

DEC 30 1955

Memorandum No. 5

Subject: Study No. 14 - Appointment
of administrator in quiet title
action.

The minutes of the meeting of the Southern Committee on December 22, 1955 (which are sent to you in the package in which this is enclosed) report the Committee's first discussion with Professor Maxwell, the Research Consultant on this study. Attached hereto in the case of members of the Commission who have not yet received it, is a copy of Professor Maxwell's preliminary report on this study.

As will be apparent from these items the Commission must decide at the January meeting whether or not to discontinue this study. I have written Mr. Ward, the originator of the Suggestion on which the study is based, to get his thoughts concerning Professor Maxwell's views.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

MINUTES OF MEETING

OF

SOUTHERN COMMITTEE

December 22, 1955
Los Angeles

PRESENT

Members

Mr. Stanford C. Shaw, Chairman
Mr. John D. Babbage
Mr. Joseph A. Ball
(morning session)

Research Consultants

Professor Richard C. Maxwell
Mr. Thomas W. Cochran

STAFF

Mr. John R. McDonough, Jr.

Discussion of Study No. 14 -- (Appointment of
administrator in quiet title actions)

This was the initial meeting of the committee with Professor Richard C. Maxwell, research consultant. Mr. Maxwell made an oral report which paralleled his written preliminary report, emphasizing that both are based on preliminary research insufficient to warrant a firm opinion on the points discussed. He stated that he is doubtful that the problem stated in the Commission's 1955 Report (Topic No. 20) exists, inasmuch as preliminary research indicates that the plaintiff in a quiet title action need not appoint an administrator but can always proceed against the decedent's heirs. He stated that in his opinion it would probably often be simpler and less expensive to have a special administrator appointed than to ascertain who their heirs are and use the various methods of substituted service necessary to bind them; thus Probate Code § 573 is really a boon rather than a problem to

the quiet title action plaintiff. He also stated that he believes that it may be possible to proceed under Probate Code § 573 even after the estate is distributed.

Mr. Maxwell's report was then discussed. Doubt was expressed by some present as to whether it would be constitutional and, if constitutional, desirable to provide for proceeding against a special administrator after the estate is distributed. Mr. Maxwell agreed, stated that it is not clear that Probate Code § 573 authorizes this, and stated that this matter should probably be clarified. It was suggested that a study might be made along the lines outlined at the end of Mr. Maxwell's written preliminary report, viz:

(1) Full exploration of the procedural remedies available to one desiring to quiet title against a claim which could have been asserted by a decedent in the action if the decedent were alive.

(2) Evaluation of these remedies to determine their adequacy and efficiency.

(3) If the remedies are found wanting, the drafting of legislation to fill in the gaps with consideration of the remedies utilized by other states. Mr. Maxwell agreed that such a study might be desirable but pointed out that it would be a somewhat different and larger study than that originally contemplated. He also stated that this is a study which falls into the field of procedure rather than his field of real property and that he is not, therefore, particularly well qualified to make it and he stated that he would be somewhat reluctant to undertake it.

It was decided that the committee would report these developments to

the Commission at the January, 1956 meeting and that Mr. Maxwell would not proceed further with his study until the Commission has considered the matter. The Executive Secretary was directed to get in touch with the originator of the suggestion on which this study is based to ascertain his views about the facts and views developed in Professor Maxwell's report.