Washington Law Review

Volume 28
Number 3 *Washington Legislation—1953*

8-1-1953

Evidence

John W. Richards
University of Washington School of Law

thus spelling out what we may assume that the 1951 legislature actually intended to provide.

JOHN B. SHOLLEY

DOMESTIC RELATIONS

Family Desertion—Non-support. Chapter 255 amends RCW 26.20.-030 [Rem. Supp. 1943 § 6908] by changing the penalties for desertion where children under the age of sixteen are involved. The former section made this a felony, carrying with it imprisonment in the state prison up to twenty years, or in the county jail up to one year, or a fine of not more than one thousand dollars, or both such fine and imprisonment. There is substituted a graduated series of penalties: for the first offense, county jail up to thirty days, or fine up to one hundred dollars, or both, for the second offense, county jail for not less than thirty nor more than ninety days, or a fine up to three hundred dollars, or both; for a third offense, the same penalties as under the old section.

The problem of the deserting father is a real one, as any social worker can testify; fecundity and irresponsibility so often go hand-in-hand that the deserted mother and her brood represent a perennial drain upon relief funds. While it is likely that the act of desertion is beyond the reach of statute in a preventive sense, nevertheless the amendment here presented has real value. Assuming that the recalcitrant father can be brought to book (a rather rare circumstance in view of the limited funds available to prosecutors), under the old system he was brought before a justice of the peace who under threat of binding him over to the Superior Court for a felony trial secured a promise that the offender would contribute so much a week for the support of the family The amendment puts the offense within the jurisdiction of the justice court; he may speedily try, convict, and suspend sentence on condition that the offender contribute. This puts the matter on the proper judicial level, avoiding the delay and the added expense of the felony trial, whether the amendment will bring in more support is speculative, but it at least has the advantage to the lawyer of being legal.

JOHN W RICHARDS

EVIDENCE

The Uniform Photographic Copies of Business and Public Records as Evidence Act. Chapter 273 is the final step taken by the legislature

to free the business man, the lawyer, and the courts from the archaic absurdities of the common law rules of evidence relating to the proof of business and public records. The first step was the Uniform Business Records as Evidence Act in 1947.[1] Further freedom was achieved when a 1949 act[2] authorized business and public records to be recorded or reproduced by the photographic process and permitted the photographic reproduction to be used as "original" evidence for all purposes. Progress is complete with this chapter. To the wide coverage of the Uniform Business Records Act is added all departments and agencies of government. Any record or memorandum of any kind recorded in the regular course of business which has, in the regular course of business, been "recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photograph or other process which accurately reproduces or forms a durable medium for so reproducing the original" may be proved by introducing the photographic copy, which is "as admissible in evidence as the original itself" when satisfactorily identified. Specific authority is given for the destruction of the original in the regular course of business without affecting the admissibility of the photographic copy. Thus the Regular Entries in Course of Business and Best Evidence rules are brought at last to bay. The only remnant of the latter rule apparent in the statute is the provision admitting into evidence a facsimile or enlargement of the photographic reproduction "if the original reproduction is in existence and available for inspection under direction of the court." Presumably it would be the rare case in which such inspection would be required; if it were, it is certainly much simpler to qualify the photograph than the original document. Even the worst imaginable situation —the original document destroyed after microfilming, an enlargement of the microfilm prepared for use on trial, and then the original microfilm destroyed by accidental fire—is simplified under the Act. Now the Best Evidence Rule operates, but the microfilm is the original, its unavailability can be easily shown, and there can be no difficulty in admitting the existing enlargement as secondary evidence.

The Act will be of immense importance when it is truly uniform, since so much interstate business is carried on by large firms whose records are kept at the main office. Some twenty-five states have adopted the

[1] RCW 5.44.100 [REM. SUPP. 1947 § 1263-1].
[2] RCW 40.20.020 [REM. SUPP. 1949 § 1257-4].

Act; it is to be hoped that its acceptance will soon be as universal as that of the N.I.L.

JOHN W RICHARDS

PROPERTY

Alien Land Law. Chapters 9, 10 and 11 of the session laws are amendments or additions to the Alien Land Law [1] Chapter 9 adds a new section expressly granting the right to own or lease land in Washington to Canadian citizens of provinces which do not prohibit ownership of land therein by Washington citizens, and to corporations "organized under the laws of this or any other state" directly or indirectly owned by such Canadians. Chapter 10 adds a proviso to section 1 of the Alien Land Law withdrawing certain corporations from the definition of "alien" by, apparently, establishing that the corporate veil will be "pierced" only once to determine whether alien persons are the real owners. This chapter also includes a severability clause and a section 3 which repeals the section 2 of the corporation law complementary to the Alien Land Law [2] Chapter 11 adds a sentence to assure that exchange of stock of an "eligible" corporation for land transferred by an "alien" corporation shall support a conclusion that the conveyance is in good faith and for value. It is complementary to Chapter 10.

It is this reviewer's recollection that newspaper accounts indicated Chapter 9, which might be called the Canadian amendment, was motivated by expressions in Canada that if Washington could not permit citizens of the provinces north of the state to own land in the State there might well be comparable restrictions running the other way; and that Chapter 10 was believed to be necessary to assure location of certain major corporate enterprises in Washington.

The immediate purposes of the sponsors of these changes probably has been accomplished, but the combination of these changes, decisions such as in the Sei Fujii[3] and Kenji Namba[4] cases, the federal constitution, and the McCarran-Walter act[5] changing the naturalization laws, as a practical matter makes the Alien Land Law essentially a dead letter. At the time of the California and Oregon decisions, under the federal law Japanese still could not qualify to become naturalized

[1] RCW 64.16.
[2] RCW 23.08.110 [RRS § 3836-16].
[3] *See* Fujii v. State, 242 P.2d 617 (Cal. 1952).
[4] Kenji Namba v. McCourt, 185 Ore. 579, 204 P.2d 569 (1949).
[5] IMMIGRATION AND NATIONALITY ACT, 66 STAT. 163 (1952), 8 USCA. § 1101 (1953 Supp.).