

A G E N D A

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

June 19-20, 1959

1. Minutes of May, 1959 meeting (Enclosed).
2. Report on interviews of candidates for position of Assistant Executive Secretary.
3. Authority to contract studies authorized in 1958.
4. Matters relating to 1959 legislative program:
 - A. Report on status of bills.
 - B. Report on status of 1959-60 budget.
5. Discussion of distribution of bound volume to public law offices.
6. Oral report on Study No. 36 - Condemnation.
7. Further consideration of studies heretofore considered:
 - A. Study No. 21 - Confirmation of Partition Sales. (See Memorandum No. 1 enclosed)
 - B. Study No. 33 - Survival of Tort Actions. (See Memorandum No. 2 to be sent)
 - C. Study No. 38 - Inter Vivos Rights in Probate Code § 201.5 property (See Memorandum No. 3 enclosed)
 - D. Study No. 32 - Arbitration (See Memorandum No. 4 to be sent)
8. New Studies:
 - A. Study No. 42 - Trespassing Improvers (See Memorandum No. 5 enclosed)
 - B. Study No. 48 - Right of Juveniles to Counsel (See Memorandum No. 6 to be sent)
 - C. Study No. 51 - Alimony after Divorce (See Memorandum No. 7, enclosed)

Meeting

MINUTES OF MEETING

of

June 19 and 20, 1959

Los Angeles

Pursuant to the call of the Chairman, there was a regular meeting of the Law Revision Commission on June 19 and 20, 1959, in Los Angeles.

Present: Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice Chairman
Mr. Frank S. Balthis
Mr. Leonard T. Dieden
Honorable Roy A. Gustafson
Mr. Charles H. Matthews
Professor Samuel D. Thurman (June 19)

Absent: Honorable James A. Cobey
Honorable Clark L. Bradley
Mr. Ralph N. Kleps, ex officio

Messrs. John R. McDonough, Jr., Glen E. Stephens and Miss Louisa R. Lindow, members of the Commission's staff, were also present.

Mr. R. E. Allen, Receiver and Commission, Los Angeles, was present during a part of the meeting on June 20, 1959 to discuss partition actions. The minutes of the meeting of May 15 and 16, 1959 were corrected and unanimously approved as corrected.

I. ADMINISTRATIVE MATTERS

A. Authorization To Make Contracts for Studies Authorized

in 1958: The Executive Secretary reported that the Commission had not formally authorized the making of contracts with research consultants for the studies authorized by Resolution Chapter 23 of the Statutes of 1958. He reported that the Commission had entered into one such contract, in the amount of \$1000, with Professor Robert A. Girard of the Stanford Law School for a study to determine whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.

After the matter was discussed a motion was made by Mr. Matthews, seconded by Mr. Thurman, and unanimously adopted to ratify the contract with Professor Girard and to authorize the Chairman to enter into contracts with qualified research consultants for the other studies authorized by Resolution Chapter 23 of the Statutes of 1958.

B. Qualification Appraisal Board Interviews of Candidates

for Position of Assistant Executive Secretary: The Chairman, Mr. Gustafson and the Executive Secretary reported on the interviews held in Sacramento, Los Angeles and San Francisco of candidates for the position of Assistant Executive Secretary. All of them spoke in particular of the perception, enthusiasm and conscientiousness which characterized the service of the public members of the Board, Mr. Jerome Lewis of Sacramento and Mr. Leon Warmke of Stockton. A motion was then made by Mr. Gustafson, seconded by Mr. Balthis and unanimously adopted expressing the sincere appreciation of the California Law Revision Commission to Mr. Lewis and Mr. Warmke for the service which they rendered to the State and the Commission and requesting the Chairman to express the Commission's appreciation to them.

It was also agreed that the Chairman should write to Mr. Chopson of the State Personnel Board thanking him for the service he rendered as a member of the Interview Board.

The Executive Secretary then reported that the first five persons on the list eligible for the position of Assistant Executive Secretary are:

Rudolf H. Michaels
George Brunn
Jay L. Shavelson
Howard H. Bell
Joseph B. Harvey

After the matter was discussed it was agreed that the Executive Secretary should write to these persons inviting them to appear at the July meeting

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to be interviewed by the Commission at that time requesting them to give us the names of at least three persons with or for whom they have worked or studied and who would be in a position to give an informed appraisal of their work and qualifications.

The Commission then considered what the length of the probation period for this position should be. It was agreed that the nature of this assignment is sufficiently unique that it would probably take longer than the ordinary six months period to become familiar with the various tasks that the candidate will be expected to perform and to demonstrate his capacity to perform them up to the applicable standard. After the matter was discussed a motion was made by Mr. Babbage, seconded by Mr. Dieden, and unanimously adopted to request the Personnel Board to make the probation period for the Assistant Executive Secretary one year instead of six months.

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C. Miscellaneous Administrative Matters:

1. 1959-60 Budget. The Executive Secretary reported that the request for augmentation of the Commission's 1959-60 budget was approved.

2. Bound Volumes. The Executive Secretary raised the question as to what policy the Commission should adopt concerning the distribution of bound volumes to public law offices. After the matter was discussed it was agreed that distribution of the bound volume to public law offices should be made on a request basis so long as not too many requests are made.

II. LEGISLATIVE MATTERS

A. Status Report on the 1959 Bills: The Executive Secretary reported that the following bills have been passed and chaptered:

- S.B. 163 (Effective Date of New Trial Order) Ch. 468.
- 164 (Time for Making New Trial Motion) Ch. 469.
- 165 (Suspension of Alienation) Ch. 470.
- 166 (Worthier Title) Ch. 122.
- 167 (Mortgage for Future Advances) Ch. 528.
- A.B. 401 (Appointment of Guardians) Ch. 500.
- 404 (Grand Juries) Ch. 501.

The Executive Secretary also reported that the Senate Interim Judiciary Committee had given a "do pass" recommendation to the constitutional amendment (ACA 16) and the several bills (A.B. 405-410) relating to the claims study and that it was anticipated that these measures would be chaptered. He reported that the following bills did not pass the Legislature:

- S.B. 160 (Nonresident Alien Heirs) (Sent to interim study)
- A.B. 400 (Taking of Vehicle)
- 402 (Driving while Intoxicated) (Sent to interim study)
- 403 (Sale of Corporate Assets)

The Commission then considered what policy to adopt with regard to the bills that failed this Session. After the matter was discussed a motion was made by Mr. Babbage, seconded by Mr. Matthews, and unanimously adopted to defer further consideration of this matter to its July meeting.

JLL. CURRENT STUDIES

A. Study No. 21 - Confirmation of Partition Sales: The Commission had before it Memorandum No. 1 (6/9/59); Memorandum No. 1-A (6/17/59) and copies of two letters from Mr. R. E. Allen, of Los Angeles (dated 6/1/59 and 6/11/59) in reply to letter from the Assistant Executive Secretary soliciting Mr. Allen's views with respect to proposed revisions to the sections of the Code of Civil Procedure governing partition actions. At the invitation of the Commission Mr. Allen was present at this portion of the meeting and made the following suggestions and comments:

1. The provisions of Code of Civil Procedure Section 752a which make the provisions relating to partition of real property applicable to the partition of personal property raise many questions, are generally unsatisfactory and should be revised.

2. Specific provision should be included in the Code (1) requiring that in every case evidence of the recordation of lis pendens be filed with the court and (2) requiring that a title report, certificate, litigation report or similar document be filed with the court evidencing the interests of all parties in the property.

3. The provisions of section 761 and 762 with respect to the holding of hearings by a referee to determine the interests of lien holders are cumbersome and inappropriate; such questions should be determined directly by the court itself.

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4. The provisions of Section 763 with respect to the determination of whether property is "so situated that partition cannot be made without great prejudice to the owners" are ambiguous and should be clarified, particularly with respect to making it clear that the court may consider other factors than physical situation (e.g. that it may take into account that the property is mortgaged) in determining whether the property can be physically partitioned.

5. Section 763 should be clarified with respect to the number of referees to be appointed; three may be desirable in a case of a physical division but one should be sufficient in case of a sale.

6. Section 772, which authorizes the court to require lien holders to exhaust other securities is undesirable and should be revised or repealed.

7. Section 777 with respect to partition sales on credit is impractical and should be repealed or revised.

8. There is no necessity for the appointment of appraisers at any stage in the partition proceedings.

9. Real estate agents are unnecessary in partition sales and provisions with respect to their appointment and commissions should not be included.

10. The present provisions with respect to the conduct of partition sales and confirmation thereof are satisfactory. The holding of a "second auction" at the confirmation proceedings after an original public sale is, in Mr. Allen's experience most satisfactory in producing

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the best price for the property.

11. There is no valid reason why provisions with respect to the bonding of referees should not be added to the code.

B. Study No. 33 - Survival of Tort Action: The Commission

had before it Memorandum No. 2 (6/12/59); a draft Recommendation relating to Survival of Tort Actions (6/12/59); a draft bill designed to effectuate the recommendation of the Commission (5/22/59); and letters from Messrs. William S. Cout (5/25/59), Dion R. Holm (5/29/59), Henry A. Dietz (6/17/59) and Mrs. Elizabeth Palmer (6/11/59) in reply to the request of the Assistant Executive Secretary for information regarding the construction given by their respective offices to the portion of Probate Code Section 573 which relates to the survival of actions by the State of California or its subdivisions founded on any statutory liability for maintenance, care or aid furnished the decedent or his relations. (A copy of each of these items is attached hereto.)

The Commission first considered the draft recommendation. After the matter was discussed the following matters were agreed upon:

1. That there should be no specific reference to the fact that certain recommendations of the Commission do not correspond with those made by the research consultant in his study.
2. That the discussion of the Commission's recommendations with respect to punitive or exemplary damages or penalties should include a brief statement of the existing law, the Commission's departure from the present law, and the reasons for such departure.
3. That the discussion of the Commission's recommendation with respect to recovery of damages for pain, suffering, mental anguish and the like include (a) a statement of the existing law and the Commission's

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departure therefrom and (b) a more complete statement of arguments which have been made against the right to recover such damages.

4. That no specific reference be made to the fact that the final action of the Commission may be beyond the literal scope of the study authorized by the Legislature.

5. That by means of either footnotes or appendices the research done by the staff relative to various matters in connection with this study should be incorporated in the recommendation.

6. That titles and subtitles should be used where appropriate throughout the recommendation.

7. That the following changes should be made:

(a) Page 1 and 3 and throughout the recommendation delete the word "more" which precedes the phrase "intangible personal . . . interest."

(b) Page 3. Revise the wording of the sentence beginning on line 1 and italicize the word "all" therein.

(c) Page 3. Delete the sentence "The Commission has reached this conclusion for the following reasons" beginning on line 5.

(d) Page 3. Revise the wording of the sentence on line 19.

(e) Page 3. Include a translation of the maxim actio personalis moritur cum persona.

(f) Page 4. Revise the wording of the paragraph beginning on line 4.

(g) Insert a subtitle reading "Limitation on Damages" before the second full paragraph on page 4.

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- (h) Page 4. Add the words "continued to" after the word "decedent" on line 21.
- (i) Page 7. Include a statement to the effect that the Commission has concluded that the new survival statute should be in the Probate Code.
- (j) Page 10. Delete the word "minor" in line 7.
- (k) Make such other minor changes as seem appropriate.

During the discussion Mr. Stanton raised the question whether the Commission should consider revising Probate Code Sections 707 and 709 which relate to the requirement of filing notice with the executor of actions pending against the decedent at the time of his death. After the matter was discussed it was agreed that this is a collateral matter and beyond the scope of the study authorized by the Legislature.

The Commission then considered the draft bill relating to the survival of actions. After the matter was discussed a motion was made by Mr. Babbage and seconded by Mr. Dieden to approve Section 573 with the following changes:

1. Add the phrase "except as provided herein" before the phrase "no cause or right of action."
2. Delete the comma following the word "administrator" in the second paragraph.

The motion carried:

Aye: Babbage, Balthis, Dieden, Matthews, Stanton.

No: Gustafson

Not Present: Bradley, Cobey, Thurman.

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It was agreed that a revised recommendation should be prepared by the staff in time for consideration at the July meeting.

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C. Study No. 36(L) - Condemnation: The Executive Secretary reported that the first of the new contracts with the law firm of Hill, Farrer & Burrill has been executed. He then raised the question of what should be done with regard to the old contract, pointing out that \$1,000 is available until June 30, 1959. After the matter was discussed a motion was made by Mr. Thurman, seconded by Mr. Dieden, and unanimously adopted directing the Chairman to execute a formal agreement with the firm of Hill, Farrer & Burrill terminating the old contract.

The Commission then considered and agreed that the firm of Hill, Farrer & Burrill should be paid in monthly installments under the new contracts rather than after studies have been submitted in view of the heavy financial burden that will be incurred monthly by the firm under the present arrangement.

D. Study No. 38 - Inter Vivos Rights in Quasi-Community

Property: The Commission considered Memorandum No. 3 (6/9/59) and a draft of a bill on this subject prepared pursuant to action taken by the Commission at its May meeting. (A copy of each of these items is attached hereto.) After the matter was discussed the following action was taken:

1. Section 164 of the Civil Code. It was agreed that the staff should give consideration to whether the proposed last paragraph of Civil Code Section 164 beginning "Within the meaning" should be eliminated in this section and the other in which it appears, substituting therefor a generally applicable section to the same effect.

2. Section 164.1 of the Civil Code. A motion was made by Mr. Thurman and seconded by Mr. Dieden to retain the phrase "when, during such marriage, the acquiring spouse becomes domiciled in this state."

The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Thurman.

No: Stanton

Not Present: Bradley, Cobey.

[Comment: This phrase is included to preclude the application of the quasi-community property principle to property acquired by married persons who never become domiciled in the State.]

The Commission then discussed whether Section 164.1 should expressly provide that property acquired elsewhere during marriage does not become quasi-community property unless both spouses become domiciled here. A motion was made by Mr. Thurman and seconded by Mr. Balthis to

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revise the operative language of Section 164.1 to read "when, during such marriage, both spouses become domiciled in this State," thus requiring that both husband and wife be domiciled in this State before property is treated as quasi-community property. The motion carried:

Aye: Babbage, Balthis, Dieden, Matthews, Thurman.

No: Gustafson, Stanton.

Not Present: Bradley, Cobey.

A motion was then made by Mr. Thurman and seconded by Mr. Dieden to treat quasi-community property as such only so long as both spouses remain domiciled here by adding the phrase "and remains quasi-community property so long as either spouse remains domiciled in this State" at the end of the first sentence in Civil Code Section 164.1. The motion carried:

Aye: Balthis, Dieden, Matthews, Thurman.

No: Babbage, Gustafson, Stanton.

Not Present: Bradley, Cobey.

A motion was made by Mr. Stanton and seconded by Mr. Babbage to substitute the word "is" for "becomes" in Section 164.1 so that the following phrase reads ". . . personal property wherever situated and so acquired, is quasi-community property." The motion carried:

Aye: Babbage, Gustafson, Matthews, Stanton.

No: Balthis, Dieden, Thurman.

Not Present: Bradley, Cobey.

A motion was made by Mr. Thurman and seconded by Mr. Dieden to approve in principle that the common law rule that the domicile of the

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wife is that of the husband should not be applicable to determinations made pursuant to Section 164.1. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Bradley, Cobey.

It was agreed to approve the following proposed language to effectuate the above action: "In determining the domicile of a wife under this section the court shall not apply a rule of law or presumption that the domicile of a wife is that of her husband."

A motion was made by Mr. Thurman and seconded by Mr. Gustafson to delete the sentence "Property acquired in exchange for quasi-community property is also quasi-community property" from Civil Code Section 164.1 as unnecessary in light of the first sentence of Section 164.1. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Bradley, Cobey.

It was agreed that the phrase in Civil Code Section 164.1 "Within the meaning of this section real property includes a leasehold interest in real property" should be eliminated if a generally applicable section to this effect is enacted.

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3. Section 164.2 of the Civil Code. A motion was made by Mr. Dieden and seconded by Mr. Babbage to delete proposed Section 164.2. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton, Thurman.

No: None.

Not Present: Bradley, Cobey.

[Comment: It was agreed that this section would not work in cases where the consideration used to acquire the property is community property under the law of another State and that the courts would reach proper results by applying the "tracing" principle in the absence of a Code section.

4. Section 164.3 of the Civil Code. A motion was made by Mr. Dieden and seconded by Mr. Thurman to approve Civil Code Section 164.3 with the following changes:

The phrase "while domiciled in this State" should be deleted from the first paragraph. [The thought expressed was that every case should begin with the presumption and that it could be quite readily rebutted by showing that the parties were not domiciled here when the property was acquired.]

The word "mentioned" in the second paragraph should be substituted for the word "created."

The motion carried:

Aye: Babbage, Dieden, Gustafson, Matthews, Stanton, Thurman.

No: Balthis.

Not Present: Bradley, Codey.

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5. Sections 172b and 172c of the Civil Code. A motion was made by Mr. Babbage and seconded by Mr. Thurman to approve Section 172b.

The motion carried:

Aye: Babbage, Dieden, Stanton, Thurman.

No: Balthis

Not Present: Bradley, Cobey, Gustafson, Matthews.

During the discussion of Section 172c a motion was made by Mr. Balthis and seconded by Mr. Dieden to provide in Sections 172b and 172c that the husband will have the management and control of the earnings of the wife, i.e., treat quasi-community property like community property insofar as the general right of management and control is concerned. The motion did not carry:

Aye: Balthis, Gustafson.

No: Babbage, Dieden, Matthews, Stanton, Thurman.

Not Present: Bradley, Cobey.

A motion was then made by Mr. Babbage and seconded by Mr. Stanton to substitute the words "the husband" for "either spouse" in clause (b) of Section 172c of the Civil Code. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Bradley, Cobey.

[Comment: The reason for this action is that the presumption applicable to the wife's transfer to a good faith purchaser is stated in new Section 164.3]

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6. Section 1238 of the Civil Code. A motion was made by Mr. Thurman and seconded by Mr. Balthis to approve Civil Code Section 1238. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton, Thurman.

No: None.

Not Present: Bradley, Cobey.

7. Section 1239 of the Civil Code. A motion was made by Mr. Dieden and seconded by Mr. Balthis not to revise Civil Code Section 1239. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton, Thurman.

No: None.

Not Present: Bradley, Cobey.

8. Section 1265 of the Civil Code. A motion was made by Mr. Babbage and seconded by Mr. Dieden to approve Civil Code Section 1265. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton, Thurman.

No: None.

Not Present: Bradley, Cobey.

9. Section 146 of the Civil Code. A motion was made by Mr. Babbage and seconded by Mr. Thurman to approve Civil Code Section 146. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton, Thurman.

No: None.

Not Present: Bradley, Cobey.

10. Section 201.5 of the Probate Code. A motion was made by Mr. Dieden and seconded by Mr. Babbage to approve the proposed revision of

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Probate Code Section 201.5 with the following changes:

(1) The phrase, "domiciled in this State" should be deleted from the first clause.

(2) The phrase "originally acquired by the decedent" should be inserted after the phrase "quasi-community property."

The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Bradley, Cobey.

[Comment: Some consideration was given to whether it is necessary to provide that on the death of the nonacquiring spouse, the property of the acquiring spouse is automatically restored to its original status but no action was taken.]

11. Section 201.6 of the Probate Code. A motion was made by Mr. Babbage and seconded by Mr. Dieden to approve Probate Code Section 201.6. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Bradley, Cobey.

12. Section 201.8 of the Probate Code. A motion was made by Mr. Babbage and seconded by Mr. Dieden to repeal Probate Code Section 201.8. The motion carried:

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Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Bradley, Cobey.

13. Section 15301 of the Revenue and Taxation Code. After the matter was discussed it was agreed that the staff should redraft Revenue and Taxation Code Section 15301 to make the gift tax applicable to a transfer of quasi-community property only by the spouse who originally acquired the property to the other spouse.

14. Section 15302 of the Revenue and Taxation Code. A motion was made by Mr. Babbage and seconded to approve Revenue and Taxation Code Section 15302. The motion carried:

Aye: Babbage Balthis, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Bradley, Cobey.

15. Section 15303 of the Revenue and Taxation Code. A motion was made by Mr. Babbage and seconded to approve Revenue and Taxation Code Section 15303. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Bradley, Cobey.

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The Commission considered whether it should recommend changes in the Inheritance Tax sections applicable to Probate Code Section 201.5 property enacted in 1957 in view of the proposed creation of quasi-community property but no action was taken.

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E. Study No. 42 - Trespassing Improvers: The Commission had before it Memorandum No. 5 (6/9/59); Item A - Statutes Proposed by Professor Merryman (6/5/59); Item B - Relief-oriented Statutes (6/5/59); Item C - Legal Rights-oriented Statutes (6/5/59). (A copy of each of these items is attached hereto.)

Mr. Stanton raised the question whether the Commission should not consider first where such statutes as it might propose should be located in the Codes. After the matter was discussed it was agreed that consideration of this matter should be deferred until the proposed statutes have been drafted.

The Commission then considered Item B - Relief-oriented Statutes. During the discussion of Section 1 (a) defining "culpable trespassing improver" the question was raised whether this term should be defined to include a negligent improver and whether the phrase "wilfully or recklessly" is sufficiently clear. After the matter was discussed it was agreed that Section 1 (a) should be revised to read "(a) 'culpable trespassing improver' means a person who, knowing that he does not have the right to do so, improves land owned by another." [The question was raised whether this language is clear since any improver knows (or ought to know) that he does not have a right to improve land owned by other persons.]

After a brief discussion of Section 1 (b) it was agreed that it should be revised to read "(b) 'Trespassing improver' means a person other than a culpable trespassing improver who improves land owned by another."

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During the discussion of Section 1 (c) Mr. Stanton stated that the culpable owner should be defined to apply only to one having actual knowledge (as opposed to constructive notice) that a trespassing improver is making improvements on his land. After the matter was discussed a motion was made by Mr. Balthis and seconded by Mr. Dieden to provide in Section 1 (c) that the culpable owner must have actual knowledge that the trespasser is improving the land he owns. The motion carried:

Aye: Babbage, Balthis, Dieden, Gustafson, Matthews, Stanton.

No: None.

Not Present: Bradley, Cobay, Thurman.

Mr. Babbage then suggested that the definition of the culpable owner should also provide in effect that one is not a culpable owner unless he knows that he owns the land in question. After the matter was discussed it was agreed that Section 1 (c) should be revised to read "(c) 'Culpable owner' means one who, knowing that he owns land, causes or encourages a trespasser to improve such land or, having actual knowledge that the trespasser is doing so, fails to warn him.

It was then suggested that the definitions in Section 1 (a) and (b), and thus the proposed legislation, should not be limited to trespassers but should apply to all persons who improve land owned by others and who otherwise fall within the definitions. In this connection reference was made by way of example to improvements made by a lessee not having the right to make them. Mr. Balthis stated that his initial reaction to this suggestion was a negative one because the statute might then extend to

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situations not intended to be covered. It was then agreed to have the staff give this matter further consideration and discuss it with Professor Merryman.

During the discussion of Section 2 Mr. Stanton raised the question whether it would be Constitutional to provide that all cases arising under the new statute should be tried by the court sitting without a jury in view of the fact that many such actions would be substantially actions in the nature of ejection. After the matter was discussed it was agreed not to delete this provision from Section 2 at the present time.

It was agreed that the first portion of the third sentence in Section 2 should be revised to read "To this end, the court may employ any remedy or remedies including . . ." to make it clear that the court is not limited to any one remedy.

After the matter was discussed it was agreed that the forfeiture provision in Section 4 should be retained.

It was then agreed that further consideration of this matter should be deferred to the next meeting. Mr. Stanton stated he did not regard Item C as a good draft of the type of legislation that he would prefer to see enacted and that he will draft a proposed statute incorporating his views if time permits.

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begin: "Subject to the provisions of Section 732.4."

4. Section 732.3. A motion was made by Mr. Gustafson and seconded by Mr. Balthis not to approve Section 732.3. The motion carried:

Aye: Babbage, Balthis, Gustafson, Matthews, Stanton.

No: Dieden.

Not Present: Bradley, Cobey, Thurman.

The Commission then discussed what policy it should adopt with regard to providing counsel to indigent juveniles at public expense in view of the information relating to the number of juvenile proceedings and arrests reported in Memorandum No. 6. It was agreed that merely to provide that the person named in the petition has the right to counsel without providing for the furnishing of counsel at public expense where necessary would be to give the right in form but not in substance in the great majority of cases in that a high proportion of juvenile offenders and their parents do not have the financial means to obtain counsel. After the matter was discussed it was tentatively agreed that the Commission should (1) recommend that a statute be enacted giving both the juvenile and his parents the right to counsel in all cases; (2) recommend that a statute be enacted requiring the court to advise the juvenile and his parent of their right to counsel in all Section 700.1 (delinquency) proceedings; and (3) report to the Legislature that to make counsel available to juveniles in fact would require that counsel be furnished at public expense where necessary, that this would involve substantial expense and that the Commission makes no recommendation on this matter.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

*James
M. ...*

5/29/59

STATUS REPORT ON 1959 BILLS

Senate Bills 163, 164, 165, 166 and 167 have all been signed by the Governor. Senate Bill No. 160 (Right of Non-resident Aliens To Inherit) has been sent to interim study.

A.B. 401 and 404 have been signed by the Governor. A.B. 402 was on third reading in the Senate at last report. A.B. 400 and 403 died in committee.

Civitas. A.C.A. 16 and A.B. 408, 409 and 410 have passed in the Assembly and are presently in the Senate Judiciary Committee. A.B. 405, 406 and 407 were on third reading in the Assembly at last report. All of these bills are set for hearing by a subcommittee of the Senate Judiciary Committee on June 3.

ES	
AES	✓
AES	✓

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