THE UNIFORM EVIDENCE ACTS

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Among the accomplishments of the last session of the Legislature was the passage of the four Uniform Evidence Acts, which were then duly signed by the Governor. They are: House Bill No. 317, Uniform Business Records as Evidence Act; House Bill No. 318, Uniform Composite Reports as Evidence Act; House Bill No. 319, Uniform Official Reports as Evidence Act; House Bill No. 320, Uniform Judicial Notice of Foreign Law Act. They all concern topics which are likely to transcend state lines. They involve proof of various writings which may have been made in another state or proof of the laws of a sister state, and so the advantages of uniformity in legislation are apparent. All of these acts were drafted by the National Conference of Commissioners on Uniform State Laws and were then approved by the American Bar Association, and in this state were later recommended by the Ohio State Bar Association. In each case the proposed Uniform Acts were amended by the Ohio Legislature. In each case the Legislature struck out a clause common to all the uniform laws that all acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed. It is difficult to see what is gained by the omission. These acts, being later in time, would by a principle of statutory construction naturally repeal any clauses of prior acts that were inconsistent with them, and the section would only express what would otherwise be implied.

In each case the Legislature made at least one other amendment. The effect of these amendments will be considered in the discussion of the respective acts, their influence being considerably greater in some cases than in others. All of the acts

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as enacted contain a provision that they shall be so interpreted and construed as to effectuate the general purpose to make uniform the law of those states which enact them. One might suggest that whatever the merits of amendment may be, uniformity is not one of them.

Uniform Business Records As Evidence Act

Probably the most helpful of the Uniform Acts is the first one, the Uniform Business Records as Evidence Act. The need for some such statute has long been felt. The technical common law requirements for the proof of a writing have become less and less suited to the requirements of modern business. Courts have attempted to liberalize the old requirements, but their opinions varied greatly from state to state, and piece-meal statutes added to both the liberality and the confusion.

Under the old common law a party was incompetent as a witness. A small shopkeeper, who kept no clerk, would be helpless if his books were not admissible in evidence, and in early colonial days the practice of receiving the books began. In New England the party was required to take a suppletory oath and this was not regarded as testifying, while in New York the practice derived from the Dutch required the party to prove that other customers had dealt with the party in reliance on the books. Numerous limitations were imposed on the doctrine and from time to time it was held that the books would not be admitted to prove money lent, goods sold on a third person's credit, cash transactions, large items, lump charges, etc.

If the shopkeeper employed a clerk, the latter was of course competent as a witness. If the clerk who made the entries was dead, a slowly developing, but more orthodox, exception to the hearsay rule permitted such entries to come in as entries in the course of business.

A third ground for admitting the writings was the Recollection theory. If the memory of the witness was refreshed he could testify about the transactions. But even if his memory

was not refreshed and he could do no more than say, "It must be so, because I wrote it," the entry was often admitted on a theory of past or artificial recollection.

When the parties were made competent by statute, there was no longer any need for the shop book doctrine as such. The party could now testify freely, and the Recollection theory would help him if he forgot details. But before the competency of the parties was secured, the shop book rule was so thoroughly established in the common law and by statute that it continued to exercise a considerable effect.

In Ohio, Section 11493 removes the common law disqualifications for witnesses in general, but Section 11495, the Dead Man Statute, retains the disqualification in certain cases. But Section 11495 contains numerous exceptions, and among them Subdivision 6 provides:

> If the claim or defense is founded on a book account, a party may testify that the book is his account book, that it is a book of original entries, that the entries therein were made in the regular course of business by himself, a person since deceased, or a disinterested person. The book shall then be competent evidence in any case, without regard to the parties, upon like proof by any competent witness.

The old shop book rule is the basis for this statute. The books are declared to be admissible in those situations where the old common law disqualifications of the parties are retained. But the statute is broader than the old shop book rule. It admits entries by the party, as does the old rule, but it also admits entries by a person since deceased, which would come under the hearsay exception for entries in the course of business and it also admits entries by a distinterested person which goes beyond either rule. The section appears in the Statutes as an exception to an exception, and apparently has no application if the suit is not by a party, or if it is not against an executor, etc., as set out in Section 11495. In such cases the common law apparently would control.

If the same individual handled the transaction and made the entry there is usually little difficulty today. Even if he is a

party to the action he is usually competent, and where a disqualification persists, his books will be received unless some old limitation of the shop book rule interferes. If the individual is not a party to the action, he is, as he always was, competent. If the individual is dead, his entry may be proved as an entry in the course of business.

But in modern business today there may be a large number of people who contribute to the sale, receipt or delivery of goods. The first permanent record may be prepared by a bookkeeper who has seen none of the original transactions and whose knowledge was gained by a variety of slips given or sent to him by a considerable number of people.

The common law doctrines were devised for an agricultural population and for no such system as this. Even so, the books might be proved if everyone who contributed in any way to the transaction were put upon the stand and testified to his part in it. If some of the individuals had since died, no great extension of the doctrine would be needed to prove their part in it by competent witnesses and to receive their writings as entries in the course of business.

But it would be proved with an enormous waste and at a cost out of all proportion to the evidence desired. The witnesses would ordinarily remember nothing of the event and could do no more than testify what the routine was or that a particular entry was theirs and that the facts must have been so if they had so written. It was of this situation that Judge Cardozo once said, "The dead hand of the common law should no longer be applied to such cases."

In recent years some courts have permitted business records to be proved on the testimony of a bookkeeper or person in charge of a department without requiring everyone who participated in the discussion to be called. Thus mercantile inconvenience, as well as death or absence, was regarded as a sufficient explanation of unavailability. But other courts have felt less free to dispense with the calling of witnesses or have believed that they were strictly limited by their statutes.

In 1926 a committee of the Commonwealth Fund, after a study of the decisions and a questionnaire sent to a large number of industrial firms, submitted the following:

Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event shall be admissible in evidence in proof of said act, transaction, occurrence or event if the trial judge shall find that it was made in the regular course of business and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker may be shown to affect its weight, but they shall not affect its admissibility. The term business shall include business, profession, occupation and calling of every kind.

This act was adopted in New York, Maryland, Oregon and Michigan, the Michigan statute adding a statement that the lack of an entry regarding such an act might be received as evidence that no such act took place. It was also adopted by Congress in 1936. A somewhat similar law has been in effect in Massachusetts for some time and the Massachusetts act served as a pattern for the laws of Rhode Island and Maine. The Commissioners on Uniform State Laws, after pointing out that the Commonwealth Fund Act had been adopted in several states but "with occasional verbal alterations," added that they had "attempted to devise a standard wording, which will serve to uniformize its provisions as it gets adopted from time to time in other states."

The act, as adopted by the Ohio Legislature, is as follows:

Section 1. The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

Section 2. A record of an act, condition or event, shall, in so far as relevant, be competent evidence if the custodian *or the person who made such record or under whose supervision such record was made* testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or

event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

Section 3. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 4. This act may be cited as the uniform business records as evidence act.

This act changes in two respects the one recommended by the Commissioners of Uniform State Laws and so introduced into the Legislature. In common with the other Evidence Acts a section dealing with the repeal of prior inconsistent legislation has been eliminated. Secondly, the recommended act which said in Section 2 "custodian or other qualified witness," has been changed to read "custodian or the person who made such record or under whose supervision such record was made." This defines and to some extent limits the phrase "other qualified witness" but not materially. The qualified witness would ordinarily be the entrant or the supervisor. A man whose province it was to check the entries might be considered an otherwise qualified witness but would not fall under the words of the Ohio statute. But it may safely be said that this law has been enacted without substantial change.

The law is a decided step forward. It gives legal recognition to the everyday practice of business men. The latter are accustomed to rely upon the accuracy of books and records after reasonable evidence is given that they have been properly kept and the statute authorizes the courts to do the same thing. No longer will the outgrown shop book exception to the Dead Man Statute be needed, nor will the court, as in *Leonard* v. *State*,[1] be forced to run the whole field of the law and attempt to justify admissibility on the ground of such diverse claims as "shop books kept . . . in the regular course of business," declarations against interest, quasi public records, and the limitless *res gestae*. A short, simple statute provides for admissibility.

[1] 100 Ohio St. 456, 127 N.E. 464 (1919).

Uniform Composite Reports As Evidence Act

This is easily the most advanced of the four new Evidence Acts. On the other hand, occasions for its employment will arise less often than for the other laws. As enacted by the Ohio Legislature, the Composite Reports as Evidence Act provides:

Section 1. A written report or finding of facts prepared by an expert not being a party to the cause, nor an employe of a party, except for the purpose of making such report or finding, nor financially interested in the result of the controversy, and containing the conclusions resulting wholly or partly from written information furnished by the cooperation of several persons acting for a common purpose, shall, in so far as the same may be relevant, be admissible when testified to by the person, or one of the persons, making such report or finding without calling as witnesses the persons furnishing the information, and without producing the books or other writings on which the report or finding is based, if, in the opinion of the court, no substantial injustice will be done the opposite party.

Section 2. Any person who has furnished information on which such a report or finding is based may be cross-examined by the adverse party, but the fact that his testimony is not obtainable shall not render the report or finding inadmissible, unless the trial court finds that substantial injustice would be done to the adverse party by its admission.

Section 3. Such report or finding shall not be admissible unless the party offering it shall have given notice to the adverse party a reasonable time before trial of his intention to offer it, together with a copy of the report or finding, or so much thereof as may relate to the controversy, and shall also have afforded him a reasonable opportunity to inspect and copy any records or other documents in the offering party's possession or control, on which the report or finding was based, and also the names of all persons furnishing facts upon which the report or finding was based.

Section 4. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 5. This act may be cited as the uniform composite reports as evidence act.

As proposed by the Commissioners on Uniform State Laws, another clause was added at the end of Section 3, "*except that*

it may be admitted if the trial court finds that no substantial injustice would result from the failure to give such notice." This clause, and a section 6, which expressly repealed all acts inconsistent with this one, were omitted in the Ohio law. Again, the changes are not material. Of course the requirement of notice to offer the expert's testimony is made mandatory, instead of discretionary, but a lawyer who intends to rely largely on the testimony of the expert is not likely to forget it.

The act is intended to expedite proof in the use of expert testimony, particularly where that testimony relies in part on information furnished by others. If the common law were to be strictly construed, all the preliminary writings would first have to be proved by a number of witnesses who had knowledge of the facts, and then the expert might be required to detail any further facts that he might have and then might be permitted to express an opinion upon those facts. In many cases there is no real dispute about the facts and the requiring of all possible steps may make the proof too difficult to be worthwhile.

The new act simplifies the procedure in many ways:

(1) It permits the expert to make a report upon which he might then be examined and cross-examined. Ordinarily the law requires a witness to answer specific questions propounded by the attorneys and does not look with favor upon a witness narrating events. But, as has been argued by Wigmore, the advantages of a prepared statement in some cases may outweigh the disadvantages and when an expert has made an investigation and is called to testify, his testimony may be more lucid and accurate and certainly better understood, if he first reads his report stating precisely his observations and inferences.

(2) It does not require the production of books or other writings on which the report was based if in the opinion of the court no substantial injustice would be done the opposite party. When the facts can only be ascertained by the inspection of a large number of documents made up of numerous detailed statements, a competent witness who has perused the entire

mass may be allowed to state the net result. Summaries of pecuniary accounts or other business records may be offered.

(3) Although the report of the expert is based in whole or in part on written information furnished by others, the report may be admitted without calling those other people to the stand. At strict common law every person who participated should be called to testify to his part in the transaction or to the entry that he made of it. If they are not called, the admission of their entries or anything based on their entries would be hearsay. Even so, if the entrant were dead, an exception to the hearsay rule for entries in the course of business would ordinarily admit the item, and, as was pointed out in the discussion of the preceding act, mercantile inconvenience has in recent years frequently been regarded as a sufficient justification for not calling all the people involved. In the words of Mr. Wigmore, "The principle, when too strictly applied, prevents an expert from testifying to the result of data studied by him but furnished originally by the observation of other persons. To require all of them to be called to the stand or accounted for would be in most cases a needless burden and in some cases practically an exclusion of their testimony."

Section 1 is the heart of the act. Section 2 provides some safeguards for the opposite party. It permits him to call people who furnished information for the report and it also permits him to cross-examine those people. So, while the trial court may admit the report on the testimony of the expert without calling the other people, the adverse party is not precluded but may call the others if he so desires. Ordinarily their absence would make little difference and so the act would do away with an unnecessary difficulty of proof, but in the exceptional case their testimony might be material and they could be called. The section also provides that the report of the expert shall be admissible although the testimony of the others is not obtainable unless the court finds that substantial injustice would be done by admitting the report. Section 3 requires that notice of

an intention to use the report of the expert must be given the opposite party a reasonable time before trial, and under the Ohio act there is no discretion in the trial court to admit the report if the notice is not given.

The Composite Reports as Evidence Act is a decided forward step for Ohio and for most of the states. In England today a judge may refer matters involving special knowledge to a referee and the report of the referee will be admitted at the trial. A Rhode Island statute provides that the trial court may appoint experts and that the report of the experts shall form part of the record of the cause and shall be produced in evidence. A recent Wisconsin statute, which was held constitutional in *Jessner* v. *State*,[2] provides that the trial court may appoint experts in criminal cases and that such experts shall prepare written statements which may with the permission of the court be read by the witness at the trial. Section 13441-4 of the Ohio General Code provided for the appointment by the court of specialists when insanity is set up as a defense in a criminal case. It further provided that these experts might prepare a written statement which should be filed and could be used by counsel in cross-examining the witness, but it did not provide that such a statement could be read by the witness at the trial.

Uniform Official Reports as Evidence Act

The Public Documents exception to the hearsay rule was well established at common law. Many public books kept by various departments of the state or federal government were admitted in evidence. The public official who made the relevant entries was usually not required to testify, provided the books were otherwise duly authenticated, and the requirements of his official position served as a sufficient justification for his absence. The routine involved in keeping the books and the regularity of entries in them offered some guarantees of trustworthiness.

[2] 202 Wis. 184, 231 N.W. 634 (1930).

When the public officer made an investigation of a particular matter and prepared a report on it, the common law looked with less favor upon it. There is no such routine or regularity of entry as in keeping the books. At the other extreme is the situation where the public official prepares or signs a certificate which is to be given to a private individual. Here reliance must ordinarily be placed on the statutes.

In Ohio there apparently was no statute dealing with the admissibility of public documents in general. A considerable number provide for the admissibility of specified documents, usually transcripts, certificates or certified copies. In many states the reports of public officials whose duty it is to make an examination of particular businesses are specifically made admissible. Banks, insurance, lumbering and mines are so singled out in the laws of different states.

A more general statute is one in effect in Idaho,[3] which provides that entries in public or other official books or records made in the performance of his duty by a public officer are *prima facie* evidence of the facts stated. And a Wisconsin[4] statute provides: "Every official record, report or certificate made by any public officer, pursuant to law, is prima facie evidence of the facts which are therein stated and which are required or permitted to be by such officer recorded, reported or certified."

The hesitancy of the common law about receiving these reports of public officials was rapidly being overcome by statutes but the statutes varied greatly in scope. So a uniform act was suggested, which, as enacted in Ohio, provides:

Section 1. *Official reports made by officers of this state or certified copies of the same*, on a matter within the scope of their duty as defined by statute, shall, in so far as relevant, be admitted as evidence of the facts stated therein.

Section 2. Such report or finding shall be admissible only if the party offering it has delivered a copy of it or so much thereof as may relate

[3] Idaho Code 1932, 16-315.
[4] Wis. Statutes 1937, 327-18.

to the controversy, to the adverse party, a reasonable time before trial, unless in the opinion of the trial court the adverse party has not been unfairly surprised by the failure to deliver such copy.

Section 3. Any adverse party may cross-examine any person making such reports or findings or any person furnishing information used therein; but the fact that such testimony may not be obtainable shall not affect the admissibility of the report or finding, unless, in the opinion of the court, the adverse party is unfairly prejudiced thereby.

Section 4. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 5. This act may be cited as the Uniform Official Reports as Evidence Act.

Besides omitting the section in this, as well as the other uniform acts, providing for the repeal of inconsistent provisions, the only change occurs at the beginning of Section 1. The Legislature substituted "Official reports made by officers of this state, or certified copies of the same" for "Written reports or findings of fact made by officers of this state." The addition of the phrase "certified copies of the same" will make no material difference. As to whether the substitution of "official reports" for "written reports or findings of fact" will make any considerable difference will depend upon the construction given by the courts to the phrase "Official Reports." As drawn, the Act was intended to provide for the admission of the results of various investigators. "Written reports or findings of fact" more clearly indicates this than does "Official Reports." Yet the investigator ordinarily is an official, and he would ordinarily prepare a formal report of his work, so that the document would usually be admissible in either case. It is noticeable that the phrase "such report or finding" appears in the second and third sections, although there is no finding mentioned in the first section. This may tend to influence the court to give a broad interpretation to the phrase "official reports."

Again Section 1 is the heart of the act. Section 2 provides for notice to the adversary, but the court may admit the report

although no notice was given if it thinks that the adversary has not been unfairly surprised. This differs from the preceding act on that point because an Ohio Court is given no power to waive the requirements of notice in the Uniform Composite Reports Act.

Section 3 provides that the adversary may cross-examine the maker of the report if he desires but that the failure to obtain such testimony will not ordinarily make the report inadmissible. There is nothing radical in this provision. Many government books were admissible at common law although the entrant was unavailable, and the various statutes providing for the admissibility of all kinds of documents at least imply that the presence of the maker of the document will not be required.

Uniform Judicial Notice of Foreign Law Act

The common law rule is that a state will not take judicial notice of a foreign law. This was the old common law of England which has since been changed by statute. In the England of two or three centuries ago, foreign law usually meant the law of some other European country with a system of jurisprudence based on the Roman law and written in a language that English judges could not read. It was reasonable to require that such foreign laws should be proved in court.

The laws of another country are foreign to those of the United States and so must be proved. And since the country is a union of sovereign states, the law of each state is said to be foreign to the others. Yet practically all are based upon the common law and all are written in the same language. Similar problems confront the courts and most of them are answered in the same way. The judge is the court officer who must know and apply the local law, and a growing number of lawyers and judges can see no reason why he is not best fitted to apply the law of another jurisdiction. In a few states the court has declared that it will take judicial notice of the law of another

state. Nowhere has the argument been better stated than by the New Hampshire court:[5]

There is no sound theory that a judge knows the local law. If knowledge in all cases were assumed, briefs and arguments would be anomalous and inconsistent. When he does not know or have the law in mind, it is his duty to find out what it is in cases calling for its application. He may take judicial notice of it, not because of a supposed knowledge, but because it is contrary to judicial policy that local law should be ascertained in the manner facts are proved under the law of evidence. He either knows it or has the most competent knowledge where to search for it. . . .

In all states federal law is ascertained by the same process and on the same theory as domestic law. The judge searches for it and finds it out. This treatment is said to be because the federal laws are equally the laws of each state. The reason seems somewhat specious and open to the charge of opportunism. Between ascertaining federal law and foreign law there is no real difference of method by the trial judge.

In most states, however, the court has waited for the Legislature, and in the past twenty years about one-third of the states have passed laws permitting or instructing their courts to take judicial notice of the laws of other states. The acts varied considerably in details and so a uniform act was recommended to the states by the commissioners on uniform state laws. As enacted by the Ohio Legislature, the law provides:

Section 1. Every court of this state shall take judicial notice of the statutes of every state, territory and other jurisdiction of the United States.

Section 2. The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

Section 3. The determination of such laws shall be made by the court and not by the jury, and shall be reviewable.

Section 4. Any party may also present to the trial court any admissible evidence of such laws, but, to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties either in the pleadings or otherwise.

[5] *Saloshin* v. *Houle*, 85 N.H. 126, 155 Atl. 47 (1931).

Section 5. The law of a jurisdiction other than those referred to in Section 1 shall be an issue for the court, but shall not be subject to the foregoing provisions concerning judicial notice.

Section 6. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 7. This act may be cited as the Uniform Judicial Notice of Foreign Law Act.

Aside from omitting the usual section providing for repeal of inconsistent provisions in other acts, the only change was in omitting certain words in Section 1. As recommended by the Commissioners on Uniform State Laws, the act provided that the court should take judicial notice of *the common law* and statutes. As enacted, the act provides that the court shall take judicial notice of the statutes. By omitting the phrase, *the common law*, the Legislature has made a very material change in the law, and has probably reduced the effect of the uniform law by more than fifty per cent. While other states, by the passage of the uniform acts, or of other statutes, or by judicial construction are providing for the judicial notice of the laws of states other than themselves, Ohio has sharply limited the process. An Ohio judge is to take judicial notice of Ohio law, of federal law, and of the statutes of other states, but apparently not of the common law of other states. There seems little reason for drawing such a line of demarcation. The judge should be the best qualified individual on all of these matters and should be authorized to take judicial notice of all of them. The effect of the section is to make the Ohio law more like the old Uniform Proof of Statutes Act which was adopted by a few states in 1921 than like the recent Uniform Judicial Notice of Foreign Law Act.

A court may take judicial notice not only of what everyone knows, or what it knows as a court, but also of matters capable of exact ascertainment. So there is nothing startling in Section 2 which permits a court to inform itself as it deems proper or even to call upon counsel to assist.

Section 3 was designed to change another old rule of the common law. Since foreign law was regarded as a fact to be proved, it was often said that like other facts it should be proved to the satisfaction of the jury. But a jury is not well equipped to decide questions of law, and calling foreign law a fact does not add to the ability of the jury. Yet it is only in recent years that a majority of the courts have held that questions of foreign law are to be decided by the court and not by the jury. In Ohio it has frequently been held that the laws of other states and decisions of their courts must be proved in evidence as matters of fact.[6] But the court's control of the subject matter seems to have been pretty well settled in Ohio since the decision in *Alexander* v. *Pennsylvania Co.*[7]

In declaring that such laws shall be determined by the court and not by the jury, the section follows the prevailing modern theory. It is also a necessary conclusion from Section 1, since if a court will take judicial notice, it obviously follows that the determination is for the court and not the jury. But since the Ohio act provides only that judicial notice shall be taken of

[6] *Ingraham* v. *Hart*, 11 Ohio 255 (1842); *Smith* v. *Bartram*, 11 Ohio St. 690 (1860); *Bank* v. *Baker*, 15 Ohio St. 68 (1864); *Whelan's Executor* v. *Kingley's Administrator*, 26 Ohio St. 131 (1875); *Larwell* v. *Hanover Savings Fund Society*, 40 Ohio St. 274 (1883); *Williams* v. *Finlay*, 40 Ohio St. 342 (1883). And see sec. 11498 General Code.

[7] 48 Ohio St. 623, 30 N.E. 69 (1891). It does not follow from this, however, that where, as in the case at bar, numerous decisions of the several courts of a state are introduced in evidence to a jury as proof of the law of such state, that the jury should be required to search through them, elucidate and announce the doctrine they establish; this is often a most difficult and delicate duty for courts and judges of the greatest skill, learning and experience to undertake. To submit its performance to a body of men inexperienced on the examination and construction of judicial decisions, and not familiar with the general doctrines pertaining to the subject would be to submit the rights of parties involved in the controversy to be determined by a method little, if any, more certain than the cast of a die.

In such case it becomes the duty of the court, as in the case of any other documentary evidence requiring construction, to construe the decisions, the rulings of the trial court in this respect being subject to review by other courts having jurisdiction in error, thus securing as much certainty in ascertaining the law of another state or country as the nature of the subject will admit. And see to the same effect *Ott* v. *Lake Shore etc. R. Co.*, 18 Ohio C.C. 395, *aff'd* without opinion in 62 Ohio St. 661 (1899).

the statutes, Section 3 in speaking of "the determination of such laws" will be regarded as referring only to the statutes. This furnishes little assistance for the argument that the common law of another state should be decided by the court except for reasoning by analogy that if the statutes of other states are to be determined by judges their common law should also be so determined.

By Section 4 reasonable notice is to be given to the adverse party if the court is to be asked to take judicial notice of such laws. This is only fair. Otherwise an opponent might very easily be misled by a failure to appreciate that the case was to be tried by the law of another state.

Section 5 provides that the law of a foreign country shall be an issue for the court but shall not be subject to judicial notice. There are much greater differences between the laws of different countries than the laws of different states. Furthermore they are less accessible and so there is much more reason for requiring them to be proved. But under this section the determination of the law of another country is for the court and not the jury. There being no mention of such laws as in the three preceding sections, the effect is to make the Ohio law, in this respect, the same as that of states adopting the act without amendment. With this section holding clearly enough that the determination of the law of a foreign country is for the court, it seems safe to say that the court will reach the same result about the law of another state, although Section 3 gives us no answer to that question.

Section 6 expresses a pious hope that the act will be construed so as to make uniform the law of those states which enact it. This is difficult to reconcile with the amendment to Section 1. Other states are to judicially notice each other's common law and statutes, while Ohio is to take judicial notice only of their statutes. Uniformity of interpretation and construction would have been much more likely if the Legislature in the first place had enacted a truly uniform act.