

5/17/57

MINUTES OF MEETING
OF
NORTHERN COMMITTEE

May 4, 1957
San Francisco

Members

Mr. Thomas E. Stanton, Jr.
Professor Samuel D. Thurman

Staff

Mr. John R. McDonough, Jr.

STUDY NO. 24 - MORTGAGES FOR FUTURE ADVANCES

The Committee discussed with Mr. Merryman his report, the recommendations made therein, and the revision of Civil Code Sections 2974 and 2975 proposed by him. The Committee makes the following recommendations:

1. That Mr. Merryman's study be accepted and approved for publication by the Commission.
2. That the Commission determine whether a field study of real property mortgages for future advances should be made for the purpose of determining whether the Commission should recommend to the Legislature:
 - (a) That all advances be given the priority presently accorded obligatory advances;
 - (b) That all advances be given the priority presently accorded optional advances; or

(c) That if the present distinction between obligatory and optional advances is retained, a mortgage for future advances be required to state that advances to be made thereunder are obligatory in order to have the priority presently accorded to such advances.

3. That the Commission determine whether a similar field study should be made with respect to personal property mortgages for future advances.

4. That if no field study is undertaken the Commission recommend no revision of existing law relating to mortgages for future advances except the following:

(a) That Civil Code Section 2974 be repealed.

(b) That Civil Code Section 2975 be revised to read as follows: *

2975. Mortgages of personal property or crops may be given to secure future advances. If the maximum amount to be secured is stated in the mortgage, the lien for all advances to that amount, whether optional or obligatory, has the same priority as that originally established by the mortgage. If the maximum amount to be secured is not stated, the lien for all optional advances made after actual notice of intervening liens is inferior to them in priority.

The stated maximum amount means the maximum amount secured at any one time, and does not include amounts already

* The proposed revision is shown in strike-out and underline following this statement of Section 2975 as it would read if revised as recommended.

repaid or discharged. Repayment in full of amounts owing under the mortgage does not extinguish the mortgage.

Necessary expenditures made by the mortgagee to preserve the security constitute liens having the same priority as that originally established by the mortgage.

Within the meaning of this section, future advances means sums to be paid in the future by the mortgagee to the mortgagor or for his account pursuant to the terms of the mortgage.

The following shows the revision of Section 2975 in strike-out and underline:

2975. A-mortgage Mortgages of personal property or crops may be given to secure future advances. ~~the repayment of sums that may be advanced, expenditures that may be made, or indebtednesses or obligations that may be incurred subsequent to the execution of such mortgage.~~ If the maximum amount the repayment of which is proposed to be secured by such is stated in the mortgage, is expressed therein (whether the creation of debts in such amount or any part thereof be optional with, or obligatory upon the mortgagee or assign), such mortgage (subject to the provisions of sections 2911, 2941, 2968, 2969 and 2972 of the Civil Code) shall be and constitute a the lien for all advances to that amount, whether optional or obligatory, has the same priority as ~~or encumbrance of rank, effect, status~~

and-standing-equal-to that originally established by the mortgage.
If the maximum amount to be secured is not stated, the lien for
all optional advances made after actual notice of intervening liens
is inferior to them in priority. thereby-initially-and-as-it-may
thereafter-obtain,-as-security-for-the-repayment-of-any-sums,
expenditures,-indebtednesses-and-obligations,-owing-or-due-or
becoming-owing-or-due-thereunder,-up-to-and-including-such-expressed-
maximum-amount-which-shall-be-considered-only-as-a-limit-of-the
debts,-sums,-expenditures,-indebtednesses-and-obligations-that-may
be

The stated maximum amount means the maximum amount secured
thereby at any one time, and does not to include such-as-may-have
existed amounts already and-been repaid or discharged thereunder.
Repayment in full of amounts owing under the mortgage does not
extinguish the mortgage. A-mortgage-of-personal-property-or-crops
shall-also-constitute-a-lien-or-encumbrance-of-rank,-effect,-status
and-standing-equal-to-that-established-initially-or-thereafter
obtained-thereby,-as-security-for-the-repayment-of-all-sums-or
amounts-that-are-necessarily-advanced-or-expended-by-the-mortgages-
or-assigns,-for-the-maintenance-or-preservation-of-the-property,
or-any-part-thereof,-described-in-such-mortgage.

Necessary expenditures made by the mortgagee to preserve
the security constitute liens having the same priority as that
originally established by the mortgage.

Within the meaning of this section, future advances means
sums to be paid in the future by the mortgagee to the mortgagor
or for his account pursuant to the terms of the mortgage.

STUDY NO. 23 - RESCISSION OF CONTRACTS

At the beginning of the discussion Professor Lawrence Sullivan distributed copies of a lengthy outline of his proposed study on this subject. He then outlined orally a number of the points covered in the outline. Several of these points were discussed at some length. It was agreed that the members of the Committee and the Executive Secretary would read and discuss Mr. Sullivan's outline and that the Executive Secretary would then communicate to him any suggestion which we might have concerning the study. Mr. Sullivan expressed his intention of completing the study at a relatively early date.

STUDY NO. 33 - SURVIVAL OF TORT ACTIONS

Mr. Stanton was unable to be present during this part of the meeting. Mr. Thurman and the Executive Secretary discussed with Mr. Killion the legislative history of survival of tort actions in California and a number of questions relating to the study which were raised by Mr. Killion. Mr. Killion expressed the view that all tort actions should survive but that the estate should not have a right to recover any element of damages (such as pain and suffering) which the decedent might have recovered had he survived but which did not result in diminution of the estate. Mr. Killion was given a rough outline of the points which it was suggested might be covered in the study. There was discussion of a completion date but none was decided upon. However, Mr. Killion stated that he would like to complete the study within the next month.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary