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MATTERS REQUIRING JUDICIAL NOTICE.

I.

To require that every step in judicial proceedings be fortified by evidence, as that the Court has territorial jurisdiction, or of the subject-matter, or the like, would not only be a manifest absurdity, but would divert attention from the real issues involved, and the trial of a cause might descend into a useless wrangle over abstractions. That parties should be permitted, then, to rely securely upon the Court as to certain facts, is an absolute necessity. It is usual to regard what may be termed the routine matters of judicial proceedings, as being settled: yet they are so held as established, simply because the Court takes judicial notice of them. But there are other matters, frequently somewhat or even quite collateral to the issues being tried, that may receive recognition from the Court without being pleaded or proved. These classes of facts are so diverse and various in character that the Courts are often called upon, without having the benefit of any precedent applying thereto, to determine whether or not they should be thus received.

Perhaps no subject falling within the administration of the law, so constantly calls for the exercise of a sound discretion by the Courts, as that of judicial notice. This arises mainly from the fact that those matters which the Court will thus recognize, are, for the most part, only capable of classification under a few heads, and thus the generality of their

description would include facts which unquestionably require averment and proof. The general ground, or rule, if it may be so called, which can be applied to all phases of the subject is, that in receiving this class of facts without averment or proof, Courts simply act on knowledge of their truth. But this should not be understood as an assumption by the judges of any special or technical knowledge of the matter; they merely recognize the fact in question as being already sufficiently established. Three classes of facts naturally follow as many divisions of the rule, of which there can be no question that Courts will take judicial notice: *first*, matters of public law, which all are bound to know; *second*, matters so notorious as to be regarded as universally known; and *third*, matters peculiarly within the cognizance of the particular Court: 1 Phil. Ev., § 619.

However clear the rule may be as to primary distinctions, the real question must at last rest with the Court for solution. While all Courts agree, for instance, that every public law, enacted by the proper legislative authority, must receive judicial notice within the same jurisdiction, it still remains for the Court to say whether or not the particular act be a public statute; and although a fact may be of undoubted notoriety, to establish this, might be more difficult than to prove the fact itself.

The limits, therefore, beyond which Courts may not safely pass, are regulated more by the soundness of judgment and sense of justice of the judges, than by any fixed rules that can be adopted. It follows that in many instances the admissibility of this class of facts must depend upon the peculiar circumstances existing in each particular case. Nor is it essential to its judicial reception that the Court have a complete knowledge of the fact; for no division of opinion exists that this information may be obtained from any authentic source. Thus stamped with the seal of absolute verity, this class of facts may be embraced in instructions to juries, without interference with their prerogative as triers of fact. The restrictions surrounding the admission of judicial notice of such facts as are in their nature official, legislative, political, judicial, commercial, historical, geographical, scientific

and artistic, are usually so manifest as to admit of comparative certainty in their application; but, in addition to these, notice will be taken of a wide range of matters of uniform natural occurrence, and those generally arising in the usual course of life, the claim for recognition of which consists in their certainty and notoriety.

While this peculiar power of the Courts will invariably be exercised with caution in regard to the latter classes of facts, much care is required that no mistake be made in the truth of the fact assumed, that the requisite notoriety exists; and all reasonable doubts upon the subject should be promptly resolved in the negative: *Brown* v. *Piper* (1875), 91 U. S. 37.

As already indicated, while this subject has the sanction of well-settled principles of the law, the questions presented under it are often incapable of reference to any positive rule of decision, and the result is that perhaps in no other branch of jurisprudence do the adjudicated cases exhibit so wide a range of circumstances, affording, for this reason, the most practical view of the subject.

II.

As all civilized nations constitute one great family of sovereign states, they recognize each other's existence and general public and external relations, including Acts of State, and their Courts take judicial notice of the national flags and seals, as the highest emblems of sovereignty: *Griswold* v. *Pitcairn* (1816), 2 Conn. 85; *The Santissima Trinidad* (1822), 7 Wheat. (20 U. S.) 283. The public seal of a state, properly affixed to proceedings, either judicial or diplomatic, is taken notice of as a part of the law of nations and proves itself: *Lincoln* v. *Battelle* (1831), 6 Wend. (N. Y.) 475. But where a foreign *de facto* government has not been recognized by the executive power of the government under which the Court is organized, its seal cannot be admitted to prove itself: *U. S.* v. *Palmer* (1818), 3 Wheat. (16 U. S.) 634; *City of Berne in Switzerland* v. *Bank of England* (1804), 9 Ves. Jun. 347; *Dolder* v. *Lord Huntingfield* (1805), 11 Id. 283.

Foreign judgments are judicially noticed when they are

authenticated, either by the great seal, by a copy proved to be a true copy, or by a certificate of an officer authorized by law, and this certificate is itself properly authenticated: *Church* v. *Hubbart* (1804); 2 Cranch (6 U. S.), 187.

The law of nations is of force, not because it has been prescribed by any superior power, but because it has been generally accepted as a rule of conduct: *The Scotia* (1871), 14 Wall. (81 U. S.) 170. The law of nations, which is acknowledged generally as binding on all independent states, and as affecting the rights of their citizens or subjects, is derived from three sources: *first*, from the long and ordinary practice of nations, which affords evidence of a general custom, tacitly agreed to be observed until expressly abrogated; *second*, the recitals of what is acknowledged to have been the law or practice of nations, and which will frequently be found in modern treaties; *third*, the writings of eminent authors, who have long, by a concurrence of testimony and opinion, declared what is the existing international jurisprudence: Vattel's Law of Nations (Chitty), § 3, note 1.

Under prize and admiralty jurisdiction, the law of nations controlling these matters is frequently noticed and applied by the Courts. The established law upon the subject in England is, that the sentence of a foreign Court of competent jurisdiction, condemning the property upon the ground that it was not neutral, is so entirely conclusive of the fact decided that it can never be controverted, directly or collaterally, in any other Court having concurrent jurisdiction: *Bolton* v. *Gladstone* (1804), 5 East, 155; *Oddy* v. *Boville* (1802), 2 Id. 473; *Lothair* v. *Henderson* (1803), 3 B. & P. 499; *Hughes* v. *Cornelius* (Trin. Term, 32 Car. 2), 2 Show. 242. Substantially the same doctrine prevails in the Supreme Court of the United States: *Croudson* v. *Leonard* (1808), 4 Cranch (8 U. S.), 434. In the State of New York a somewhat different rule obtains, and it is there held that, if it appear from the proceedings in the prize Court that the condemnation was a breach of the law of nations, it will not be considered as binding upon the Courts of other countries upon the question of neutrality, but that, in making this inquiry, the Courts cannot take judicial notice of the municipal laws

of the foreign country: *Ocean Ins. Co.* v. *Francis* (1828), 2 Wend. (N. Y.) 64. Of course, the seal of a Court of Admiralty proves itself, and when it appears to have been affixed to a decree by the deputy registrar, it will be received: *Thompson* v. *Stewart* (1819), 3 Conn. 171.

Courts will also take judicial notice of and apply the law merchant as a part of the law of nations: *Jewell* v. *Center* (1854), 25 Ala. 498. The various customs entering into and comprising the law merchant, having all repeatedly received judicial sanction, are universally recognized as forming a system of established facts not subject to proof. Thus, the notary's certificate and seal, when used in this connection, is noticed the world over; and with equal facility is the almanac received, as the basis of judicial notice of the time of presentation and non-payment of a foreign bill of exchange: *Reed* v. *Wilson* (1879), 41 N. J. L. 29; *Bank of Columbia* v. *Fitzhugh* (1827), 1 H. & G. (Md.) 239; *Branch* v. *Burnley* (1797), 1 Call (Va.), 147; *Wiggins* v. *Chicago* (1878), 5 Mo. App. 347; *Consequa* v. *Willings* (1816), 1 Pet. U. S. C. C. 225; *Munn* v. *Burch* (1860), 25 Ill. 35; *Goldsmith* v. *Sawyer* (1873), 46 Cal. 209.

The English Courts apply essentially the same principles to this subject as our own; but they are required to take judicial cognizance of numerous facts not existing in this country. Of these are the accession and demise of the sovereign: *Holman* v. *Burrow* (Trin. Term, 1 Anne), 2 Ld. Ray. 791; s. c. Salk. 658. The correspondence of the year of any particular reign with the year of our Lord: *Henry* v. *Cole* (Mich. Term, 1 Anne), 2 Ld. Ray. 811; s. c. 7 Mod. 103; *Regina* v. *Pringle* (1840), 2 Moo. & R. 276. The prerogatives of the Crown and the privileges of the royal palaces; *Elderton's Case* (Trin. Term, 2 Anne), 2 Ld. Ray. 978; s. c. Salk. 284; *Winter* v. *Miles* (Sittings after East., 48 Geo. 3), 1 Camp. 475; *Att'y-Gen.* v. *Donaldson* (1842), 10 M. & W. 117. In like manner they take notice of the great and privy seals, and also of the sign manual: *Rex* v. *Miller* (1772), 2 W. Bl. 797; s. c. 1 Leach, 74; *Rex* v. *Gully* (1773), 1 Id. 98. They also take notice of royal proclamations, as being acts of state; but not of orders of council: *Wells* v. *Williams*

(Mich. Term, 9 Will. 3), 1 Ld. Ray. 282; s. c. 1 Salk. 46; *Dupays* v. *Shepherd* (Mich. Term, 10 Will. 3), 12 Mod. 216; *Rex* v. *Sutton* (1816), 4 M. & S. 532; *Att'y-Gen.* v. *Theakstone* (1820), 8 Price, 89. Judicial cognizance is also taken of the commencement of the sessions, prorogations, and dissolutions of Parliament, and of the place where any particular Parliament sat: *Rex* v. *Wilde* (Mich. Term, 22 Car. 2, B. R.), 2 Keb. 686; *Birt* v. *Rothwell* (East. Term, 9 Will. 3), 1 Ld. Ray. 210, 343. They will also notice the customs, privileges and proceedings of Parliament, and of each branch of the Legislature: *Lake* v. *King* (Hil. Term, 19 & 20 Car. 2), 1 Saund. 131, a; *Astley* v. *Younge* (1759), 2 Burr. 811. But they will not take notice of the journals of either House, as they are held not to be the records of the Parliament: *Rex* v. *Knollys* (Trin. Term, 6 Will. & Mar.), 1 Ld. Ray. 10, 15.

III.

The authorities admit of no question that the existence and tenor of all public statutes of the State, and the time when they took effect, will be judicially noticed by the Courts having their organization or sitting within the same jurisdiction. This recognition rests, indeed, not only upon the fact of their being a part of the law of the land, which all are bound to know, but is equally required by the official authentication of a co-ordinate branch of the government: *Lane* v. *Harris* (1854), 16 Ga. 217; *State* v. *Bailey* (1861), 16 Ind. 46; *Heaston* v. *Cincinnati, etc. R. R. Co.* (1861), Id. 275; *Pierson* v. *Baird* (1849), 2 G. Gr. (Iowa), 235; *Berliner* v. *Waterloo* (1861), 14 Wis. 378. It is held still further, that the existence and time of taking effect of a public Act, cannot be put in issue, or admitted or denied by the pleadings, but must be determined by the judges themselves: *Att'y-Gen.* v. *Foote* (1860), 11 Wis. 14; Sedgwick on Stat. & Const. Law, 94, 118; Potter's Dwarris on Stat. 169. The same rule governs both National and State Courts, in regard to all public Acts of Congress, or which are declared to be such: *Morris* v. *Davidson* (1873), 49 Ga. 361; *Canal Co.* v. *Railroad Co.* (1832), 4 G. & J. (Md.) 63; *Kessel* v. *Albetis* (1870), 56 Barb. (N. Y.) 362; *Mimms* v. *Schwartz* (1873), 37 Tex. 13; *Bird* v. *Commonwealth*

(1871), 21 Grat. (Va.) 800; *Bayly's Adm'rs* v. *Chubb* (1862), 16 Id. 284; *The Scotia* (1871), 14 Wall. (81 U. S.) 171.

In like manner the United States Circuit Courts take notice of State laws applying to cases depending before them: *Merrill* v. *Dawson* (1848), 1 Hemp. U. S. C. C. 563; *Jones* v. *Hays* (1849), 4 McLean, U. S. C. C. 521; *Jasper* v. *Porter* (1841), 2 Id. 579.

The doctrine is well settled in the Supreme Court of the United States, that the laws of the several States form a homogeneous system of domestic jurisprudence, which, under the judicial powers conferred on the government by the Constitution, the national tribunals are bound to take judicial notice of and administer alike in all the States, whenever their jurisdiction of the same is properly invoked: *Carpenter* v. *Dexter* (1869), 8 Wall. (75 U. S.) 513; *Fourth Nat. Bank* v. *Franklyn* (1887), 120 U. S. 747; *United States* v. *Turner* (1850), 11 How. (52 U. S.) 663; *Miller* v. *McQuerry* (1853), 5 McLean, U. S. C. C. 469.

As falling within the same rule, not only the laws, but the judicial decisions in the several States, will be so noticed; and while the judicial knowledge of the Federal Courts extends at all times to the laws and jurisprudence of all the States, as a general rule these Courts will follow the construction placed upon a statute of a State by its Court of last resort: *Hinde* v. *Vattier* (1831), 5 Pet. (30 U. S.) 398; *Pennington* v. *Gibson* (1853), 16 How. (57 U. S.) 65, 81; *Elmendorf* v. *Taylor* (1825), 10 Wheat. (23 U. S.) 152.

Following the same principle, it is held, that where judgments of a State Court, by reason of their affecting a right under the Federal Constitution and legislation, would be reversible in the Supreme Court of the United States, the State Courts will take judicial notice of such laws of other States as the United States Court would notice on appeal; and this is placed upon the very sufficient ground that it would be a discordant practice for the Court of original jurisdiction to adopt a different rule of decision from the one held by the Court of last resort: *State of Ohio* v. *Hinchman* (1856), 27 Pa. 479; *Jarvis* v. *Robinson* (1867), 21 Wis. 523; *Butcher* v. *Brownsville* (1863), 2 Kan. 70; *Paine* v. *Schenectady* (1876),

11 R. I. 411; *Shotwell* v. *Harrison* (1871), 22 Mich. 410; *Saltar* v. *Applegate* (1851), 23 N. J. L. 115. And even where an Act of Congress relates exclusively to the District of Columbia, it will be judicially noticed by the Courts of the several States: *Bayly's Adm'rs* v. *Chubb*, *supra*. So, Acts of Congress confirming foreign laws, such as grants of lands in Missouri and other States, whose territory has been acquired by the United States from a foreign power, will be judicially noticed as public acts: *Papin* v. *Ryan* (1862), 32 Mo. 21.

IV.

It becomes necessary to determine the character of statutes, which constitutes them public acts, and thus entitled to judicial notice. It must be conceded that a statute which is general in its character and equally applicable to all parts of the State, is a public act. Many State Constitutions contain restrictions upon private or class legislation by requiring that there shall be no special, local, or private law, in any case for which provision has been or may be made by general law.

In some of them, this limitation applies in any case where the relief sought can be given by any State Court. In Indiana and Oregon, every statute is declared by the Constitution to be a public law, unless otherwise provided in the statute itself.

Statutes may be public acts, and yet apply only to certain localities. It is not necessary that it should extend to all parts of the State; it is a public act, if it extends equally to all persons within the territorial limits described in the statute: *Burnham* v. *Webster* (1809), 5 Mass. 266. In accordance with this view, laws upon the following subjects have been held to be public acts: regulating the sale of liquors in a particular locality: *Levy* v. *State* (1855), 6 Ind. 281; *Inglis* v. *State* (1878), 61 Id. 212; an act to regulate the lumber trade in a certain district: *Pierce* v. *Kimball* (1832), 9 Me. 54; and a statute granting a portion of the public domain, and affecting the rights of navigation and fishing,

by allowing improvements to be extended into navigable waters: *Hammond* v. *Inloes* (1853), 4 Md. 138.

The doctrine seems to be fully supported by the authorities, that the character of an Act of the Legislature, whether it be a general law or not, is determined by the greater or less extent to which it affects the people, rather than by the extent of territory over which it operates; therefore a law affecting a single county, but affecting the rights of all the people therein, is a general law: *State ex rel. Cothren* v. *Lean* (1859), 9 Wis. 279; *Clarke* v. *City of Janesville* (1859), 10 Id. 136, 195; *Rains* v. *Oshkosh* (1861), 14 Id. 372; *Mills* v. *Gleason* (1860), 11 Id. 470.

Some little fluctuation in opinion has resulted in establishing, upon authority, that Courts will judicially notice the charter or incorporating Act of a municipal corporation, not only when it is declared to be a public statute, but when it is public or general in its purposes, though there be no express provision to that effect: Dillon on Municipal Corp. (3d ed.) sect. 83. This rule rests upon the ground that municipal corporations are public institutions, created for public purposes. The municipality is a political subdivision or department of the State, governed, regulated, and constituted by public law; the agents who administer its affairs derive their powers from legislative authority: *Payne* v. *Treadwell* (1860), 16 Cal. 220; *Village of Winooski* v. *Gokey* (1877), 49 Vt. 282; *Case* v. *City of Mobile* (1857), 30 Ala. 538; *Stier* v. *Oskaloosa* (1875), 41 Iowa, 353; *Prell* v. *McDonald* (1871), 7 Kan. 426; *State* v. *Sherman* (1868), 42 Mo. 210; *Gallagher* v. *State* (1881), 10 Tex. Ct. App. 469; *Alexander* v. *Milwaukee* (1862), 16 Wis. 247; *Briggs* v. *Whipple* (1835), 7 Vt. 15; *Washington* v. *Finley* (1850), 10 Ark. 423. In like manner, Courts will notice the repeal of a section of an incorporating Act: *Belmont* v. *Morrill* (1879), 69 Me. 314.

Where the existence of an Act, incorporating a town, had been previously recognized by the Supreme Court of the then Territory, the same Court for the State, long afterward, took judicial cognizance of the legality of the corporation, even though the Act itself could not be found: *Swan* v. *Comstock* (1864), 18 Wis. 463. Under the rule as stated, for the Court

to notice a special charter, is to recognize the corporation, but, when the town or city is organized under the general law, its incorporation must be proved, for, though the Court will take notice of the law, it cannot know that its provisions as to organizing under it have been complied with: *Ward* v. *City of Decorah* (1876), 43 Iowa, 313. In the same direction, it was decided by the Supreme Court of Indiana, that while it would take judicial notice of all the laws authorizing the formation of plank-road companies, it could not know under which one of them a particular company was organized: *Danville, etc. Co.* v. *State* (1861), 16 Ind. 456. The same Court refused judicial notice of the names of the townships in a county, because they were established by the commissioners and not by public law: *Bragg* v. *Rush County* (1870), 34 Ind. 405. While this objection may be sufficient in the appellate tribunal, it could not apply in any Court of general jurisdiction, sitting within the county, where the fact would appear of record. It has been held, however, that evidence in the record that a municipality has exercised its corporate powers under a general law, will sustain the Court in taking judicial notice of its organization under the same: *Doyle* v. *Bradford* (1878), 90 Ill. 416; following *Brush* v. *Lemma* (1875), 77 Id. 496.

V.

Acts of the Legislature incorporating banks have generally been judicially recognized as public statutes or general laws: *Buell* v. *Warner* (1861), 33 Vt. 570. Where the bank partakes of the character of a State institution, the Courts will take judicial notice of the fact of its existence, and that its notes constitute a circulating medium and are of value: *Shaw* v. *State* (1855), 3 Sneed (Tenn.), 86. Whenever any question as to the incorporation of a bank arises collaterally, Courts will take judicial knowledge of its existence and corporate powers: *Hays* v. *Northwestern Bank* (1852), 9 Grat. (Va.) 127; *United States* v. *Amedy* (1826), 11 Wheat. (24 U. S.) 392; *The People* v. *Hughes* (1865), 29 Cal. 258; *Davis* v. *Bank of Fulton* (1860), 31 Ga. 69; *Cowan* v. *State* (1887), 22 Neb. 519.

General laws, incorporating railroad companies, are judicially noticed, the same as other public acts; or, if the charter be private in form, but is declared by the Legislature to be a public statute; and it has been held that publication with other enactments of a public character, will entitle such acts to judicial notice: *Hill* v. *Brown* (1877), 58 N. H. 93; *Atchison, etc. R. R. Co.* v. *Blackshire* (1872), 10 Kan. 477; *Perry* v. *New Orleans, etc. R. R. Co.* (1876), 55 Ala. 413; *Ohio, etc. R. R. Co.* v. *Ridge* (1839), 5 Blackf. (Ind.) 78. The following acts have been declared by the Courts to be public laws, and thus entitled to judicial recognition: the general law relating to highways: *Griswold* v. *Gallop* (1852), 22 Conn. 208; acts defining the boundaries of counties: *Ross* v. *Reddick* (1832), 2 Ill. 73; a joint resolution, imposing a particular duty upon an officer of the State: *State* v. *Delesdenier* (1851), 7 Tex. 76. Acts of a State Legislature, or of Congress, called for, recognized, or adopted by public laws of any State, will be judicially noticed by the Courts of such State: *Canal Co.* v. *Railroad Co., supra;* and where a public act expressly amends a private act, the existence and duties of an office provided for in the latter, will be judicially recognized: *Lavalle* v. *People* (1880), 6 Bradw. (Ill.) 157.

The rule is well settled that statutes which are declared by the Legislature, at the time of their enactment, to be public acts, will be judicially noticed by the Courts: *Hammett* v. *Little Rock R. R. Co.* (1859), 20 Ark. 204; *Eel River Drain. Ass'n* v. *Topp* (1861), 16 Ind. 242; *Covington Drawbridge Co.* v. *Shepherd* (1857), 20 How. (61 U. S.), 227; *Beaty* v. *Knowles* (1830), 4 Pet. (29 U. S.), 152. The same rule prevails when Courts are required by the Legislature to notice private statutes: *Bixler's Admr's* v. *Parker* (1867), 3 Bush (Ky.), 166; *Halbert* v. *Skyles* (1818), 1 A. K. Marsh. (Ky.), 368; *Hart* v. *Baltimore, etc. R. R. Co.* (1873), 6 W. Va. 336; *Collier* v. *Baptist Society* (1847–8), 8 B. Mon. (Ky.) 68; *Somerville* v. *Winbish* (1850), 7 Grat. (Va.) 205.

VI.

As to how far the Courts will go in taking judicial cognizance of the correct reading of a statute, or whether in its

enactment all constitutional requirements affecting its validity have been complied with, the authorities are not entirely uniform. On the one hand it is held, with strong support, that "Courts are bound judicially to take notice of what the law is, and to enable them to determine whether all the constitutional requisites to the validity of a statute have been complied with, it is their right, as well as duty, to take notice of the journals of the Legislature, and no plea is necessary to bring to the notice of the Court facts which the Court must judicially know, and in respect to which no proof can be given:" *People ex rel. Drake* v. *Mahaney* (1865), 13 Mich. 481; *Coburn* v. *Dodd* (1860), 14 Ind. 347; *Board of Supervisors* v. *Heenan* (1858), 2 Minn. 330; *People* v. *Purdy* (1841), 2 Hill (N. Y.), 31; *De Bow* v. *People* (1845), 1 Denio (N. Y.), 9; *People* v. *River Raisin, etc. R. R. Co.* (1864), 12 Mich. 389; *Commercial Bank of Buffalo* v. *Sparrow* (1846), 2 Denio (N. Y.), 97.

On the other hand, in *Illinois Central R. R. Co.* v. *Wren* (1867), 43 Ill. 77, and *Bedard* v. *Hall* (1867), 44 Id. 91, the Supreme Court of that State holds that judicial notice cannot be taken of the journals of the Legislature upon this question; while in the case of the *Pacific R. R. Co.* v. *Governor* (1856), 23 Mo. 353, and the following cases cited, these Courts seem to sustain the view that the certificates of the presiding officers of the two houses of the Legislature are, officially, of equal or superior weight with the journals themselves: *Duncombe* v. *Prindle* (1861), 12 Iowa, 1; *Green* v. *Weller* (1856), 32 Miss. 650; *Fouke* v. *Fleming* (1858), 13 Md. 392; *People* v. *Devlin* (1865), 33 N. Y. 269; *Pangborn* v. *Young* (1866), 32 N. J. L. 29; *Root* v. *King* (1827), 7 Cow. (N. Y.), 613; *Kilbourne* v. *Thompson* (1880), 103 U. S. 168; *Chicago & A. R. R. Co.* v. *Wiggins Ferry Co.* (1887), 119 Id. 615.

On this point, in a recent and somewhat well-considered opinion, which is sustained by numerous citations, the Supreme Court of Nebraska held that "the certificate of the presiding officer of a branch of the Legislature that a bill has duly passed the house over which he presides, is merely *prima facie* evidence of the fact, and evidence may be received to ascertain whether or not the bill actually passed. The journals of

the respective houses are records of the proceedings therein, and if it should appear from them that a bill had not actually passed, the presumption in favor of the certificate would be overthrown and the Act declared invalid:" *State ex rel. Huff* v. *McLelland* (1885), 18 Neb. 236; *Clare* v. *State* (1857), 5 Iowa, 509; *Evans* v. *Browne* (1869), 30 Ind. 514; *Madison Co. Com'rs* v. *Burford* (1883), 93 Id. 383.

In *Gardner* v. *Collector* (1867), 6 Wall. (73 U. S.) 499, the Supreme Court of the United States adheres to substantially the same rule which, with the additional support of the following decisions, would seem to carry the weight of authority decidedly in favor of this view of the matter: *Legg* v. *Mayor* (1874), 42 Md. 203; *Berry* v. *Drum Point R. R.* (1874), 41 Id. 446; *Moody* v. *State* (1872), 48 Ala. 115; *People* v. *De Wolf* (1871), 62 Ill. 253; *State* v. *City of Hastings* (1877), 24 Minn. 78; *Southwick Bank* v. *Commonwealth* (1856), 26 Pa. 446; *Jones* v. *Hutchinson* (1868), 43 Ala. 721; *Fowler* v. *Pierce* (1852), 2 Cal. 165; *Speer* v. *Plank Road Co.* (1853), 22 Pa. 376; *Opinion of the Justices* (1864), 45 N. H. 607; *Opinion of the Justices* (1858), 35 Id. 579; *Opinion of the Justices* (1873), 52 Id. 622; *Coleman* v. *Dobbins* (1856), 8 Ind. 156.

VII.

The Constitution is the fundamental law of the State, in opposition to which any other law, or any direction or order, must be inoperative and void. If, therefore, such other law, direction, or order, seems to be applicable to the facts, but on comparison with the fundamental law, the latter is found to be in conflict with it, the Court, in declaring what the law of the case is, must necessarily determine its invalidity, and thereby effectually annul it: *De Chastellux* v. *Fairchild* (1850), 15 Pa. 18.

The Courts take judicial notice of all constitutional amendments, and when the same went into force: *Graves* v. *Keaton* (1866), 3 Cold. (Tenn.) 8.

Judicial notice is taken of the common law, as the basis of our system of jurisprudence. It is recognized as a system of grand principles, founded on the mature and perfected reason of centuries, that have grown up irrespective of statutes, and

which, no matter how recently announced, are assumed to have existed from time immemorial; and in the administration of justice as embodying the rules upon which remedies are given in a vast majority of cases: *Wilson* v. *Bumstead* (1881), 12 Neb. 1.

For these reasons, Courts will not hesitate to apply the common law to any condition of facts, however novel this application may seem; for it would have but little claim to the admiration to which it is entitled, if it failed to adapt itself to any condition, however new, which may arise; and it would be singularly lame, if it were impotent to determine the right of any dispute whatsoever: *Conger* v. *Weaver* (1856), 6 Cal. 548.

A treaty is the supreme law of the land by which judges in every State must be bound, and no Act of the Legislature can stand in its way: *Hauenstein* v. *Lynham* (1879), 10 Otto (100 U. S.) 483. So far as the power of the contracting parties is concerned, a treaty with an Indian tribe is like a treaty with a foreign power, and equally as binding as a law of Congress: *U. S.* v. *Payne* (1881), 2 M'Crary (U. S. C. C. W. Dist. Ark.), 289; *Wilson* v. *Wall* (1867), 6 Wall. (73 U. S.) 83; *Dole* v. *Wilson* (1871), 16 Minn. 525; *U. S.* v. *Reynes* (1850), 9 How. (50 U. S.) 127. Courts are also required to notice extradition treaties; and where, in an action for slander in a State Court, the crime alleged to have been falsely charged was, that the plaintiff had committed a murder in Ireland, the Court took judicial notice that Ireland is within the jurisdiction of the British Empire, and that murder is a crime for which, under the extradition treaty with that Empire, the party was liable to be reclaimed and delivered up by the United States government for punishment: *Montgomery* v. *Deeley* (1854), 3 Wis. 709.

Public institutions, such as court-houses, jails, prisons, asylums, State universities, and the like, are entitled to judicial notice, not only from their public character and well-known situations, but as being established by law. The universities of Oxford and Cambridge, and that they were founded for the promotion of learning and religion, are taken notice of by the Courts in England, and no reason seems to exist

why many similar institutions in this country should not fall within the same rule: *Oxford Poor Rate* (1857), 8 E & B. 184–211.

VIII.

Judicial notice of foreign laws is not taken by the Courts of this country; and a claim or defence founded on a foreign law, must be alleged and proved; otherwise, the presumption is that the foreign law is the same as that of the forum: *Syme* v. *Stewart* (1865), 17 La. An. 73; *Chumusaro* v. *Gilbert* (1860), 24 Ill. 293; *Frith* v. *Sprague* (1817), 14 Mass. 455; *Baptiste* v. *De Volunbrun* (1820), 5 H. & J. (Md.) 86; *Hooper* v. *Moore* (1857), 5 Jones (N. C.) Law, 130; *Woodrow* v. *O'Connor* (1856), 28 Vt. 776; *Bean* v. *Briggs* (1857), 4 Iowa, 464; *Hilliard* v. *Outlaw* (1885), 92 N. C. 266; *Sloan* v. *Torry* (1883), 78 Mo. 623; *Owen* v. *Boyle* (1838), 15 Me. 147. The common or unwritten law of a foreign country and the construction given to a foreign statute, by usage and judicial decisions, which thus becomes a part of the unwritten law, must be proved by the testimony of experts: *Dyer* v. *Smith* (1837), 12 Conn. 384. Of a printed volume, purporting to contain the statutes of a foreign country, being received to prove them, it may perhaps be safely said that some extrinsic evidence of its authenticity will generally be required.

As a general rule the laws of one State will not be judicially noticed by the Courts of another State. Their relation to each other in the Union is that of foreign States in close friendship, and the rules for the proof of foreign laws are relaxed as to the statutes of sister States; a printed volume, assuming to contain them and published by the State authority, will be received in all cases as *prima facie* evidence to establish what are the laws of any particular State: *Irving* v. *McLean* (1835), 4 Blackf. (Ind.) 52; *Cook* v. *Wilson* (1821), Litt. Sel. Ca. (Ky.) 437; *Ripple* v. *Ripple* (1829), 1 Rawle (Pa.), 386; *Sims* v. *Southern Express Co.* (1868), 38 Ga. 129; *Hoyt* v. *McNeil* (1868), 13 Minn. 390; *Rape* v. *Heaton* (1859), 9 Wis. 328; *Drake* v. *Glover* (1857), 30 Ala. 382; *Anderson* v. *Anderson* (1859), 23 Tex. 639; *Carey* v. *Cincinnati, etc. R. R. Co.* (1857), 5 Iowa, 357; *Whitesides* v. *Poole* (1855), 9 Rich.

(S. C.) 68; *Taylor* v. *Boardman* (1853), 25 Vt. 581; *Newton* v. *Cooke* (1849), 10 Ark. 169; *Miller* v. *Avery* (1848), 2 Barb. (N. Y.) Ch. 582; *Anderson* v. *Folger* (1856), 11 La. An. 269; *De Sobry* v. *De Laistre* (1807), 2 H. & J. (Md.) 191; *Mason* v. *Wash* (1822), 1 Ill. 16; *Boggs* v. *Reed* (1819), 5 Mart. (La.) 673.

Where a new State has been erected from an older one, or the territory composing a State formerly belonged to a foreign power, an exception is made as to foreign laws; those in force before the separation or acquirement of the territory by the United States, are judicially noticed by the Courts within the States thus formed. Accordingly, the Supreme Courts of Louisiana and Missouri, and the Supreme Court of the United States, take judicial notice of the Spanish laws prevailing in the then territory of Louisiana, before the cession to the United States: *Pequet* v. *Pequet* (1865), 17 La. An. 204; *Choteau* v. *Pierre* (1845), 9 Mo. 3; *Ott* v. *Soulard* (1846), Id. 581; *U. S.* v. *Turner* (1850), 11 How. (52 U. S.) 663. And the same is true of the laws in force in California and the Territories acquired from Mexico: *Payne* v. *Treadwell* (1860), 16 Cal. 220; *Bouldin* v. *Phelps* (U. S. C. C. N. Dist. Cal. 1887), 30 Fed. Rep. 547. For the reason stated the Supreme Courts of Indiana and Kentucky recognize certain statutes of the State of Virginia: *Henthorn* v. *Doe* (1822), 1 Blackf. (Ind.) 157; *Delano* v. *Jopling* (1822), 1 Littell (Ky.), 117, 417. In Tennessee, certain statutes of North Carolina: *Stevens* v. *Bomar* (1848), 9 Humph. (Tenn.) 546; *Green* v. *Goodall* (1860), 1 Cold. (Tenn.) 404; *Wilson* v. *Smith* (1825), 5 Yerg. (Tenn.) 379. On the proof of a foreign law, by the parol testimony of experts the jury must determine the existence of, and what that law is, but the question of its construction and effect is for the Court alone: *Kline* v. *Baker* (1868), 99 Mass. 253; *Holman* v. *King* (1844), 7 Met. (Mass.) 384; Story's Conflict of Laws, § 638; *Pickard* v. *Bailey* (1852), 26 N. H. 152. Where on its face a contract or other matter in dispute is to be governed by a foreign law, and no proof of the law is made, and it is not such as to be judicially noticed, the adjudicating tribunal will proceed upon the basis of its own laws, not being informed in what respect the foreign law differs;

or presuming, within certain restrictions, that it is identical. Thus, as a general rule, it is presumed that the common law prevails in each of the United States: *Monroe* v. *Douglass* (1851), 5 N. Y. 447; *Whitford* v. *Panama Railroad Co.* (1861), 23 Id. 465; *Copley* v. *Sandford* (1847), 2 La. An. 335; *Rape* v. *Heaton*, *supra;* Whart. on Ev., § 314; and that the common law is similarly in force in each State: *Wilson* v. *Cockrell* (1843), 8 Mo. 1; *Houghtaling* v. *Ball* (1853), 19 Id. 84; *Billingsly* v. *Dean* (1858), 11 Ind. 331.

Champerty, being an offence at common law, it is presumed, the contrary not appearing, to be against the law of another State: *Thurston* v. *Percival* (1823), 1 Pick. (Mass.) 415. As in Massachusetts, the giving of a promissory note is evidence of the payment of a pre-existing debt, the law will be presumed the same in Maine: *Ely* v. *James* (1877), 123 Mass. 36. If a contract made with reference to foreign laws and to be governed thereby, would be void or illegal by the law of the forum, the Court will not, for the mere purpose of defeating the contract, presume the foreign law to be the same; on the contrary, in the absence of proof, it will understand the contract to be valid by the foreign law: Bishop on Mar. & Div., § 412; Whart. on Ev., §§ 314, 1250; *Jones* v. *Palmer* (1844), 1 Doug. (Mich.) 379. Where the defence is usury, and the contract would be usurious under the domestic law, the Court will not presume the *lex loci contractus* is identical and so overthrow the contract: for the burden of proving the foreign law is on the defendant to establish his defence: *Champion* v. *Kille* (1863), 15 N. J. Eq. 476; *Cutler* v. *Wright* (1860), 22 N. Y. 472; *Davis* v. *Bowling* (1854), 19 Mo. 651.

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(To be continued.)