

8/8/57

MINUTES OF MEETING

OF

NORTHERN COMMITTEE

July 26, 1957

San Francisco

Members

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

Research Consultants

Professor Harold Horowitz

Staff

Mr. John R. McDonough, Jr.

STUDY NO. 25 - RIGHT OF NONRESIDENT ALIENS TO INHERIT

The Committee discussed with Professor Horowitz his study, a communication received by him relating thereto from Mr. William Stern, Foreign Law Librarian of the Los Angeles County Law Library, and a letter received by the Commission from Mr. Henry Dietz, Assistant Attorney General, expressing the interest of that office in the subject matter.

Professor Horowitz was requested to send a copy of his study to Mr. Dietz and to offer to discuss it with him for the purpose of obtaining the Attorney General's views respecting legislation concerning the right of non-resident aliens to inherit.

The Executive Secretary was requested to place Mr. Stern's letter on the agenda for the August, 1957 meeting of the Commission so that the Commission might have an opportunity to decide how it should be handled.

In the course of discussion the following questions were raised but not finally decided:

1. Whether it would be possible to draft a statute which would preclude personally undesirable foreigners from inheriting American property - e.g., active members of totalitarian governments such as Adolph Hitler and Joseph Stalin - while permitting ordinary though loyal citizens of the same countries to inherit.

2. Whether the language proposed by Professor Horowitz to be taken from the New York statute - that the heir, etc. "would not have the benefit or use or control of the money or other property due him" is sufficiently definite, particularly with respect to a situation in which a foreign heir would get the inheritance except that it would be subjected to a death transfer tax by his country.

3. Whether any statute on the subject should deal explicitly with the question whether a foreign heir precluded from inheriting immediately by California law should be able assign his interest to one who could inherit immediately were he the heir.

4. Whether there should be a time limit on the right of a foreign heir to claim an impounded inheritance.

STUDY NO. 23 - RESCISSION OF CONTRACTS

The Committee began but did not have time to complete its consideration of Professor Sullivan's study.

The Committee tentatively agreed to recommend to the Commission that it recommend (1) that a single rescission action be established; (2) that a right to jury trial be provided; (3) that attachment be made available and (4) that such an action be joinable with unrelated contract actions.

The Committee was unable to agree whether the new procedure should include a requirement that the person desiring to rescind promptly give notice thereof and offer to restore what he has received. Mr. Stanton favors such a requirement; Mr. Thurman would make failure to give notice and offer to restore a defense only when the other party has been prejudiced thereby.

No decision was reached with respect to what statute of limitations should apply to the single rescission action or as to whether the justice court should be given jurisdiction of rescission actions.

The statute proposed by Professor Sullivan was not discussed in detail.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary