action, applied, as against the contrary law of Arizona.

The Law Revision Commission and its consultant, Professor James D. Sumner, Jr., School of Law, U.C.L.A., have expressed the view that legislation should not be proposed to change the rule of the Grant case.

Both Sections of this Committee concur in the Commission's decision.

(2) Opposition to motion to change venue on the ground of convenience of witnesses before answer is filed.

The Commission has recommended that the words "if an answer be filed" be stricken from C.C.P. 396b for the purpose of allowing the court where the complaint is filed to decide whether the case shall be retained there for the convenience of witnesses. At present, if plaintiff files his action in a court other than the proper court (e.g., at plaintiff's residence) defendant may move to transfer to the county of his residence. This he will do before answering. As a result, plaintiff's counter motion to retain on account of convenience of witnesses cannot be heard in the first county. Plaintiff, after removal, then must wait until answer is filed, and move in the second county, resulting in a retransfer after a transfer.

The Sections have expressed opposing views.

The Southern Section approved the recommendation of the Law Revision Commission.

The Northern Section opposed the proposed amendment, stating:

> "The Section disagrees with the proposal and favors the present law. It believes that there is merit in the argument in support of the present rule: That an adequate and reliable determination of the convenience of witnesses issue cannot be made until the case is at issue. The proposed change would lead to an argument on the need for witnesses in support of pleadings not yet in existence. When answer is filed there is a reasonably clear situation, presumably carefully developed by the pleading process. This is actual and real. The proposal would create an artificial situation at a premature state of the proceedings for the court to rule on.
>
> "Moreover, the plaintiff has himself selected the wrong court in the first place. If there be some procedural difficulty, it is of plaintiff's choosing. The fact that he started the action in the improper county should not be used as leverage for changing an existing practice based upon entirely sound reasons and the substitution therefor of a kind of hypothetical case upon which the court may dispose of the convenience of witnesses question.
>
> "Finally, the amendment would, to some extent, impair the right of the defendant to his venue. That is, to have the case tried at his residence and, if not tried there, to have the question of where it is to be tried, determined by the judge in that county. Again, because the plaintiff improperly commenced the action this right should not be invaded."

(3) Judicial Notice of the Law of Foreign Countries.

In general, the purpose of this proposed measure is to change the present California rules (a) that the law of a foreign country must be proved as a question of fact, and (b) that in the absence of proof, it is presumed that the law of the foreign country is the same as the law of California.

The statutory changes proposed, in substance, are as follows:

1. Amend C.C.P. 1875 to read, in part:

> "Sec. 1875. Courts take judicial notice of the following facts:
>
> ...

4. (New) The law and statutes of foreign countries and of political subdivisions of foreign countries, provided, however, that to enable a party to ask that judicial notice thereof be taken, reasonable notice shall be given to the other parties to the action in the pleadings or otherwise.

...

In all these cases the court may resort for its aid to appropriate books or documents of reference and to the advice of persons learned in the subject matter.

If a court is unable to determine what the law of a foreign country or a political subdivision of a foreign country is, the court may, as the ends of justice require, either apply the law of this State if it can do so consistently with the Constitution of this State and of the United States or dismiss the action without prejudice."

2. Amend Probate Code Section 259.1 (reciprocal right of inheritance) to read:

The burden shall be upon such non-resident aliens to establish the fact of existence of the reciprocal rights set forth in Section 259.

3. Repeal of C.C.P. 1900, which provides in substance that official compilations of the laws of a sister State or country, and compilations commonly admitted by the tribunals of a sister State or country as evidence of the written law, are admissible in this state as evidence of such law.

4. Repeal C.C.P. 1901 which provides in substance that a copy of the written law or other public writing of any state or country, properly attested, is admissible as evidence of such law or writing.

5. Amend C.C.P. 1901, to provide in substance, that a copy of a public writing of any State or country, properly authenticated, as evidence of such writing, thus deleting the application of such provisions to copies of a written law of any state or country.

Changes number (2), (3), (4) and (5) above are obviously intended as conforming changes, to conform to the concept that the law of a foreign country is a question of law, i.e., judicial notice, and not a question of fact.

Both sections of this Committee are in agreement with the purpose and principle of the measure.

A number of comments, however, have been made concerning particular provisions. As earlier indicated, it has not been possible to reconcile the views of the sections thereon. Nor has time permitted adoption of the suggestion made by the Northern Section at a meeting on August 22, 1956, that the views of the Commission or its draftsman, Professor Edward A. Hogan, Jr., should be solicited, on the points that have concerned the Committee.

As a matter of record, the points raised by the two Sections are:

1. In proposed new subsection (4) of Section 1875, it is suggested by the Southern Section that if the court receives "advice" of persons learned in the law in the subject matter, such "advise" shall either be given in open court at time of trial or at least shall be made a matter of record in the proceeding or action.

The Northern Section, independently, raised the same general question, suggesting, in effect, that "advice" should be given when the court is in session.

2. The word "fact", at the outset of present Section 1875 ("Courts take judicial notice of the following facts"), caused concern to both sections.

It is suggested by the Southern Section, that word "fact" so appearing be deleted; further that the proposed legislation expressly state that determination of foreign law (i.e., law of a foreign country) is a question of law and not an issue of fact in all courts. The Northern Section also suggests a provisions of this type.

3. It is noted by the Northern Section that the amendments would permit "advice" of an expert where the law of a sister state is in issue; and in all situations where judicial notice is involved. This seems to go beyond the particular matter under consideration. The Northern Section raised the question whether such is the intent and whether such provisions are required.

4. The Northern Section questions whether, in the reference to "law and statutes" of foreign countries, there should not be added wording referring to "judicial interpretations". The latter phrase is used in present subsection 3 and its omission in new subsection (4) might give rise to ambiguity.

5. The Northern Section also noted the phrase "political subdivisions of foreign countries" may be uncertain. Will it be given a technical meaning?

6. The Northern Section was of the view that the words "reasonable notice" in provisions requiring a party to give such notice if he asks that judicial notice be taken, should be amplified.

Frequently, considerable time is required for preparation on the issue of foreign law.

7. The Northern Section also raises the question, as indicated, whether the measure should not provide that foreign law is a matter for the court to decide; further, that no presumption of correctness on appeal would attach to the trial court's determination. The Section noted that the second possible solution in the report of Professor Hogan was similar but did not appear to dispose of the question of presumption of correctness on appeal.

8. In regard to the proposed provisions in the last paragraph of Section 1875, i.e., that if the court is unable to determine what the foreign law is, it may, as the ends of justice require, either apply the law of this State or dismiss the action without prejudice:

(a) These provisions met with the approval of the Southern Section, which suggests a minor re-arrangement of language. The first clause would read "If the law of a foreign country or a political subdivision of a foreign country is not determinable, the court may," etc.

(b) The Northern Section believes that the entire paragraph should be deleted. It believes that litigants are entitled to a determination of the question of foreign law by the court and the court should make the determination. If the trial court is wrong, it is stated, appellate review is available.

The Northern Section also believes that the wording referring to state and federal constitutions, in this paragraph, is superfluous.

9. The Southern Section called attention to the fact that this Committee recommended the substantial revision of Probate Code Sec. 259, et seq. (July-August, 1956 Journal, p. 310). The amendment to Section 259.1 recommended by the Commission (see above), would be inconsistent with certain provisions of the revision of Section 259, et seq., recommended by this Committee. Note: The Board of Governors later determined not to sponsor the revision of Probate Code Sec. 259, et seq., at the coming session of the Legislature, as the Commission has the subject matter on an Agenda.

(4) New Trial; effective date of order granting.

In brief, the Commission's recommendation is for amendment to C.C.P. 660, to specify the time when a motion for new trial is determined, within the meaning of the section.

It is pointed out that the problem arises as a practical matter, only when a motion for new trial is granted. A variety of situations may arise where, although the judge intends to grant the motion for new trial, formalities are not completed within the jurisdictional 60-day period. Recent case law indicates that within the 60-day period (a) the order granting the motion must be entered in the permanent minutes, or (b) a written order signed by the judge must be filed with the clerk. Earlier cases indicate a more liberal rule.

The amendments recommended by the Commission add the following wording:

> A motion for new trial is determined within the meaning of this section when (1) an oral order ruling on the motion is pronounced by the judge in open court or in chambers, or (2) a written order ruling on the motion is signed by the judge. Such determination shall be effective even though the order directs that a written order be prepared, signed, and filed.

The Northern Section of this Committee is of the opinion that the present case law is preferable and, stating:

> The Section does not approve the amendment of C.C.P. 660 proposed by the California Law Revision Commission; instead it believes that the modern case law is preferable and that the new trial order to be effective should be either a written order signed and filed or an order entered in the minutes, within the 60-day period. (It may be noted that this is substantially the proposal of the Commission's research assistant. See "A study relating to effective date of new trial orders in relation to Section 660 of the Code of Civil Procedure", pp. 23 and 27.)
>
> The Section believes this alternative is preferable because it establishes a definite, orderly, and clear record. It makes for an easily identified action. It is consistent with general practice on other types of orders and with the effective date of new trial orders for the purposes of appeal. On the other hand, the Commission's proposal often will leave open the determination of when the judge made the order. It is a retrogression toward looseness and indefiniteness which will breed controversy.

The Southern Section of this Committee approves the purpose of the amendments but suggests that the proposed amendment be limited to the purpose sought to be accomplished.

The Southern Section also suggests the following principle:

> Expiration of the 60-day period shall not automatically determine a motion for a new trial where (a) an order granting the motion in whole or in part has been entered; or (b) has been orally pronounced within the 60-day period in open court in the presence of the parties, unless, in the latter event, a written order or minute order granting the motion in whole or

in part has not been entered within _____ days of the expiration of the 60-day period.

The Southern Section also suggests the following:

In respect to an order granting the motion, it shall be deemed to have been determined on the date of the entry of the written order or minute order to that effect.

(5) Repeal of Dead Man Statute and related provisions.

The Commission recommends that subsection (3) of C.C.P. 1880, the so-called Dead Man Statute, be repealed and that a new section (1880.1) be added to the Code of Civil Procedure, to provide, in substance, that any action or proceeding by or against the representative or by or against the heirs or successors in interest of a deceased person, etc., no written or oral statement of such deceased person made upon his personal knowledge shall be excluded as hearsay. The proposed new section also contains a provision that in any action or proceeding by or against a person of unsound mind incapable of being witness under C.C.P. 1880(1), or by or against his successor in interest, no written or oral statement of such person of unsound mind made upon his personal knowledge and at a time when he would have been a competent witness shall be excluded as hearsay.

Both the Southern and Northern Sections of this Committee approve the principle of the measure and the recommendations of the Commission.

It was said by the Northern Section that the provisions would probably help more estates than it would hurt, by allowing the representative to use statements of the deceased which are now excluded as hearsay. The problem of false claims was noted but it was the sense of the Section that the majority of these could be disproved by decedent's statements during his lifetime.

The Southern Section, in addition to approving the principle and recommendation, suggested that if proposed Section 1880.1 is enacted, subsection (4) of C.C.P. 1870 should also be amended to conform to the liberalization provided by Section 1880.1.

(6) Quiet Title Action--Necessity for appointment of Administrator as defendant.

A member of the Bar suggested to the Commission that amendments be proposed which would make it unnecessary for an administrator to be appointed in the estate of a deceased claimant, and named as a defendant. Instead, it was suggested that a form of process might be provided like that provided for unknown defendants. The research consultant of the Commission questioned the necessity for the amendment.

Richard Tuttle, Vice President of the California Land Title Association, who was consulted by the Commission's staff, expressed certain doubts both as to the demand for the statute on the part of the bar and as to the danger of exceeding constitutional limits.

The Commission has submitted a memorandum to the State Bar giving the backgroundand asking 5 questions of the State Bar. These questions include (a) The scope of C.C.P. 738,749,749.1 and 750, as applied to this situation; (b) whether as "unknown defendants" statute including heirs and devisees of deceased persons, similar to that in Sec. 3952 of the Rev. & Tax. Code, should be enacted, to eliminate the necessity for appointment of administrator; (c) whether such a statute would be constitutional; (d) whether the Bar in general is satisfied with the existing situation; and (e) whether a complete study would be desirable with suggested legislation for such gaps as might be found to exist.

The Southern Section of this Committee, acting under information that this item did not appear to involve legislation proposed by the Commission for the 1957 session, referred the matter to one of its members, Mr. Lawrence L. Otis, and has not had an opportunity, as of this date, to go into the problem.

The Northern Section reviewed the matter and concluded that it could not answer the specific questions asked, without, in substance, making the complete study referred to in question (e). On general consideration, however, the Northern Section expressed doubt whether the studies outlined would be warranted.

This report is submitted by the Chairman on behalf of the Committee. Time precludes circulation to the Committee in advance of the September, 1956 Board Meeting.

Respectfully submitted,

Ben C. Duniway
Chairman

September 6, 1956