

June 11, 1957

MINUTES OF MEETING
OF
SOUTHERN COMMITTEE

June 8, 1957
Los Angeles

Members

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

Research Consultants

Professor Harold E. Verrall
Professor James H. Chadbourn
Professor Arvo Van Alstyne
Messrs. Robert Nibley, Albert
J. Day and John N. McLaurin
of the firm of Hill, Farrer
& Burrill

Staff

Mr. John R. McDonough, Jr.

STUDY NO. 31 -- DOCTRINE OF WORTHIER TITLE

The Committee discussed with Professor Verrall his study and the recommendations made therein and considered a proposed statute submitted by Professor Verrall at the meeting to accomplish the repeal of the Doctrine of Worthier Title. It was agreed that Professor Verrall would revise his manuscript to show with respect to each of the New York cases discussed therein the purpose for which the action was brought and that he would add to the manuscript a discussion of the tax implications and consequences of the Doctrine of Worthier Title. It was also agreed that the Executive Secretary would send to Professor Verrall for his consideration a number of suggested editorial changes in his manuscript.

The Committee makes the following recommendations:

1. That Professor Verrall's study be accepted and approved for

publication by the Commission, subject to the revisions agreed upon as reported above, and that Professor Verrall be paid for his study.

2. That the Commission recommend the abolition of the Doctrine of Worthier Title in California through the enactment of the following statute:

The doctrine of worthier title, both as a rule of law and as a rule of construction, as applied to limitations to heirs or next of kin of conveyors or testators, or limitations having such meaning though not employing such terms, is abolished and the meaning of such limitations shall be determined by the general rules controlling the construction of deeds or wills.

STUDY NO. 36 - CONDEMNATION LAW AND PROCEDURE

The Committee talked with Messrs. Nibley, Day & McLaurin of the firm of Hill, Farrer and Burrill, the research consultant on this study. Certain preliminary matters were discussed and it was agreed that the firm will submit a study covering cost of removal and relocation, taking of possession and passage of title, and evidence within six months. It was also agreed that the firm may prepare the study in several parts submitting the earlier portions within a shorter time if this is found to be convenient.

STUDY NO. 34 - UNIFORM RULES OF EVIDENCE

The Committee talked with Professor Chadbourn about his first study, covering presumptions. The subject matter was discussed at length. Due to its complexity no decision was reached concerning the acceptability of the study or a recommendation for Commission action. It was agreed that all concerned would give the matter further study and that Professor Chadbourn's study would be discussed again at the next meeting of the Committee. Professor Chadbourn reported that he had completed another portion of his study and would send it to us shortly and stated that he would continue working on other portions and submit studies from time to time. It was agreed that any studies received sufficiently in advance of the next meeting of the Committee to afford an opportunity for study prior to the meeting would also be discussed at that time.

STUDY NO. 37(L) - CLAIMS STATUTES

The Committee talked with Professor Van Alstyne about his study and the recommendations made therein. It was agreed that Professor Van Alstyne would add to the study a summary of the material at pages 1 - 148 of his manuscript which analyzes the present state of the law and demonstrates the urgent need for reform, to be placed either immediately following page 148 of the manuscript or at the beginning of the study. The discussion then turned to the constitutional amendment and statute proposed by Professor Van Alstyne. A number of proposed changes in this material were discussed and acted upon. At the conclusion of this discussion Professor Van Alstyne expressed his desire to revise this portion of his study, drawing upon the ideas developed in the course of the meeting.

The Committee makes the following recommendations:

1. That Professor Van Alstyne's study be accepted and approved for publication by the Commission, subject to the revisions agreed upon as reported above, and that Professor Van Alstyne be paid for his study.
2. That the Commission recommend the adoption of the following constitutional amendment and statute:

Proposed Constitutional Amendment

The Legislature shall have power to prescribe by law procedures governing the presentation and consideration of claims against counties, cities and counties, cities, districts, authorities or other political subdivisions and all officers, agents, employees thereof.

Proposed Statute Governing Claims Against Political
Subdivisions

§1. This act shall not apply to (a) claims for exemption, cancellation or refund of taxes; (b) claims required by any provisions of law relating to mechanics' and materialmen's liens; (c) claims for wages, salaries, fees and reimbursement for expenses of public employees; (d) claims arising under workmen's compensation laws; (e) claims for aid under any public assistance program; (f) claims arising under any retirement or pension system; (g) claims for interest or principal upon bonded indebtedness.

§2. Claims against the State shall be governed by Part 1, Division 4, Title 2 of the Government Code and such other provisions of law as may be applicable thereto.

§3. This act shall be applicable only to causes of action which accrue subsequent to its effective date.

§4. "Public entity" means a county, city, city and county, district, authority, or other political subdivision.

§5. Except as limited by Section 1 hereof no suit may be brought against a public entity on any claim for money or damages upon which a legal action might be brought against such public entity until a written claim has been presented to the public entity in conformity with the provisions of this Act by the claimant or by a person acting in his behalf and has been rejected in whole or in part.

§6. By written agreement, compliance with the provisions of this act may be waived by a public entity with respect to any or all claims arising out of an express contract between the parties to the waiver agreement.

§7. A claim may be presented to a public entity only by delivering the claim personally to the clerk or secretary [or to a member of the governing body] thereof or by sending the claim to such clerk or secretary or to the governing body at its principal place of business by mail postmarked not later than the ninetieth day after the cause of action to which the claim relates has accrued. If a claim is not presented to the person designated in this section the presentation shall be deemed valid if the claim is actually received by the clerk, secretary, [governing board member,] or governing body within the time prescribed by this act.

Note:
The
Committee
members
disagreed
re
inclusion
of
bracketed
material
in this
section;
Shaw for,
Babbage
against.

§8. Where the claimant is an infant, or is mentally or physically incapacitated, and by reason of such disability fails to present a claim within the time allowed, or where a person entitled to present a claim dies before the expiration of the time allowed for presentation, any court which would have proper jurisdiction and venue of an action to enforce the cause of action to which the claim relates may grant leave to present the claim after the expiration of the time allowed, where the public entity against which the claim is made will not be unduly prejudiced thereby. Application for such

leave must be made by duly noticed motion, accompanied by affidavits showing the reasons for the delay and a copy of the proposed claim, made within a reasonable time, not to exceed one year, after the expiration of the time allowed for presentation.

§9. If the claim as presented is insufficient or inaccurate as to form or contents, or omits to give relevant and material information, the governing body of the public entity may give the person presenting the claim written notice of its insufficiency. Within ten days after receipt of the notice, the person presenting the claim may file a corrected or amended claim which shall be considered a part of the original claim for all purposes. Unless notice of insufficiency is given, any defects or omissions in the claim are waived, except that no notice of insufficiency is required when the claim fails to give the address of the person presenting the claim.

§10. The public entity shall be estopped from asserting the insufficiency of a claim actually filed as to form or contents, or as to time place or method of presentation of the claim if the claimant or person presenting the claim in his behalf has reasonably and in good faith relied on any representation express or implied that a claim was unnecessary or that his claim had been presented in conformity with legal requirements, made by any responsible official, employee or agent of the

public entity if it is shown that the public entity had actual notice of the essential facts upon which the claim is based within the time provided herein for the presentation of the claim.

§11. If the governing body of the public entity fails or refuses to allow or reject a claim for ninety days after it has been received by a person designated in Section 7, the claim shall be deemed to have been rejected on the ninetieth day. An action on such a claim must be commenced within six months after such ninetieth day.

§12. If a claim is allowed in part and rejected in part, the claimant may accept the amount allowed and sue for the balance. An action upon a claim rejected in whole or in part must be commenced within six months after the claimant receives written notice of such rejection.

§13. This act shall be exclusively applicable to claims within its scope not governed by any other claims procedure in existence on its effective date. All other claims within the scope of this act shall also be governed by this act, but substantial compliance with the requirements of any other claims procedure established by a statute, charter or ordinance in existence on the effective date of this act shall be regarded as equivalent to compliance with the terms of this act.

§§ 14 et seq. [Repeal of all existing statutes superseded and enactment of cross-references in such cases to this act.]

There being no further business, the meeting was adjourned.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

JRM:fp