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Property

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

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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.).

United States citizens, and while an alien land law preventing all aliens from land ownership might be valid, those decisions clearly indicate that disqualification of Japanese aliens alone (or nearly alone) constituted an unconstitutional denial of equal protection.

Since the time of those decisions the federal statute has been amended to provide, "The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married."[6] All aliens rightfully permanently residing in the United States are now, apparently, eligible for citizenship, and the federal statute as amended preserves the declaration of intention to become a citizen although such declaration is no longer a procedural step to naturalization. It would seem, therefore, that a resident alien after once in good faith declaring his intention would be able to own land in Washington even though he never became a citizen; and in any event the change in the federal statute eliminates complications on resident's ownership under the Washington law

There is the possibility that non-resident aliens are now in certain situations able to assert an unconstitutional discrimination from the preference given by the Canadian amendment. There is the further argument that the more favorable treatment accorded Canadian citizens infringes upon exclusive federal power over foreign relations.[7]

But even if the Alien Land Law is still good, and even if equal protection arguments are not persuasive, the double corporation ownership possibility of Chapter 10 furnishes a relatively simple device to circumvent the restrictions of the Alien Land Law. The only requirement of citizenship with reference to corporations appears to be that at least two-thirds of the persons who are the incorporators must be citizens. There is no requirement that the shareholders or directors be citizens. Under Chapter 10 it appears that a corporation, owned by aliens, incorporated in Washington or some other state[8] could acquire ownership of a second corporation, have the second corporation acquire ownership of land in Washington and thereby have ownership in a corporation not "alien" and therefore qualified. In effect, then, if the aliens would set up two Washington corporations they could become the beneficial and effective owners of land in the state.

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[6] IMMIGRATION AND NATIONALITY ACT § 311, 66 STAT. 239 (1952), 8 USCA. § 1422 (1953 Supp.).

[7] It should be pointed out, however, that the United States Supreme Court has not accepted this argument where the problem presented was on the state's power over devolution upon death. Clark v. Allen, 331 U.S. 503 (1947).

[8] Arguably, this includes alien as well as American states.

Except for the fact that Section 33 of Article II of the Washington Constitution proscribes alien land ownership[9] it would have been simpler and less confusing just to have repealed the whole Alien Land Law

Survivorship in Joint Tenancies. By chapter 270 the legislature has completed the turn of the wheel on survivorship in joint tenancies and although during the revolution a few spokes were knocked out, the new law probably restores some which were at least weakened if not broken by *In Re Ivers' Estate*[10] and *Holohan v. Melville*[11] decided by the Supreme Court in 1940, and 1952, respectively The essence of the statute lies in the new first sentence: "The right of survivorship by agreement or otherwise as a principle and as an incident of joint tenancy or of tenancy by the entireties is abolished." Except for the proviso and an emergency clause the statute repeats the language of its predecessor enacted in 1885.

Until 1940 it was apparently generally assumed that the legislature had abolished joint tenancy and its right of survivorship. But the court by *In re Ivers' Estate*[12] concluded that survivorship could exist in a concurrent ownership of the bank account asset on the basis of a contract or agreement therefor between husband and wife. In the *Holohan* case[13] this reasoning was applied to a real property holding of two spinster school teachers. Future creation of such interests would appear clearly to be precluded now, but certain problems may still arise; e.g., can a past attempt to create survivorship be effective when the death of one occurs after the enactment? Before death to what extent are inter vivos joint tenancy rules to be applied rather than tenancy in common rules?

The spokes missing still are of three kinds under the proviso of chapter 270· first, community property rights under, apparently, the community property agreement statute;[14] second, express statutory survivorship situations, being the "bank account" statutes;[15] third, as stated in the statute: "as to property and rights conveyed to trustees while subject to the trust"—a provision which is entirely new

[9] The "Canadian" amendment to the Constitution was made in 1950.
[10] *In re* Ivers' Estate, 4 Wn.2d 477, 104 P.2d 467 (1940).
[11] Holohan v. Melville, 41 Wn.2d 380, 249 P.2d 777 (1952).
[12] Note 10 *supra.*
[13] Note 11 *supra.*
[14] RCW 26.16.120 [RRS §3164].
[15] Discussed in Rutledge, *Joint Tenancy in Washington Bank Accounts,* 26 WASH. L. REV. 116 (1951).

Whether the second exception of the proviso poses problems in ownership is open to dispute, but in any event this new law preserves the effectiveness of prior statutory survivorship provisions.

HARRY M. CROSS

SALES

Bulk Sales Law. Chapter 247 amends the present Bulk Sales Law. It provides that the sworn statement of the vendor which is required in case of a sale in bulk shall include, in addition to the list of creditors and the amount due to each, the amount of unpaid taxes with respect to the operation of the business of the vendor. This sworn statement of the vendor shall contain an assertion that all such taxes have been paid, or if unpaid, that the amount of taxes set forth is the correct amount due according to the best knowledge of the vendor. The statement is to be executed in triplicate rather than in duplicate as before. The vendee must first apply the purchase price to the taxes with respect to the operation of the business before the pro rata payment of claims of other creditors.[1]

Motor Vehicles. Several changes have been made in the acts relating to the registration and licensing of motor vehicles. When a motor vehicle is sold, the registered and legal owners, in addition to endorsing an assignment on the back of the certificate of ownership, must also record thereon the name of the purchaser and the date of the transaction.[2] The purchaser must now apply for the reissue of the certificate of ownership within fifteen days after date of delivery of the vehicle to him. If he fails to do this he shall be guilty of a misdemeanor and in addition he shall on making application for transfer be assessed a five dollar penalty on the sixteenth day and one dollar additional for each day thereafter, but not to exceed fifteen dollars.[3] Formerly the purchaser was allowed thirty days to make application for transfer and there was only a one dollar penalty for failure to comply.

Under the provisions of the new act, the application for a license may not be filed before the first day of January of the calendar year for which the license is to be issued, and a penalty of three dollars will be assessed if an application for renewal is not filed before the

[1] L. 1953, c. 247, amending RCW 63.08.020, 63.08.030, 63.08.040 and 63.08.050 [Rem. Supp. 1943 § 5832 and RRS §5833].
[2] L. 1953, c. 252, §1, amending RCW 46.12.100 [Rem. Supp. 1947 §6312-6 (a)].
[3] L. 1953, c. 252, §2, amending RCW 46.12.110 [Rem. Supp. 1947 § 6312-6 (b)].