

9/24/57

MINUTES OF MEETING

OF

SOUTHERN COMMITTEE

September 21, 1957

Los Angeles

Members

Mr. Stanford C. Shaw
Mr. John D. Babbage

Research Consultants

Harold W. Horowitz
James H. Chadbourn
Hill, Farrer & Burrill by
Messrs. Nibley, Day and
McLaurin

Staff

Mr. John R. McDonough, Jr.

STUDY NO. 25 - PROBATE CODE SECTION 259 et seq.

The Committee determined that Professor Horowitz's study should be accepted by the Commission, with the understanding further minor revisions may be made therein, and that he should be paid for the study.

The Committee recommends that the Commission recommend that Probate Code Sections 259-259.2 be continued in substance as a part of the law of California, with such amendments as may be necessary to clarify their meaning and to fit them in with the other statutes recommended by the Committee. Professor Horowitz agreed to draft such amendments for the Commission's consideration.

The Committee recommends that the Commission recommend that the statute proposed in Professor Horowitz's report be enacted, with such amendments, if any, as might be necessary to adjust it to the

continued existence of Probate Code Sections 259-259.2.

The Committee recommends that the Commission not recommend that Probate Code Section 259 be amended as suggested by Mr. William B. Stern in his communication to Professor Horowitz, in effect suggesting that California establish, in addition to its present provision against discrimination against Americans, certain minimum standards which foreign inheritance laws must meet if the citizens of such countries are to have a right to inherit in California.

STUDY NO. 36 - CONDEMNATION LAW AND PROCEDURE

The Committee discussed this study with Messrs. Nibley, Day and McLaurin of Hill, Farrer & Burrill. Mr. Nibley reported that statutes enacted by the 1957 Session of the Legislature have made extensive changes in the law relating to one of the three main topics to be covered in the initial study Taking of Possession and Passage of Title. He said that it would not, in the firm's opinion, be advisable to proceed with this part of the study until there has been some experience with the new statutes. He recommended that there be substituted for this portion of the initial study a study of possible innovations in pre-trial procedure in condemnation actions looking toward simplification of issues and in the preparation of expert testimony. The Committee agreed.

Mr. Nibley reported that a recent Supreme Court decision (County of Los Angeles v. Faus 48 A.C. 717) overruled the line of cases holding that evidence of sales of adjacent property may not be introduced as direct evidence of value and that the 1957 Session of the Legislature enacted new Code of Civil Procedure Section 1845.5, to the same general effect. He recommended, however, that the study of this subject be continued, in part because the Faus decision and the new statute are not entirely compatible and in part because a number of important questions are not settled by either or both of them. The Committee agreed.

Mr. Nibley stated that the Evidence part of the initial study will cover the problems on valuation which were suggested by Senator Cobey at the August meeting and elaborated in his letter of August 28 to Hill, Farrer & Burrill.

Mr. Nibley reported that the firm's study of Cost of Removal and Re-location is well under way. There was some discussion of the form which the report should take.

STUDY NO. 34 - UNIFORM RULES OF EVIDENCE

The Committee discussed with Professor Chadbourn his memoranda on Subdivisions 2, 3, 4, 5 and 6 of Rule 63 of the Uniform Rules of Evidence. Its recommendations are as follows:

Subdivision (2)(Affidavits). Committee recommends adoption.

Subdivision (3)(Depositions):

3(a) Professor Chadbourn will re-examine this part of the memorandum in light of the extensive changes with respect to discovery procedure enacted by the 1957 Session of the Legislature. The Executive Secretary suggested one possible solution of this problem would be to treat the matter as affidavits are treated under Subdivision (2), i.e., to make depositions admissable "to the extent admissable by the statutes of this State".

3(b)(1)(Prior testimony used against person who introduced it before) Committee recommends adoption.

3(b)(2)(Prior testimony used basis earlier opportunity for cross-examination) The Committee recommends the adoption of this rule where the party against whom the evidence is offered was also a party to the former action with an interest and motive similar to that which he has in the action in which the testimony is offered. The Committee disagreed as to whether the rule should be adopted in the situation where the party against whom the evidence is offered was not a party to the

former action. Mr. Babbage does not favor the adoption of the rule as applied to this situation; Mr. Shaw would favor its adoption in this situation insofar as civil actions are concerned but not in the case of criminal actions.

Subdivision (4):

4(a) (Statement of present perception by unexcited declarant).

The Committee disagreed. Mr. Shaw for adoption, Mr. Babbage, against.

4(b) (Excited statements). Committee recommends adoption.

4(c) (Declarant unavailable as witness). Committee recommends not adopt.

"Boot strap" Problem. The Committee considered Professor Chadbourn's recommendation that Rule 8 be amended to provide that a Judge is not bound by rules of evidence (with specified exceptions) in determining the admissability of evidence. The Committee disagreed: Mr. Shaw for adoption; Mr. Babbage, against.

Subdivision (5) (Dying declarations). The Committee recommends adoption of Subdivision 5 with the amendment suggested by Professor Chadbourn, requiring a finding that the statement was made on the personal knowledge of the declarant.

Subdivision (6). Committee recommends adoption.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary