Minute

Date of Meeting: February 13-14, 1959
Date of Memo: February 11, 1959

Memorandum No. 4

SUBJECT: Study #31 - Doctrine of Worthier Title

Following the January meeting I wrote to Mr. Edward D. Landels, chairman of the State Bar Special Committee to consider the Commission's Recommendation and Study Relating to Doctrine of Worthier Title. A copy of my letter and its enclosure are attached.

Thereafter I received a letter from Jack Hayes of the State Bar enclosing Mr. Landel's committee's report and reporting that the Board of Governors had approved it. At about the same time I received a communication from Mr. Landels in response to my letter of January 30. Copies of these items are also attached.

I take it that we now face the problem of getting the Board of Governors to agree with the chairman of its special committee that the Bar should endorse the Law Revision Commission's recommendation as made.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

minutes

LANDELS, WEIGEL and RIPLEY
San Francisco 4

January 9, 1959

Board of Governors
State Bar of California
2100 Central Tower
San Francisco 3, California

Attention: Mr. Jack A. Hayes, Secretary

Gentlemen:

Your committee, appointed to report to the Board of Governors on the proposal of the Law Revision Commission for the adoption of certain legislation abolishing the Doctrine of Worthier Title, recommends as follows:

Your committee recommends that the State Bar sponsor a bill amending Section 1073 of the Civil Code abolishing the Doctrine of Worthier Title, in the form hereto attached.

The amendment to Section 1073 follows the recommendation of the Law Revision Commission except that in the first line the words "includes neither" are substituted for the words "does not include", and following the word "rule" on the seventh line the word "otherwise" is inserted.

Your committee does not recommend that the State Bar sponsor a bill amending Section 109 of the Probate Code as suggested, but not urged, by the Law Revision Commission, it being the belief of your committee that the amendment to the Probate Code is unnecessary and that its enactment would only lead to confusion.

We have discussed these recommendations with Mr. McDonough, Executive Secretary of the Law Revision Commission, and we understand that they are satisfactory to him.

Respectfully yours,

C. Coolidge Kreis
Carlisle B. Lane
Harold Marsh, Jr.
Stanley Walsh
Edward D. Landels, Chairman

EDL:bg
59-17
A-1-21

AN ACT TO ADD SECTION 1073 TO THE CIVIL CODE, RELATING TO A GRANT TO A GRANTOR'S OWN HEIRS OR NEXT OF KIN.

The People of the State of California do enact as follows:

SECTION 1. Section 1073 is added to the Civil Code, to read:

1073. The law of this State includes neither (1) the common law rule of worthier title that a grantor cannot convey an interest to his own heirs nor (2) a presumption or rule of interpretation that a grantor does not intend, by a grant to his own heirs or next of kin, to transfer an interest to them. The meaning of a grant of a legal or equitable interest to a grantor's own heirs or next of kin, however designated, shall be determined by the general rules otherwise applicable to the interpretation of grants. This section shall be applied in all cases in which final judgment has not been entered on its effective date.

SEC. 2. If the application of Section 1073 of the Civil Code to any instrument is held invalid, its application to other instruments to which it may validly be applied shall not be affected thereby.

UNIVERSITY OF CALIFORNIA

School of Law
Los Angeles 24, California

January 13, 1959

John R. McDonough, Jr., Esq.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear John:

In answer to your inquiry of December 31, I still think the legislation should expressly abolish the Rule of Worthier Title in Wills Cases. Lowell Turrentine in reviewing cases of gifts to heirs intimated that decisions involving Section 108 of the Probate Code "seemed" to lead to the conclusion that the section has done away with the rule. But in his annotations to Section 314 of the Restatement of Property he noticed that the California cases have not mentioned the common-law rule. Whether Section 108 then does abolish the rule is still to be directly considered by the courts. The fact that there is a Section 108 and that there are no cases in California discussing the rule, reduces the chances that the rule will be pressed on the courts. The chances are further reduced by the fact that the Restatement of Property in Section 314 states the rule is not part of modern American common law. California courts have shown a decided tendency to follow the Restatements.

On the other side of the ledger is the fact that the California lawyer is an ingenious man whose attention will be directed to the Doctrine of Worthier Title when it is considered by the legislature. He will note the many American cases considering the Doctrine in Wills Cases and the fact that the legislation is only directed to inter vivos conveyances. It will only be a question of time until he finds cases in which pressing the doctrine on the courts will give his client an advantage. Such a case might be one like In re Estate of Warren, fn. 5 page D-10 of the commission's report, involving the applicability of the anti-lapse statutes. Or such a case might be one involving Probate Code Sections 750, 751, 752, or 753. To my mind any chance that the rule will be pressed on the courts is justification for present action.

If we consider the legislation in other states, passed after thorough consideration by the bar of the states involved, we will notice in all states where the Doctrine of Worthier Title is abolished the statute was made to cover the wills part of the doctrine. Notice herein the Illinois, Nebraska, Minnesota and

English legislation. New York for reasons peculiar to that State has legislation, but it cannot be said to abolish the doctrine in any type case.

Finally the Commissioners on Uniform State Laws and the American Law Institute approve of such legislation.

I am rather more impressed with the conclusions reached by the many lawyers who after research recommended legislation, than with the unsupported "think" and "seem" doubts expressed.

Sincerely yours,

S/Harold Verrall

Harold E. Verrall

HEV:bas

minutes

January 30, 1959

Mr. Edward D. Landels
Landels, Weigel and Ripley
275 Bush Street
San Francisco 4, California

Dear Ted:

At its January meeting the Law Revision Commission considered the suggestions made by Harold Marsh in his letter of March 5, 1958 to you. The Commission decided not to make the language changes suggested in proposed Section 1073 of the Civil Code. The Commission conceivably might have responded differently had the suggestion been made before its pamphlet on this study was printed.

The Commission also decided to propose the enactment of Section 109 of the Probate Code. Its judgment was based in considerable part on a letter received from its research consultant on this study, Professor Harold Verrall of U.C.L.A., a copy of which is enclosed.

I expect we will both be spending some time in Sacramento in the next few months. I hope that we will have an opportunity to get together for a meal or at least for a drink.

Sincerely yours,

John R. McDonough, Jr.
Executive Secretary

JRM:imh
Enclosure

minutes

LANDELS, WEIGEL and RIPLEY
San Francisco

February 5, 1959

Mr. John R. McDonough, Jr.
Executive Secretary
Law Revision Commission
School of Law
Stanford University, California

Dear John:

Thank you for your letter of January 30th.

Our committee met rather belatedly and felt that probably it was unnecessary to enact Section 109 of the Probate Code, but nobody felt very strongly on the subject, so if the Professors think we should, fine.

I do hope I get a chance to visit with you in Sacramento.

Sincerely yours,

Edward D. Landels

EDL:m

Memo 59-31

STATE BAR OF CALIF.
2100 Central Tower
San Francisco 3, California.

February 6, 1959

John R. McDonough Jr., Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear Mr. McDonough:

At its January 1959, meeting, the Board of Governors approved the report of the Committee of the State Bar to Study Doctrine re Worthier Title, copy of which is enclosed.

Very truly yours,

Jack A. Hayes
Secretary

JAH:RH

encl:

CC Thomas E. Stanton, Esq. w/encl.