

January 1924

## Evidence--Carbon Copy as Secondary Evidence

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### Recommended Citation

C. L. W., *Evidence--Carbon Copy as Secondary Evidence*, 30 W. Va. L. Rev. (1924).

Available at: <https://researchrepository.wvu.edu/wvlr/vol30/iss2/11>

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gregations from becoming rich, but to prevent the accumulation of real estate withdrawn from commerce, the purpose being essentially the same as that of the English mortmain statute. It would probably be more frank, more honest, to declare such conveyances to the grantees in trust. If the effect of such a decision would be to void such conveyances, then perhaps the legislatures would come to the aid of those affected by revising the mortmain statutes.

— H. L. S., Jr.

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EVIDENCE—CARBON COPY AS SECONDARY EVIDENCE.—P sued D on a contract and offered as evidence a carbon copy of a letter which he had sent to D, D failing to produce the original after notice. It was shown that D could have secured the letter and have brought it into court within a very short time after the notice given in court. *Held*, the notice to produce the letter at the trial was sufficient to authorize the admission of secondary evidence. *Waddell v. Trowbridge*, 119 S. E. 290 (W. Va. 1923).

The dictum in the case, to the effect that the carbon copy was admissible as secondary evidence, indicates that the court does not agree with decisions of the courts of Virginia and many other states, where a carbon copy is admissible as a duplicate original. The trial court had refused to admit the carbon copy on the ground that non-production of the original had not been excused. The upper court merely reversed this decision, on the ground that non-production of the original had been excused, and that the carbon copy was therefore properly admissible as secondary evidence. By requiring that non-production of the original be excused, the court indicates that it does not regard a carbon copy as a duplicate original, admissible as such, but as secondary evidence, subject to the rules governing the admissibility of secondary evidence. The law of West Virginia, if we can say that the law is a reasonable prediction as to what the court would decide if the question should actually come before it, may be considered as against the admissibility of a carbon copy as a duplicate original. This rule is not in accord with the settled law of many other states. It is a settled rule of evidence that when a party makes out two papers for the same purpose and to exactly the same effect, and delivers one to the defendant, retaining one in his own posses-

sion, in a suit in which the paper in defendant's possession would be admissible as evidence, the paper in plaintiff's possession is admissible as a duplicate original, without non-production of the paper in defendant's possession being excused. *Hubbard v. Russell*, 24 Barb. (N. Y.) 404; *Jory v. Orchard*, 2 Bos. & P. 39. The Virginia court applies this rule in cases where the question is as to the admissibility of a carbon copy, and admits the carbon copy as a duplicate original. The rule was first recognized by the Virginia court in a dictum. *C. & O. Ry. Co. v. F. W. Stock & Sons*, 104 Va. 97, 51 S. E. 161. In later cases the court has admitted a carbon copy as a duplicate original. *Virginia-Carolina Coal Co. v. Knight*, 106 Va. 674, 56 S. E. 725. See *Burton v. F. A. Seifert & Co.*, 108 Va. 338, 61 S. E. 933. There seem to be no direct decision on the point in West Virginia, but in a case similar to the principal case, where the addressee was called upon to produce the original letter and failed to do so, the court held that proper foundation was laid for the admission of a carbon copy as evidence. *Fayette Liquor Co. v. Jones*, 75 W. Va. 119, 83 S. E. 726. This case, in the necessary inference to be drawn from it, is the same as the principal case. In other jurisdictions there are many cases which are in accord with the Virginia rule and admit a carbon copy as a duplicate original. *Wilkes v. S. V. Clark Coal & Grain Co.*, 95 Kan. 493, 148 Pac. 768; *Hay v. American Fire Clay Co.*, 179 Mo. App. 567, 162 S. W. 666; *Fed. Union Surety Co. v. Indiana Lumber & Mfg. Co.*, 176 Ind. 328, 95 N. E. 1104; *First Nat. Bank v. Jamieson*, 63 Ore. 594, 128 Pac. 433; *Goodman v. Saperstein*, 115 Md. 678, 81 Atl. 695; *Cole v. Ellwood Power Co.*, 216 Pa. 283, 65 Atl. 678; *Intl. Harvester Co. v. Elfstrom*, 101 Minn. 263, 112 N. W. 252. On authority it is submitted that the Virginia and majority rule is the better rule, and that the dictum in *Waddell v. Trowbridge*, *supra*, should not be followed.

— C. L. W.