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The Doctrine of Judicial Notice

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NOTES

THE DOCTRINE OF JUDICIAL NOTICE

The doctrine of "judicial notice" is an exception to the general rules of evidence.[1] It certainly cannot be laid down as a general proposition that courts can judicially notice matters of fact.[2] But there are many facts which it is not necessary to prove because they are so manifestly evident in relation to the case at hand that they are judicially noticed by the court.[3] In such cases the naked facts are of the same probative force as are other facts of a different nature that have been proven. Judicial notice is really a species of evidence, and in effect displaces evidence and stands for the same thing within the scope of its application.[4]

The full scope of the doctrine includes many limitations and possibilities and cannot well be covered in a few pages. Accordingly, the purpose of the writer is simply to define its general scope and application, and to notice particularly the recent decisions in this state on the subject.

According to Bouvier the term "judicial notice" is "a term used to express the doctrine of the acceptance by a court for the purposes of the case, of the truth of certain notorious facts without requiring proof."[5] In *United States* v. *Hammers, et al.*[6] the rule is stated thus: "judicial notice or knowledge may be defined as the cognizance of certain facts which courts may properly take an act upon without proof because they already know them." The Kansas court in *State* v. *Kelly*[7] said: "the term 'judicial notice' means no more than that the court will bring to its own aid and consider, without proof of the facts, its knowledge of those matters of public concern which are known by all well-informed persons." These general definitions are perhaps sufficient for all practical purposes. But a thorough knowledge of the subject can be obtained only by a study of specific cases.

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[1] *Greenbaum* v. *Bingham*, 201 N. Y. 343, 94 N. E. 853.
[2] *United States* v. *Wilson*, 7 Pet. 150, 8 Law Ed. 640.
[3] *Coulin* v. *San Francisco*, 99 Cal. 17, 33 Pac. 753, 37 Am. St. Rep. 17.
[4] *State* v. *Main*, 69 Conn. 123, 37 Atyl. 80 36 L. R. A. 623.
[5] *Bouvier's Law Dictionary*, Vol. II, p. 1734.
[6] 241 Fed. 542.
[7] 71 Kan. 811, 81 Pac. 450.

The general rule is that courts will take judicial cognizance of whatever is or ought to be generally known within the limits of their jurisdiction.[8] The general classes of facts which come within the realm of judicial notice are: judicial, legislative, political, historical, geographical, commercial, scientific, and artistic, in addition to a wide range of matters arising in the ordinary course of nature or the general current of human affairs which rest entirely upon acknowledged notoriety for their claims to judicial recognition.[9] Thus in the case of *United States* v. *La Vengeance*[10] the court judicially noticed the geographical position of Sandy Hook. And it may certainly notice similar facts, as that the Bay of New York, for instance, is within the ebb and flow of the tide.[11] Also, in the case of the Steamboat Thomas Jefferson[12] the libel claimed wages earned on a voyage from Shippingport in Kentucky up the Missouri river and back again to the place of departure. The decisive point in the case was whether the wages could be considered as earned in a maritime employment. The court took judicial notice of the fact that the tide did not ebb and flow within the range of the voyage.

The Kentucky cases on judicial notice follow the recognized principles which govern the doctrine in general.[13] It is the purpose of the writer now to turn to a more particular discussion of the most recent decisions of the Kentucky courts on the subject with the view of showing the modern trend of legal thought on the subject in this state.

An interesting phase of the doctrine is presented by the case of *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-operative Association,*[14] decided by the Court of Appeals of Kentucky, May 1, 1925. The purpose of the appeal was to test the constitutionality of a statute enacted Jan. 10, 1922, commonly known as the Bingham Co-operative Marketing Act, providing for tobacco growers' co-operative associations. At this time there was no statute in this state against pools, trusts and

[8] *Salomon* v. *State*, 28 Ala. 83.
[9] *Bouvier's Law Dictionary*, Vol. II, p. 1734.
[10] 3 Dall. 297, 1 Law Ed. 610.
[11] *Peyroux* v. *Howard*, 7 Pet. 324, 8 Law Ed. 700.
[12] 10 Wheat. 428, 6 Law Ed. 358.
[13] *Gnau, et al.* v. *Ackerman*, 166 Ky. 258, 179 S. W. 217; *Craig* v. *Durret*, 1 J. J. M. 365; *Baum* v. *Winston*, 3 Met. 127.
[14] 208 Ky. 643, 271 S. W. 695.

monopolies. The only law against such combinations was the common law. The question arose as to the power of a legislature to repeal the common law prevailing in the jurisdiction where it sits or to alter or modify the police power of a state. No evidence was presented to the court as to the general agricultural conditions prevailing in the state at the time the Bingham Co-operative Marketing Act was passed, or current events growing out of such conditions, and the attention of the court was not called to the fact that similar statutes had been held valid in other states. But the court said in the opinion:

"We take judicial knowledge of the history of the country and of current events, and from that source we know that conditions at the time of the enactment of the Bingham Act were such that the agricultural producer was at the mercy of speculators and others who fixed the price of the selling producer and the purchasing price of the final consumer through combinations and other arrangements, whether valid or invalid, and that by reason thereof the farmer obtained a grossly inadequate price for his products. So much so was that the case that the intermediate handlers between the producer and the final consumer injuriously operated upon both classes and fattened and flourished at their expense. It was and is a well-known fact that without the agricultural producer, society could not exist, and the oppression brought about in the manner indicated was driving him from his farm, thereby creating a condition fully justifying an exception in his case from any provision of the common law, and likewise justifying legislative action in the exercise of its police power.

"Co-operative marketing acts for agricultural products have been enacted in a great number of the agricultural states, the provisions of which are similar to and in many instances the same as are the provisions of the Bingham Act. They are all intended to accomplish the same ultimate end, and in each of those states they have been upheld in actions urging the same constitutional objections as are made here."

Thus it is seen that in this case the court took judicial notice of the history of the country, current events, economic conditions, and the laws of other states.

Another Kentucky case which deserves notice at this point is that of *Van Meter, et al. v. Commonwealth*,[15] decided by the Court of Appeals of Kentucky June 9, 1925, in which the court refused to take judicial notice of a fact specifically presented to it. The defendants were convicted of possessing intoxicating liquor. The indictment charged that the defendants "did unlawfully have and keep in their possession spirituous, vinous, and malt liquors, to-wit, still beer." The court in this case said:

"Our statute is directed against the possession of intoxicating liquor. While the indictment accuses appellants of possession of intoxicating liquor, yet, when it comes to describe the particular circumstances of the offense, it merely charges that they 'did unlawfully have and keep in their possession spirituous, vinous and malt liquors, to-wit, still beer,' without any allegation that the still beer was intoxicating. . . . While the courts will take judicial knowledge of the fact that ordinary, common beer is intoxicating, that rule does not apply to a particular kind of beer, which may or may not be intoxicating."

At first consideration this case seems to be rather technical and to turn on a nice distinction of terms. But the basis of the decision may be found by examining the Criminal Code. Under our Code the indictment must be direct and certain as regards (1) the party charged; (2) the offense charged; (3) the county in which the offense was committed; (4) the particular circumstances of the offense charged, if they are necessary to constitute a complete offense.[16] It is also essential that an indictment contain a statement of the acts constituting the offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended; and with such degree of certainty as to enable the court to pronounce judgment on conviction, according to the right of the case.[17]

Thus it is seen that this case is not properly a limitation upon the doctrine of judicial notice, but rests squarely upon the specific provisions of the Code.

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[15] 209 Ky. 465, 173 S. W. 36.
[16] Section 124, Criminal Code.
[17] Section 122, Criminal Code.

Another important phase of the doctrine is presented by the case of *Boreing et al.* v. *Garrard, et al.*,[18] decided May 19, 1925. This case was an equitable action to quiet title to land. The difficult question was to determine the location of the beginning point in an old survey described as a point ". . . on the bank of the west fork of the first creek that empties into Cumberland river above where the settlement road crosses, . . ." The court took judicial knowledge of the history and geography of the state and noticed that the city of Pineville, in Bell county, was built on the Cumberland river at a point where the settlement road crossed that river, saying in part:

"This court takes judicial knowledge of the history and geography of Kentucky. . . . We conclude from . . . the facts of the history and geography of our state, of which we take judicial knowledge, . . ."

The opinion in this case was evidently prepared with great care and after reference to many maps and records. The points involved are discussed at great length. But the principles recognized and applied by the court are laid down with accuracy, precision and insight. The doctrine of judicial notice as to historical and geographical facts is couched in terse and emphatic language and the facts therein noticed are given full probative effect. This is a leading case on the precise facts involved.

The case of *Louisville & Nashville Railroad Co.* v. *Birochik*,[19] decided February 27, 1925, is another important recent case which presents what seems to be a rather extreme view in the application of the doctrine of judicial notice. Plaintiff brought an action for $5,308.43 against the Louisville & Nashville Railroad Co. as damages for the loss of a shipment of household goods which he shipped over defendant's lines from Lynch via Hazard to Millstone. The court required plaintiff to file a list of the goods lost, and according to that paper his aggregate loss was $5,308.43. The goods were packed for shipment in one barrel, three tubs, two baskets, and a bucket. An itemized list of plaintiff's own personal apparel he claimed to have lost was: boots and shoes, $119.32; bath robes, $22.05; four suits of clothes, $437.40; fifteen suits of work clothes, $44.25; two

[18] 210 Ky. 135, 175 S. W. 375.
[19] 207 Ky. 595, 269 S. W. 720.

overcoats, $242.00; hose, $51.40; shirts, $61.25, etc. He claims his wife lost: three fur coats, $435.00; bath robes, $23.00; dresses and skirts, $802.95; shoes, $147.35; and hose, $81.00. The alleged value of silver knives, forks, spoons, etc., lost was $161.25, and of pictures of ex-presidents was $267.30. Plaintiff was a miner, and his average monthly wage was $141.13. He was the sole breadwinner of a family of eight and lived in three rented rooms. His domestic surroundings and apparent wealth were similar to those of other miners. The court took judicial notice of the inconsistency existing between plaintiff's income and surroundings and the alleged value of the goods lost, saying in part:

"Solomon in all his glory was not arrayed as appellee claims this family was, nor did he have any more in his palace than this appellee claims to have had in his three rooms. If he can go on the stage and by legerdemain take as many things out of a tub, basket, or barrel, as he says he put into these, he has a fortune in his grasp.

"The members of this court are not going to pretend to be more ignorant than the rest of men, or that matters of common knowledge are not also known to them. We know judicially that with the war prices of 1920, a coal miner earning $141.13 per month, could not pay his house rent, feed his family of eight and array them in any such style as the appellee claims. This claim is fraudulently extravagant."

This case seems to stretch the doctrine of judicial notice considerably in applying it to the financial status of plaintiff. It is open to severe criticism on this account. There are many ways to amass money other than by the ordinary savings from a rather meagre monthly income. Probably no other one thing is more universally varient than one's financial status at different times. This is especially true in the case of miners and people engaged in similar employments where work is usually irregular and wages fluctuate.

But there is no doubt that, on the facts presented, the decision in this case works complete justice There is undoubtedly a fatal inconsistency between the plaintiff's income and his extravagant claim. His surroundings and apparent wealth almost negative any possibility of his having this amount of money invested in property as extravagant in nature as that

set out in his own itemized list. If the particular facts in the case as presented to the court are carefully considered, and the fatal inconsistency involved therein is given full effect, it seems that the case is probably right on both legal and ethical principles. The chief objection presented by this conclusion is the difficulty the courts will meet with in the future in attempting to circumscribe the doctrine of this case within proper limits.

Thus it is seen that the doctrine of judicial notice is essentially general in nature. The reason for it is found in common sense. The universal test of the advisability of applying it in a particular case is whether the facts involved therein are or ought to be a matter of common knowledge. The recent Kentucky cases indicate that the modern trend of legal thought on the subject in this state is sufficiently conservative to be salutary and yet sufficiently liberal to be progressive. These cases represent the tendency of the courts to perpetuate fundamental principles liberally interpreted to meet immediate needs.

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