

Washington Law Review

Volume 13 | Number 4

11-1-1938

Criminal Law—Perjury—Depositions—Suggested Legislation

John N. Rupp

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Criminal Procedure Commons](#)

Recommended Citation

John N. Rupp, Comment, *Criminal Law—Perjury—Depositions—Suggested Legislation*, 13 Wash. L. Rev. & St. B.J. 319 (1938).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol13/iss4/5>

This Comment is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

suggested that those desiring to attend the banquet make their reservations as early as possible. Reservations may now be made by communicating with the secretary of the Law School.

SUPPLEMENT TO SHEPARD'S WASHINGTON CITATION

The law library now maintains a card index supplementing the last paper supplement to Shepard's Washington Citation. Attorneys are welcome to make use of it when seeking the latest Washington citations.

COMMENTS

CRIMINAL LAW—PERJURY—DEPOSITIONS— SUGGESTED LEGISLATION

By an amended information, in a recent Washington case, respondent was charged with the crime of perjury in the first degree, the information alleging that respondent came before a notary public for the purpose of giving his deposition which was to be used in a pending civil case, that he was sworn according to law to tell the truth, and that he thereupon testified falsely with the intent that his testimony as written in the deposition be used in that civil case. It affirmatively appeared, both from the allegations of the original information and from the state's admission in open court, that the deposition was never subscribed by respondent. The superior court sustained respondent's demurrer and dismissed the prosecution. Upon the state's appeal, it was *held* that the demurrer had been properly sustained.¹

The decision is founded upon Remington's Revised Statutes, Section 2356,^{2a} which relates to perjury and which provides:

"The making of a deposition, certificate or affidavit shall be deemed to be complete when it is *subscribed and sworn to or affirmed* by the defendant with intent that it be uttered or published as true." (Italics mine.)

The reasoning of the majority opinion, in brief, is that this statute means that perjury cannot be based upon a false deposition unless that deposition be subscribed by the defendant.

The dissenting opinion is based upon the concept that, even though the deposition itself is not complete, still the defendant knowingly and deliberately testified falsely under oath before the notary in aid of a pending judicial proceeding, and this false swearing is perjury under the general statute defining the offense. That statute is dissected and quoted as follows:

"Every person who, in any action, proceeding, hearing

¹State v. Ledford, 95 Wash. Dec. 490, 81 P. (2d) 830 (1938). (En banc; two of the judges dissented.)

^{2a}Laws 1909, C. 249, § 104.

tion states, “. . . subscribed *and* sworn to or affirmed . . .”

Thus, in Minnesota, the deposition, for purposes of the perjury statutes, is complete when it is subscribed, *or* when it is sworn to, *or* when it is affirmed, in each case with the requisite intent. In Washington, it is complete only when subscribed *and* sworn to, *or* when it is subscribed *and* affirmed, with the necessary intent.

Upon reflection, the instant case is seen to be an excellent illustration of the inferiority of Remington's Revised Statutes Section 2356, to statutes of the California or the Minnesota types.

The 1939 session of the legislature should amend Section 2356 as suggested by this comment in order to remedy the present defect.

JOHN N. RUPP.

LIFE INSURANCE PROCEEDS AS COMMUNITY PROPERTY

The past year has witnessed the closing by judicial decision of two important gaps in the Washington community property law, both relating to life insurance proceeds. The first case in point of time, *Occidental Life Insurance Company v. Powers*,¹ announced the rule that where the husband changes the beneficiary of a life insurance policy which is the property of the community because issued on the life of the husband during marriage and paid for with community funds, without the consent or knowledge of the wife, the former beneficiary, the attempted gift by the husband is ineffective and the wife may recover the entire proceeds.

The second case, *In re Coffey's Estate*,² solves a problem not touched upon in the *Powers* case, namely the status of a policy issued before marriage to a husband, the premiums for which are paid partly by the separate funds of the husband and partly by community funds. There the policy was held to be community property in the proportion that premiums were paid by community funds. The wife's one-half share of the community proportion so determined was held not subject to the state inheritance tax.

Most of the community property jurisdictions are in accord with respect to two other common insurance situations. By statute in Washington³ and by judicial decision in other community property states,⁴ if the wife is the designated beneficiary of any life insurance policy, the proceeds go to her separate estate, not to the community estate. Conversely, it is the settled rule of these jurisdictions that the proceeds are community property where the hus-

¹192 Wash. 475, 74 P. (2d) 27 (1937).

²95 Wash. Dec. 315, 81 P. (2d) 233 (1933).

³REM. REV. STAT. § 7230-1.

⁴Succession of Bofenschen, 29 La. Ann. 711 (1877); Succession of Hearing, 26 La. Ann. 326 (1874); Succession of Clark, 27 La. Ann. 269 (1875); *Davis v. Magnolia Petroleum Co.* (Tex. Civ. App.), 105 S. W. (2d) 695 (1937); *Johnson v. Cole* (Tex. Civ. App.), 258 S. W. 850 (1924); *In re Dobbel's Estate* 104 Cal. 432, 38 Pac. 87 (1894); *In re Castagnola's Estate*, 68 Cal. App. 732, 230 Pac. 188 (1924); *In re Lissner's Estate*, — Cal. —, 81 P. (2d) 448 (1933).