

NY CLS CPLR R 4540

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New York

Consolidated Laws Service >

Civil Practice Law And Rules (Arts. 1 — 100) >

Article 45 Evidence (§§ 4501 — 4551)

R 4540. Authentication of official record of court or government office in the United States.

(a) Copies Permitted. An official publication, or a copy attested as correct by an officer or a deputy of an officer having legal custody of an official record of the United States or of any state, territory or jurisdiction of the United States, or of any of its courts, legislature, offices, public bodies or boards is prima facie evidence of such record.

(b) Certificate of Officer of the State. Where the copy is attested by an officer of the state, it shall be accompanied by a certificate signed by, or with a facsimile of the signature of, the clerk of a court having legal custody of the record, and, except where the copy is used in the same court or before one of its officers, with the seal of the court affixed; or signed by, or with a facsimile of the signature of, the officer having legal custody of the original, or his deputy or clerk, with his official seal affixed; or signed by, or with a facsimile of the signature of, the presiding officer, secretary or clerk of the public body or board and, except where it is certified by the clerk or secretary of either house of the legislature, with the seal of the body or board affixed. If the certificate is made by a county clerk, the county seal shall be affixed.

(c) Certificate of Officer of Another Jurisdiction. Where the copy is attested by an officer of another jurisdiction, it shall be accompanied by a certificate that such officer has legal custody of the record, and that his signature is believed to be genuine, which certificate shall be made by a judge of a court of record of the district or political

subdivision in which the record is kept, with the seal of the court affixed; or by any public officer having a seal of office and having official duties in that district or political subdivision with respect to the subject matter of the record, with the seal of his office affixed.

(d) Printed Tariff or Classification Subject to Public Service Commission, Commissioner of Transportation or Interstate Commerce Commission. A printed copy of a tariff or classification which shows a public service commission or commissioner of transportation number of this state and an effective date, or a printed copy of a tariff or classification which shows an interstate commerce commission number and an effective date, is admissible in evidence, without certification, and is prima facie evidence of the filed original tariff or classification.

History

Formerly § 4540, add, L 1962, ch 308; amd, L 1962, ch 315, § 1, eff Sept 1, 1963; L 1970, ch 267, § 9, eff March 1, 1971.

Annotations

Notes

Derivation Notes:

Earlier statutes: CPA §§ 329, 330, 336, 382– 384, 388–391, 398-b, 399, 400, 402; CCP §§ 931-c, 933, 934, 941– 945, 957–959, 961-c; Code Proc § 426; 2 RS 403 § 59 (part); 2 RS 404 §§ 59 (part), 60.

Advisory Committee Notes:

This rule combines the following sections of the Civil Practice Act which are listed with their titles: 329, Form of certificate; 330, Certificate attested by seal; 336, Proof of payments by municipal corporation or officer thereof; 382, Proof of public records and papers; 383, Proof of

papers and records in town clerk's office; 384(2), Conveyance and record as evidence [see notes to sections transferred as Real Property Law § 313-b for subdivisions 3 and 4 and notes to CPLR rule 4539 for subd 1]; 388, Proof of municipal records; 390, Proof of books and records in certain state departments; 391, Proof of statutes, decrees and decisions of another state or country; 398-b, Authentication of copy; 399, Copies of records of United States courts; 400, Records and documents in United States departments; and 402, Record of conveyance or mortgage of vessels as evidence.

Subd (a) and (b) are former § 398-b with minor language changes in order to broaden the provision so that it covers all the provisions referred to above. The term "purporting" has been omitted. It is clear that the person who certifies must be the officer referred to but that at the time of reception of a self-authenticating document, the signatures and seals are assumed to be what they purport to be. The final sentence of former § 330 has been added to subd (b). **Subd (c)** is the second half of § 382 broadened to cover the detailed provisions in the former act. **Subd (d)** is the final sentence of former § 382 combined with the final sentence of former § 400.

Former § 336, in addition to providing for use of certain receipts in evidence, made them prima facie evidence of payment by a municipal corporation six years after the date of the receipt. This provision, taken from the Code of Civil Procedure, served little, if any, purpose in view of the short statute of limitation on contract actions. See CPLR § 213. Accordingly, it has been omitted.

Notes to Decisions

I.Under CPLR

1.Generally

II.Under Former Civil Practice Laws

A.Form Of Certificate

2.Generally

3.Sufficiency of certificate

4.Prior conviction

5.Foreign documents and records

6.Particular actions and proceedings

B.Proof of Public Records and Papers

7.Generally

8.Formalities

9.Objections

10.Regulations of administrative boards

11.Departmental regulations

12.Decedents' estates

13.Legislative journals

14.Census returns

15.Proceedings of board of supervisors

16.Certificate of incorporation

17.Report of railroad commissioners

18.Bill of sale

19.Chattel mortgage

20.Transcript of judgment

21.Transcript of power of attorney

22.Copy of land patent

23.Tax charts

24.Comptroller's deed

25.Certificate of conviction

C.Proof Of Papers And Records In Town Clerk's Office

26.Generally

27.Poll list

28.Proceedings at town meeting

29.Public highways

D.Proof Of Municipal Records

30.Generally

31.Prosecutions for violation

32.Counterclaim based on ordinance

E.Proof Of Statutes, Decrees, And Decisions Of Another State Or Country

33.Generally

34.Foreign law as question of fact

35.Judicial notice

36.—In appellate courts

37.Foreign statutes

38.—Constitution of another state

39.Foreign reports

40.Foreign common law

41.Foreign judgments

42.Federal court records

43.Marriage certificates

44.Charter of corporation

F.Records And Documents In United States Departments

45.Generally

46.Administrative and departmental regulations

47.Departmental reports and communications

48.National banks

49.Miscellaneous records

I. Under CPLR

1. Generally

An accident report made by the defendant to the Commissioner of Motor Vehicles, when properly certified, was receivable in evidence as an admission by the defendant in plaintiff's action to recover damages arising out of the collision of defendant's automobile with the rear end of plaintiff's allegedly stopped automobile. *Carter v Castle Electric Contracting Co.*, 26 A.D.2d 83, 271 N.Y.S.2d 51, 1966 N.Y. App. Div. LEXIS 4006 (N.Y. App. Div. 2d Dep't 1966).

Where removal of highway foreman from position was based upon two employment applications purportedly filed in the village clerk's office and a criminal record sheet obtained from a county

police department, there should have been testimony of the source of the official record and of the identity of such person with the criminal record sheet. *Marchesi v Cowan*, 31 A.D.2d 765, 297 N.Y.S.2d 595, 1969 N.Y. App. Div. LEXIS 4718 (N.Y. App. Div. 2d Dep't 1969).

A Motor Vehicle Accident Report is an "official record" within the meaning of the statute and, in the absence of other objections, a certified copy is receivable in evidence. In motor vehicle accident collision case, it was error to exclude a motor vehicle accident report to the effect that defendant's vehicle was making a left turn. *Welde v Wolfson*, 32 A.D.2d 973, 302 N.Y.S.2d 906, 1969 N.Y. App. Div. LEXIS 3368 (N.Y. App. Div. 2d Dep't 1969).

Where it did not appear that untainted evidence compelled conviction of selling dangerous drug in third degree and criminal possession of dangerous drug, new trial was mandated by errors consisting of: admission of evidence of defendant's flight, without proper foundation showing possible motive for such flight; reference by prosecutrix in her summation to fact not in evidence, which had incidental effect of circumventing court's ruling at Huntley hearing; and admission of non-exemplified copy of out-of-state motor vehicle registration that circumstantially connected defendant to vehicle from which he allegedly sold drugs to police. *People v Bradshaw*, 56 A.D.2d 657, 391 N.Y.S.2d 905, 1977 N.Y. App. Div. LEXIS 10793 (N.Y. App. Div. 2d Dep't 1977).

In the absence of any hint that documents constituting the record of defendant's prior predicate felony conviction in Puerto Rico were not genuine, the trial court did not abuse its discretion in refusing to permit defendant to object to the documents on the technical ground that they were not an "exemplified" copy as required by CPLR § 4540(c), where the documents had been received into evidence six weeks previously without objection by defendant. *People v Parsons*, 84 A.D.2d 510, 443 N.Y.S.2d 159, 1981 N.Y. App. Div. LEXIS 15526 (N.Y. App. Div. 1st Dep't 1981), *aff'd*, 55 N.Y.2d 858, 447 N.Y.S.2d 924, 432 N.E.2d 796, 1982 N.Y. LEXIS 3079 (N.Y. 1982).

The sentence imposed on a criminal defendant would be vacated and remanded for a new predicate felony hearing, where the trial court erroneously received into evidence, over

defendant's objection, certificates of conviction from another state which were not properly authenticated as required by CPLR § 4540 in that, while attested to, the certificates of conviction lacked the certificate, under seal, showing that the attester was the legal custodian of the records and that his signature was genuine. *People v Hines*, 90 A.D.2d 621, 456 N.Y.S.2d 235, 1982 N.Y. App. Div. LEXIS 18690 (N.Y. App. Div. 3d Dep't 1982).

A sentence would be affirmed against defendant's contention that he had not been previously convicted of a felony, notwithstanding that the People relied on a Pennsylvania judgment of conviction that was not properly certified under CPLR § 4540(c), where a police officer testified that he witnessed defendant's conviction, and where such testimony, though it presented hearsay and best evidence problems, was admitted without objection and was thus properly considered by the court as proof of a prior conviction. *People v Conklin*, 102 A.D.2d 829, 476 N.Y.S.2d 602, 1984 N.Y. App. Div. LEXIS 19010 (N.Y. App. Div. 2d Dep't 1984).

Individual who certifies document does more than merely state fact and actually vouches, attests, or warrants that information being certified is true, and court will not presume that statutory requirement of certification is meaningless. *Thalmann v Bullock*, 144 A.D.2d 174, 535 N.Y.S.2d 120, 1988 N.Y. App. Div. LEXIS 15076 (N.Y. App. Div. 3d Dep't 1988).

In action against owner of building under construction for injuries sustained when pedestrian was walking past building at night, was compelled to step into street because sidewalk was broken up, and was struck by barricade when passing automobile collided with it, court erred in refusing to admit copy of owner's construction permit and accompanying application despite having been certified as such by custodian of records since (1) CLS CPLR § 4540(a) excepts official records from mandates of best evidence rule of CLS CPLR § 4518(c), and (2) pedestrian had subpoenaed original from city, which had not produced it by time of trial. *Chanler v Manocherian*, 151 A.D.2d 432, 543 N.Y.S.2d 671, 1989 N.Y. App. Div. LEXIS 8884 (N.Y. App. Div. 1st Dep't 1989).

Sentencing court erred at second felony offender hearing when, over defendant's objection, it admitted into evidence certificates of conviction from Florida which were not accompanied by

certification required by CLS CPLR § 4540(c). *People v Acebedo*, 156 A.D.2d 369, 548 N.Y.S.2d 324, 1989 N.Y. App. Div. LEXIS 15437 (N.Y. App. Div. 2d Dep't 1989).

Defendant was improperly adjudicated as second felony offender where (1) minutes of defendant's guilty plea to prior felony, which sentencing court read into record did not comply with CPLR 4540(a) and (b), and (2) no attestation or certification of other documents relied on was ever shown. *People v Coleman*, 157 A.D.2d 845, 550 N.Y.S.2d 425, 1990 N.Y. App. Div. LEXIS 1030 (N.Y. App. Div. 2d Dep't 1990).

In enforcement proceeding brought under CLS Dom Rel § 244, husband was entitled to vacatur of filing of Georgia final judgment and decree of divorce since copy of Georgia judgment and decree was not accompanied by certificate required by CLS CPLR § 4540(c). *Waingort v Waingort*, 203 A.D.2d 453, 610 N.Y.S.2d 605, 1994 N.Y. App. Div. LEXIS 4009 (N.Y. App. Div. 2d Dep't 1994).

Although Maryland order of probation did not strictly comply with provisions of CLS CPLR § 4540(c), hearing officer did not abuse her discretion in admitting document on ground of its apparent authenticity, including outline of seal and "true copy" stamp of administrative clerk of district court of Maryland on court-generated non-jury trial report submitted with order and memorializing conviction for which sentence of probation was imposed. *Thomas v New York State Bd. of Parole*, 208 A.D.2d 460, 617 N.Y.S.2d 309, 1994 N.Y. App. Div. LEXIS 10487 (N.Y. App. Div. 1st Dep't 1994).

Defendants, city and lessee of city premises, were properly granted summary judgment where they showed that they did not have reasonably adequate opportunity after snowstorm ended to remedy condition caused by elements; court properly relied on data excerpted from publication of National Climatic Data Center, Division of United States Department of Commerce, in rendering its determination (CLS CPLR § 4540 (a)). *Flanagan v City of New York*, 243 A.D.2d 677, 663 N.Y.S.2d 864, 1997 N.Y. App. Div. LEXIS 10744 (N.Y. App. Div. 2d Dep't 1997).

Stamp "Certified True Copy" on insurance report was insufficient to constitute self-authentication under CLS CPLR §§ 4540(a) or 4520. *Consol. Edison Co. of N.Y. v Allstate Ins. Co.*, 283 A.D.2d 322, 724 N.Y.S.2d 853, 2001 N.Y. App. Div. LEXIS 5364 (N.Y. App. Div. 1st Dep't 2001), *aff'd*, 98 N.Y.2d 208, 746 N.Y.S.2d 622, 774 N.E.2d 687, 2002 N.Y. LEXIS 1041 (N.Y. 2002).

While defendant was properly convicted of, *inter alia*, rape in the first degree, defendant's sentence was improper because at the second felony offender hearing, a certificate of conviction from South Carolina was not accompanied by the required certification under N.Y. C.P.L.R. 4540(c) and was admitted into evidence over defendant's objection. *People v Redmond*, 41 A.D.3d 514, 837 N.Y.S.2d 710, 2007 N.Y. App. Div. LEXIS 6858 (N.Y. App. Div. 2d Dep't 2007), *app. denied*, 16 N.Y.3d 745, 917 N.Y.S.2d 627, 942 N.E.2d 1052, 2011 N.Y. LEXIS 625 (N.Y. 2011).

Although a certification that accompanied a copy of defendant's court-martial records did not strictly comply with N.Y. C.P.L.R. 4540, the records were reliable hearsay and under N.Y. Correct. Law §§ 168-k(2), 168-n(3), they could be considered in defendant's sex offender classification proceeding. The certification of authenticity was signed by a Deputy Assistant Judge Advocate General and attested that the records were a copy of those on file in the Office of the Judge Advocate General. *People v Wheeler*, 46 A.D.3d 1082, 848 N.Y.S.2d 391, 2007 N.Y. App. Div. LEXIS 12628 (N.Y. App. Div. 3d Dep't 2007).

Certificate of conviction issued in Pennsylvania that was signed under seal of a Pennsylvania common pleas court by the court clerk of that court who attested that the records submitted were a true copy of records held on file in the common pleas court, substantially complied with N.Y. C.P.L.R. 4540 and was properly admitted in defendant's New York revocation of probation hearing. *People v Feliciano*, 54 A.D.3d 1131, 864 N.Y.S.2d 221, 2008 N.Y. App. Div. LEXIS 6898 (N.Y. App. Div. 3d Dep't 2008).

Authenticated and exemplified copy of divorce decree was admissible under CPLR § 4543 to establish that defendant ex-husband was not married to patient at time she incurred hospital expenses for which hospital sought to hold ex-husband liable, irrespective of whether such

documentary evidence complied with provisions of CPLR § 4540. *Lenox Hill Hospital v Firkal*, 74 Misc. 2d 577, 345 N.Y.S.2d 325, 1973 N.Y. Misc. LEXIS 1904 (N.Y. Civ. Ct. 1973).

Copy of utility's rate schedule, which showed a commission number and file date, though uncertified, was prima facie evidence of a filed original tariff or classification and the exemption of the utility from liability for the interruption of its service arising from the ordinary negligence of its employees, servants, or agents contained therein. *Newman v Consolidated Edison Co.*, 79 Misc. 2d 153, 360 N.Y.S.2d 141, 1973 N.Y. Misc. LEXIS 1265 (N.Y. App. Term 1973).

In order to demonstrate the reliability of a breathalyzer test in a prosecution for operating a motor vehicle while under the influence of alcohol or drugs, a document, consisting of a photocopy of ampoule analysis results, and an original certification containing a declaration that the record of the results was made in the regular course of business with State seals on both, complies with CPLR 4540 (subds [a], [b]) which authorizes certification of a copy of an official record by a public officer and permits authentications by the officer's signature or its facsimile and the appropriate seal, and, therefore, the photocopy is not subject to objection; however, CPLR 4540 merely obviates the objection to the best evidence rule, so the original document itself must be admissible under an exception to the hearsay rule. *People v Hoats*, 102 Misc. 2d 1004, 425 N.Y.S.2d 497, 1980 N.Y. Misc. LEXIS 2050 (N.Y. County Ct. 1980).

In trial for speeding, photocopies of "Certification pursuant to CPLR 4518 of Records Maintained in the Regular Course of Business," prepared Bureau for Municipal Police, and bureau's reports concerning accuracy of radar unit used to measure defendant's speed, were admissible under CLS CPLR § 4518 since (1) copies of original documents in bureau's custody, sent to local police department as matter of bureau's business duty, were business records of local department, (2) such copies were also admissible as "other records" under § 4518(c) because they were police department "papers" under CLS CPLR § 2307, and (3) formalities of certification contained in CLS CPLR § 4540(b) are not required by § 4518(c), and thus officer's affidavit to which copies were annexed, stating that documents were true, complete copies of

original records, constituted sufficient certification. *People v Farrell*, 137 Misc. 2d 926, 523 N.Y.S.2d 383, 1987 N.Y. Misc. LEXIS 2738 (N.Y. J. Ct. 1987).

In prosecution for driving while ability is impaired by alcohol in violation of CLS Veh & Tr § 1192(1), copies of test results could not be admitted as business records in absence of seals required by CLS CPLR § 4540(b) and either certification by head of agency, or statement that police officer who signed had been designated as legal custodian of records. *People v Fiocco*, 146 Misc. 2d 330, 549 N.Y.S.2d 901, 1989 N.Y. Misc. LEXIS 830 (N.Y. City Ct. 1989).

Complaint alleging defendant's lack of general vending license was not converted into information satisfying non-hearsay requirements of CLS CPL § 100.40(1)(c) by filing of superseding affidavit by Assistant Director of License Issuance at Department of Consumer Affairs, even though affidavit recited that affiant was custodian of department's license files, thus satisfying requirement of CLS CPLR § 4521 that certification be made by officer having legal custody of original files, since affidavit did not have official seal affixed to it, which was necessary under § 4521 and, in turn, CLS CPLR § 4540(b). *People v Ebrahimha*, 157 Misc. 2d 217, 596 N.Y.S.2d 295, 1992 N.Y. Misc. LEXIS 653 (N.Y. City Crim. Ct. 1992).

In prosecution for aggravated unlicensed operation of motor vehicle, defendant was entitled to trial order of dismissal based on insufficiency of evidence where Department of Motor Vehicles (DMV) abstract of his driving record did not qualify as valid certificate by DMV Commissioner pursuant to CLS CPLR § 4540, and thus was not admissible under CLS CPLR § 4520, because official DMV seal was preprinted on otherwise blank forms before any data was placed thereon. *People v Watson*, 167 Misc. 2d 441, 634 N.Y.S.2d 634, 1995 N.Y. Misc. LEXIS 518 (N.Y. City Crim. Ct. 1995).

Defendant could not be convicted of violating terms of his probation due to his subsequent conviction for misdemeanor assault and resisting arrest, where prosecutor attempted to prove later conviction by photocopy of certificate of conviction of town court in which defendant was convicted, together with photocopy of attorney's certification; copy of certification was tantamount to no certification, and thus copy of certificate of conviction lacked attestation

required by CLS CPLR § 4540. *People v Sykes*, 167 Misc. 2d 588, 638 N.Y.S.2d 1010, 1995 N.Y. Misc. LEXIS 671 (N.Y. Sup. Ct. 1995), *aff'd*, 225 A.D.2d 1093, 639 N.Y.S.2d 188, 1996 N.Y. App. Div. LEXIS 2995 (N.Y. App. Div. 4th Dep't 1996).

In prosecution for felony driving while under influence of alcohol, facsimile of driving record abstract maintained by Department of Motor Vehicles (DMV) was legally sufficient to establish defendant's identity and prior convictions for driving while intoxicated within preceding 10 years, where official seal and certification of DMV records were placed on document simultaneously with driving record information, which satisfied authentication requirement of public records exception to hearsay rule. *People v Baker*, 183 Misc. 2d 650, 705 N.Y.S.2d 846, 2000 N.Y. Misc. LEXIS 48 (N.Y. County Ct. 2000).

Accident report prepared by a police department clerk who did not witness the accident and which consisted of statements made to the clerk by the injured party could not be admitted as an official record of a government agency because it was not certified. *Brown v Reece*, 194 Misc. 2d 269, 753 N.Y.S.2d 825, 2003 N.Y. Misc. LEXIS 8 (N.Y. Civ. Ct. 2003).

Where the attestation made by a deputy clerk on behalf of the clerk of a Michigan court stated that the clerk of the court was the custodian of records of the court, that she had compared the attached copy of the money judgment to the original on file at the court and that the copy of the judgment was a true copy of the original and a judge certified that the attestation was in the proper form and that the signature was genuine, the requirement of Civil Practice Law and Rules 4540 were met, and the foreign judgment was properly authenticated. *Sparaco v Sparaco*, 309 A.D.2d 1029, 765 N.Y.S.2d 683, 2003 N.Y. App. Div. LEXIS 10949 (N.Y. App. Div. 3d Dep't 2003), *app. denied*, 2 N.Y.3d 702, 778 N.Y.S.2d 461, 810 N.E.2d 914, 2004 N.Y. LEXIS 559 (N.Y. 2004).

Civil court erred in granting the occupants' motion to dismiss and in denying, as moot, a foreclosure-sale purchaser's cross-motion for summary judgment in his summary proceeding because the two attempts at service of process satisfied the reasonable application standard for purposes of obtaining a final judgment of possession, a copy of the referee's deed was not only

shown to one of the occupants, but placed in her hand, and while the photocopies of the referee's deed that were served on occupants did not bear an original seal, the signature of the purchaser's attorney on the original certification comported with the statutory requirements. *Plotch v Dellis*, 60 Misc. 3d 1, 75 N.Y.S.3d 779, 2018 N.Y. Misc. LEXIS 1375 (N.Y. App. Term 2018).

Court erred in adjudicating defendant as a second felony offender because while the People sought to utilize a 2015 conviction in Massachusetts as a predicate felony, the People's submissions lacked a certificate, under seal, showing that the attestor was a legal custodian of records and that the signature was genuine as required by CPLR 4540(c). *People v Caraballo*, 213 A.D.3d 1152, 183 N.Y.S.3d 625, 2023 N.Y. App. Div. LEXIS 1023 (N.Y. App. Div. 3d Dep't 2023).

II. Under Former Civil Practice Laws

A. Form Of Certificate

2. Generally

Contents of record cannot be proved by "officer in charge," but must be shown by certified copy of record. *Bonnano v Metz Bros. Co.*, 188 A.D. 380, 177 N.Y.S. 51, 1919 N.Y. App. Div. LEXIS 7753 (N.Y. App. Div. 1919).

CPA § 398 (§ 4542(c) herein) was to be read in conjunction with CPA § 329. *In re Asterio's Estate*, 16 N.Y.S.2d 943, 172 Misc. 1081, 1939 N.Y. Misc. LEXIS 2631 (N.Y. Sur. Ct. 1939).

Requisites to make transcripts of bill of sale, of vessel, etc., admissible in evidence. *Redford v Snow*, 46 Hun 370, 12 N.Y. St. 323 (N.Y.).

3. Sufficiency of certificate

Statement by Polish officer, in certifying marriage record, that “the authenticity of the foregoing extract from the original is hereby attested to by my signature and official seal” is tantamount to certificate that copy has been compared with original and that it is correct transcript therefrom. *De Yong v De Yong*, 263 A.D. 291, 32 N.Y.S.2d 505, 1942 N.Y. App. Div. LEXIS 6870 (N.Y. App. Div. 1942).

Certificate of clerk that he has compared the record of judgment with the original and “found the same to be a full, exact and correct transcript therefrom, and of the whole of the said original record,” conformed to the requirements of CPA § 329 and U. S. Rev St, § 905. *Gustavus v Dahlmer*, 163 N.Y.S. 132, 98 Misc. 462, 1917 N.Y. Misc. LEXIS 772 (N.Y. Sup. Ct. 1917).

Photostatic copy of attachment warrant filed in county clerk’s office, stamped on back “copy of order duly entered in Office of Clerk of Kings County” and subscribed by plaintiff’s attorney, was insufficient. *Nomikos (London), Ltd. v Petroutsis*, 60 N.Y.S.2d 802, 186 Misc. 710, 1946 N.Y. Misc. LEXIS 1948 (N.Y. Sup. Ct. 1946).

4. Prior conviction

Prior conviction could be established according to common law or under CPA §§ 329, 330, 382. *People v McIntyre*, 163 N.Y.S. 528, 99 Misc. 17, 1917 N.Y. Misc. LEXIS 500 (N.Y. Sup. Ct. 1917).

5. Foreign documents and records

Certification and authentication of copy of foreign birth record. *People v Todoro*, 224 N.Y. 129, 120 N.E. 135, 224 N.Y. (N.Y.S.) 129, 1918 N.Y. LEXIS 865 (N.Y. 1918).

A certified copy of a physician’s certificate of death, recorded in another state, is improper unless it states, “that it has been compared by him with the original and that it is a correct transcript therefrom and of the whole of the original.” *Nolan v Nolan*, 35 A.D. 339, 54 N.Y.S. 975, 1898 N.Y. App. Div. LEXIS 2572 (N.Y. App. Div. 1898).

Special provision, such as was made in CPA § 398 (§ 4542(c) herein) as to foreign documents, rendered CPA § 329 inapplicable. *De Yong v De Yong*, 263 A.D. 291, 32 N.Y.S.2d 505, 1942 N.Y. App. Div. LEXIS 6870 (N.Y. App. Div. 1942).

6. Particular actions and proceedings

The provisions of CPA § 329 were inapplicable to demand in extradition proceedings, and papers were sufficiently authenticated if they complied with CCrp § 830. *People ex rel. Gadson v Hoy*, 285 A.D. 974, 138 N.Y.S.2d 704, 1955 N.Y. App. Div. LEXIS 6340 (N.Y. App. Div.), cert. denied, 350 U.S. 829, 76 S. Ct. 60, 100 L. Ed. 740, 1955 U.S. LEXIS 445 (U.S. 1955).

B. Proof of Public Records and Papers

7. Generally

A certified copy of a paper filed in a public office is not competent, unless the original, if produced, is competent evidence. *Donohue v Whitney*, 133 N.Y. 178, 30 N.E. 848, 133 N.Y. (N.Y.S.) 178, 1892 N.Y. LEXIS 1297 (N.Y. 1892).

CPA § 382 merely provided that a paper so authenticated as therein provided, had the same but only the same force and effect as the original, but the production of a note authenticated as provided in the section did not prove as an example that a person who signed as a director was in fact a director of the corporation. *Bank of Metropolis v Faber*, 38 A.D. 159, 56 N.Y.S. 542, 1899 N.Y. App. Div. LEXIS 480 (N.Y. App. Div. 1899).

8. Formalities

A complaint not served is proof of the jurisdictional facts; a copy of the judgment roll in an action in the city court of Mount Vernon is properly authenticated by the certificate of the clerk of the

court. *Phipps v Oprandy*, 69 A.D. 497, 74 N.Y.S. 985, 1902 N.Y. App. Div. LEXIS 474 (N.Y. App. Div. 1902).

A transcript of a part of the record containing the assessment against the defendant, certified by the chief clerk of the department of taxes, was not competent in evidence, where such certificate has no seal attached to it. *New York v Vanderveer*, 91 A.D. 303, 86 N.Y.S. 659, 1904 N.Y. App. Div. LEXIS 370 (N.Y. App. Div. 1904).

9. Objections

It was only when a transcript provided for by CPA § 382 was offered in evidence that the person making the report filed in a public office would have had occasion to object on the ground that its contents might incriminate him. *People ex rel. Stenstrom v Harnett*, 224 A.D. 127, 230 N.Y.S. 28, 1928 N.Y. App. Div. LEXIS 9947 (N.Y. App. Div.), *aff'd*, 249 N.Y. 606, 164 N.E. 602, 249 N.Y. (N.Y.S.) 606, 1928 N.Y. LEXIS 965 (N.Y. 1928).

General objection to admission in evidence of record on appeal in another case, that it was not properly authenticated, was unavailing. *Nastasi v State*, 86 N.Y.S.2d 635, 194 Misc. 449, 1949 N.Y. Misc. LEXIS 1809 (N.Y. Ct. Cl.), *rev'd*, 275 A.D. 524, 90 N.Y.S.2d 377, 1949 N.Y. App. Div. LEXIS 3810 (N.Y. App. Div. 1949).

Compiled reports from public records will not be excluded as hearsay and as admitted without proper foundation laid, where such objection is not specifically made when reports are admitted in evidence. *People ex rel. New York C. R. Co. v Vincent*, 68 N.Y.S.2d 202, 1947 N.Y. Misc. LEXIS 2051 (N.Y. Sup. Ct. 1947).

10. Regulations of administrative boards

Civil service regulations of a city filed in the office of the state civil service commission may be proved by producing a copy duly certified by the secretary of state commission; how objection to

certification should be taken on trial. *People ex rel. Sears v Tobey*, 153 N.Y. 381, 47 N.E. 800, 153 N.Y. (N.Y.S.) 381, 1897 N.Y. LEXIS 711 (N.Y. 1897).

The regulations issued by the Federal Food and Drug Commission and the State Commissioner of Agriculture and Markets were inadmissible in evidence where not authenticated as provided by CPA §§ 382, 400. *Lash, Inc. v A. C. Ogden Milk Co.*, 297 N.Y.S. 1008, 163 Misc. 407, 1937 N.Y. Misc. LEXIS 1430 (N.Y. City Ct. 1937).

OPA regulations may be proved by original or certified copy, but not by printed circular characterized as copy. *People ex rel. Liebert v Lipoff*, 45 N.Y.S.2d 636, 181 Misc. 618, 1943 N.Y. Misc. LEXIS 2680 (N.Y. Magis. Ct. 1943).

11. Departmental regulations

Proof of departmental rules and regulations of canal navigation may be made pursuant to CPA § 382. *Hart v State*, 78 N.Y.S.2d 734, 192 Misc. 492, 1948 N.Y. Misc. LEXIS 2307 (N.Y. Ct. Cl. 1948).

Interdepartmental communications, see *Vanadium Corp. v Fidelity & Deposit Co.*, 159 F.2d 105, 1947 U.S. App. LEXIS 2440 (2d Cir. N.Y. 1947).

12. Decedents' estates

Where complaint alleges death of intestate, and due appointment of plaintiff as administrator, and answer only contains a general denial, the letters of administration are sufficient prima facie to establish plaintiff's representative capacity. *Belden v Meeker*, 47 N.Y. 307, 47 N.Y. (N.Y.S.) 307, 1872 N.Y. LEXIS 20 (N.Y. 1872).

By chap. 311 of 1864 and chap. 680 of 1872, exemplified copy of a will proved in a foreign state, when recorded, is made equivalent to proof of a will in this state. See *Bromley v Miller*.

13. Legislative journals

When an executor claims that the act authorizing the transfer tax is unconstitutional in that three-fifths of the members of both houses, as required by the Constitution, are not shown to have been present by the certificates of the presiding officers of said houses as required by the Legislative Law, § 40, certified copies of the journals of the two houses and corrected certificates filed by the presiding officers thereof are admissible to show that in fact three-fifths of the members were present. *In re Weeks' Estate*, 109 A.D. 859, 96 N.Y.S. 876, 1905 N.Y. App. Div. LEXIS 3677 (N.Y. App. Div. 1905), *aff'd*, 185 N.Y. 541, 77 N.E. 1197, 185 N.Y. (N.Y.S.) 541, 1906 N.Y. LEXIS 947 (N.Y. 1906).

14. Census returns

Census returns are not admissible to prove date of birth. *Maher v Empire Life Ins. Co.*, 110 A.D. 723, 96 N.Y.S. 496, 1906 N.Y. App. Div. LEXIS 59 (N.Y. App. Div. 1906).

15. Proceedings of board of supervisors

The record of proceedings of board of supervisors printed by authority of the board is competent, and the testimony of the printer that the book was printed by authority of the board sufficient *prima facie*. *People v De Graff*, 6 N.Y. St. 412.

16. Certificate of incorporation

A certificate of incorporation filed with the secretary of state, as provided by the General Corporation Law, § 5, or a certified copy thereof, is presumptive evidence of the incorporation and of the facts set forth in the certificate. *Acker, Merrall & Condit v Richards*, 63 A.D. 305, 71 N.Y.S. 929, 1901 N.Y. App. Div. LEXIS 1602 (N.Y. App. Div. 1901).

17. Report of railroad commissioners

The fact that the law requires a report from the railroad commissioners to the legislature, and that they are authorized to distribute copies thereof, does not supply the requirements of the statute with respect to their being received in evidence. *Bella v New York, L. & W. R. Co.*, 6 N.Y.S. 552, 1889 N.Y. Misc. LEXIS 680 (N.Y. Super. Ct. 1889).

18. Bill of sale

Certified copy of a bill of sale which was filed pursuant to law may be received in evidence as if the original were produced. *Polykranas v Krausz*, 73 A.D. 583, 77 N.Y.S. 46, 1902 N.Y. App. Div. LEXIS 1611 (N.Y. App. Div. 1902).

19. Chattel mortgage

A certified copy of a chattel mortgage made by the clerk or register where the same is filed, is evidence only of filing. *George v Toll*, 39 How. Pr. 497, 1870 N.Y. Misc. LEXIS 182 (N.Y. Sup. Ct. July 1, 1870).

20. Transcript of judgment

CPA § 382 authorizing the admission of a transcript of a judgment, provided only that a judgment for some cause of action had been docketed but it did not prove what such judgment was for. *Non-Electric Fibre Mfg. Co. v Peabody*, 28 A.D. 442, 51 N.Y.S. 111, 5 N.Y. Ann. Cas. 271, 1898 N.Y. App. Div. LEXIS 843 (N.Y. App. Div. 1898).

While the transcript of a judgment is not evidence of the contents of the judgment roll, so as to operate as an estoppel, yet, under the provisions of CPA § 382, it was evidence of the fact that a judgment had been duly recovered, and of all of the matters which it recited under the provisions of law, for the purpose of showing the right of the party recovering the judgment to maintain a judgment creditor's action. *Bailey v Fransioli*, 101 A.D. 140, 91 N.Y.S. 852, 1905 N.Y. App. Div. LEXIS 324 (N.Y. App. Div. 1905).

21. Transcript of power of attorney

A transcript certified to by the proper officer of a power of attorney authorizing the conveyance of land recorded in the clerk's office of county in which the land is situated, is competent as evidence. *Lerche v Brasher*, 104 N.Y. 157, 10 N.E. 58, 104 N.Y. (N.Y.S.) 157, 4 N.Y. St. 335, 1887 N.Y. LEXIS 578 (N.Y. 1887).

22. Copy of land patent

CPA § 382 made a certified copy of a land patent filed in the office of the secretary of state evidence which the court was bound to receive. *New York C. & H. R. R. Co. v Brockway Brick Co.*, 158 N.Y. 470, 53 N.E. 209, 158 N.Y. (N.Y.S.) 470, 1899 N.Y. LEXIS 698 (N.Y. 1899).

23. Tax charts

Charts showing default in paying taxes on mortgaged property, prepared from tax records by public accountant and aides, were admissible where he and one assistant testified and where certification would have been most expensive. *United States v Mortimer*, 118 F.2d 266, 1941 U.S. App. LEXIS 3982 (2d Cir. N.Y.), cert. denied, 314 U.S. 616, 62 S. Ct. 58, 86 L. Ed. 496, 1941 U.S. LEXIS 345 (U.S. 1941).

24. Comptroller's deed

The comptroller's deed, although made conclusive evidence of the regularity of the sale, is not conclusive as to publication of the redemption notice after the sale. *Westbrook v Willey*, 47 N.Y. 457, 47 N.Y. (N.Y.S.) 457, 1872 N.Y. LEXIS 44 (N.Y. 1872).

25. Certificate of conviction

Certificate of conviction made by court of special sessions and filed in county clerk's office, is conclusive evidence of facts therein stated. *People v Powers*, 6 N.Y. 50, 6 N.Y. (N.Y.S.) 50, 1851 N.Y. LEXIS 99 (N.Y. 1851).

Prior conviction could have been established according to common law or under CPA §§ 329, 330, 382. *People v McIntyre*, 163 N.Y.S. 528, 99 Misc. 17, 1917 N.Y. Misc. LEXIS 500 (N.Y. Sup. Ct. 1917).

C. Proof Of Papers And Records In Town Clerk's Office

26. Generally

The town clerk's certificate, in whose office chattel mortgage is filed, is no proof of the existence of the mortgage. The original must be produced or its nonproduction accounted for. *Bissell v Pearce*, 28 N.Y. 252, 28 N.Y. (N.Y.S.) 252, 1863 N.Y. LEXIS 66 (N.Y. 1863).

A copy of a chattel mortgage certified by the town clerk, the originals whereof were an alleged chattel mortgage and alleged acknowledgment, is no proof of the execution of the mortgage, as no proof of such execution need be in the instrument to require the clerk to file it. *Maxwell v Inman*, 42 Hun 265, 5 N.Y. St. 100 (N.Y.).

27. Poll list

Poll list admissible to show that person voted. *THE PEOPLE ex rel. SMITH*, appellants *DIODATE PEASE*, 25 How. Pr. 495, 1863 N.Y. Misc. LEXIS 263 (N.Y. Mar. 1, 1863); see *People v Cook*, 8 N.Y. 67, 1853 N.Y. LEXIS 12 (N.Y. 1853).

28. Proceedings at town meeting

Town clerk's minutes of proceedings of a town meeting conclusive. *People ex rel. Burr v Zeyst*, 23 N.Y. 140, 23 N.Y. (N.Y.S.) 140, 1861 N.Y. LEXIS 10 (N.Y. 1861).

29. Public highways

As to record in laying out public highway, see *Van Bergen v Bradley*, 36 N.Y. 316, 36 N.Y. (N.Y.S.) 316, 1867 N.Y. LEXIS 49 (N.Y. 1867).

D. Proof Of Municipal Records

30. Generally

An ordinance could not be proved by introduction of a pamphlet which was not a certified copy, nor a volume printed by authority of the common council of board of aldermen. *People v Cronin*, 154 N.Y.S. 446, 91 Misc. 342, 1915 N.Y. Misc. LEXIS 971 (N.Y. Gen. Sess. 1915).

31. Prosecutions for violation

Conviction for operating motor vehicle in violation of city ordinance was without authority unless the ordinance was proved. *People v Traina*, 155 N.Y.S. 1015, 92 Misc. 82, 1915 N.Y. Misc. LEXIS 696 (N.Y. Gen. Sess. 1915).

32. Counterclaim based on ordinance

The right to a counterclaim based upon a city ordinance could not be allowed where the ordinance was not proved as required by CPA § 388. *Sachs v Lyons*, 103 N.Y.S. 149, 53 Misc. 640, 1907 N.Y. Misc. LEXIS 315 (N.Y. App. Term 1907).

E. Proof Of Statutes, Decrees, And Decisions Of Another State Or Country

33. Generally

As to laws of foreign countries. See *Monroe v Douglass*, 5 N.Y. 447, 5 N.Y. (N.Y.S.) 447, 1851 N.Y. LEXIS 63 (N.Y. 1851).

Applies to Canada as well as the Kingdom of Great Britain. *Lazier v Westcott*, 26 N.Y. 146, 26 N.Y. (N.Y.S.) 146, 1862 N.Y. LEXIS 192 (N.Y. 1862).

CPA § 391 cited on question of reports and statutes as determinative of the law of divorce in a foreign jurisdiction. *Ball v Cross*, 231 N.Y. 329, 132 N.E. 106, 231 N.Y. (N.Y.S.) 329, 1921 N.Y. LEXIS 642 (N.Y. 1921).

Proof of foreign laws is made to the court to enable it to instruct the jury what, in point of law, is the result of the foreign law to be applied to the matters in controversy. *Fitzpatrick v International R. Co.*, 252 N.Y. 127, 169 N.E. 112, 252 N.Y. (N.Y.S.) 127, 1929 N.Y. LEXIS 535 (N.Y. 1929).

CPA § 391 had not changed the law. It referred to additional evidence and not to a case where no evidence was produced and where the case was not tried on the theory that the foreign law was different from our own. *Cherwien v Geiter*, 272 N.Y. 165, 5 N.E.2d 185, 272 N.Y. (N.Y.S.) 165, 1936 N.Y. LEXIS 885 (N.Y. 1936).

In an action for the construction of a will, where it is necessary to prove the unwritten laws of the republic of Switzerland, the court should not refuse to grant a commission, because they may be shown by lawyers of the city of New York who are versed in such laws; where it appears that the action is at issue in regard to the defendants who applied for a commission the fact that it is not at issue as to other defendants does not constitute the granting for a denial of the motion for a commission. *Boyes v Bossard*, 87 A.D. 605, 84 N.Y.S. 563, 1903 N.Y. App. Div. LEXIS 2707 (N.Y. App. Div. 1903).

The question of proof of records and documents without the state was regulated by CPA §§ 391-398. *In re Smith's Estate*, 242 N.Y.S. 464, 136 Misc. 863, 1930 N.Y. Misc. LEXIS 1318 (N.Y. Sur. Ct. 1930).

Domestic relations court of New York city is not court of record, and CPA § 391 did not apply to such court, which is bound by common-law rule that law of sister state or foreign country is fact to be proved by evidence in same manner as any other fact. *Denton v Denton*, 37 N.Y.S.2d 704, 179 Misc. 681, 1942 N.Y. Misc. LEXIS 2089 (N.Y. Dom. Rel. Ct. 1942).

Repeal by L 1943, ch 536, of provision in CPA § 391 permitting court, in determining foreign law, to consult written authorities not offered in evidence, was made because CPA (now § 4535 herein) § 344-a covered same subject. *Arams v Arams*, 45 N.Y.S.2d 251, 182 Misc. 328, 1943 N.Y. Misc. LEXIS 2938 (N.Y. Sup. Ct. 1943).

34. Foreign law as question of fact

Usury laws of another state affecting contract, must be proved. *Davis v Garr*, 6 N.Y. 124, 6 N.Y. (N.Y.S.) 124, 1851 N.Y. LEXIS 111 (N.Y. 1851); *Cutler v Wright*, 22 N.Y. 472, 22 N.Y. (N.Y.S.) 472, 1860 N.Y. LEXIS 50 (N.Y. 1860).

Evidence must be introduced at the trial and cannot be offered on appeal. *Hunt v Johnson*, 44 N.Y. 27, 44 N.Y. (N.Y.S.) 27, 1870 N.Y. LEXIS 123 (N.Y. 1870).

The law of another State or of a foreign country must be proved like any other fact. *Phillips v Griffen*, 236 A.D. 209, 259 N.Y.S. 105, 1932 N.Y. App. Div. LEXIS 5935 (N.Y. App. Div. 1932).

Action for personal injuries in Louisiana automobile accident, brought directly against liability insurer under a Louisiana statute, is against public policy of New York and the defendant's motion for summary judgment should be granted. *Morton v Maryland Casualty Co.*, 1 A.D.2d 116, 148 N.Y.S.2d 524, 1955 N.Y. App. Div. LEXIS 3637 (N.Y. App. Div. 2d Dep't 1955), *aff'd*, 4 N.Y.2d 488, 176 N.Y.S.2d 329, 151 N.E.2d 881, 1958 N.Y. LEXIS 864 (N.Y. 1958).

Legal effect of public record of Polish marriage, certified and authenticated, was established by practicing attorney in Poland and justice of its highest court. *In re Burdak's Estate*, 19 N.Y.S.2d 451, 173 Misc. 839, 1940 N.Y. Misc. LEXIS 1675 (N.Y. Sur. Ct. 1940), *aff'd*, 261 A.D. 952, 27 N.Y.S.2d 448 (N.Y. App. Div. 1941).

Determination of New York supreme court of the effect of Texas anti-trust laws was one of fact, since it involves question of law of another state. *Blaustein v Pan American Petroleum & Transport Co.*, 21 N.Y.S.2d 651, 174 Misc. 601, 1940 N.Y. Misc. LEXIS 1995 (N.Y. Sup. Ct. 1940), *aff'd in part and rev'd in part*, 263 A.D. 97, 31 N.Y.S.2d 934, 1941 N.Y. App. Div. LEXIS 4546 (N.Y. App. Div. 1941).

Question of foreign law is one of fact. *Schwartz v Schwartz*, 75 N.Y.S.2d 592, 190 Misc. 757, 1947 N.Y. Misc. LEXIS 3439 (N.Y. Sup. Ct. 1947).

Factual issue as to law of another state bars motion for judgment or pleadings. *Valentine v Valentine*, 109 N.Y.S.2d 466, 1951 N.Y. Misc. LEXIS 2693 (N.Y. Sup. Ct. 1951).

35. Judicial notice

Under CPA § 344-a (§ 4511 herein) the court could have taken judicial notice of foreign law. In *re McDougald's Estate*, 272 A.D. 176, 70 N.Y.S.2d 200, 1947 N.Y. App. Div. LEXIS 3247 (N.Y. App. Div. 1947).

Courts do not take judicial notice of the laws of foreign states. *Ferguson v Harder*, 252 N.Y.S. 783, 141 Misc. 466, 1931 N.Y. Misc. LEXIS 1730 (N.Y. Sup. Ct. 1931).

CPA § 391 did not require a court to take judicial notice of foreign law. *Smith v Russo Asiatic Bank*, 290 N.Y.S. 471, 160 Misc. 417, 1936 N.Y. Misc. LEXIS 1397 (N.Y. Sup. Ct. 1936).

District of Columbia statutes, relating to marriage, were judicially noticed. *Ferraro v Ferraro*, 77 N.Y.S.2d 246, 192 Misc. 484, 1948 N.Y. Misc. LEXIS 2140 (N.Y. Dom. Rel. Ct. 1948), *aff'd in part*, 275 A.D. 777, 87 N.Y.S.2d 707, 1949 N.Y. App. Div. LEXIS 4435 (N.Y. App. Div. 1949).

Judicial notice may be taken of New Jersey statute governing sale of personalty. *Zendman v Harry Winston, Inc.*, 94 N.Y.S.2d 878, 196 Misc. 924, 1949 N.Y. Misc. LEXIS 3139 (N.Y. Sup. Ct. 1949), *rev'd*, 279 A.D. 28, 107 N.Y.S.2d 618, 1951 N.Y. App. Div. LEXIS 2852 (N.Y. App. Div. 1951).

Hearing will not be granted in order to prove foreign statute, since judicial notice may be taken thereof. *In re Bishop's Estate*, 129 N.Y.S.2d 387, 206 Misc. 7 (1954), *aff'd*, 1 A.D.2d 612, 152 N.Y.S.2d 310, 1956 N.Y. App. Div. LEXIS 5094 (N.Y. App. Div. 1st Dep't 1956).

36. —In appellate courts

Appellate court has authority to consider appropriate decisions interpreting foreign law although they are rendered subsequent to trial. *United States v Pink*, 315 U.S. 203, 62 S. Ct. 552, 86 L. Ed. 796, 1942 U.S. LEXIS 1060 (U.S. 1942), *limited*, *Rupali Bank v Provident Nat'l Bank*, 403 F. Supp. 1285, 1975 U.S. Dist. LEXIS 16092 (E.D. Pa. 1975).

Official declaration of Russian commissariat for justice as to intended territorial effect of Russian decree nationalizing insurance business upon insurance funds outside of Russia was before appellate court although it was not part of record. *United States v Pink*, 315 U.S. 203, 62 S. Ct. 552, 86 L. Ed. 796, 1942 U.S. LEXIS 1060 (U.S. 1942), *limited*, *Rupali Bank v Provident Nat'l Bank*, 403 F. Supp. 1285, 1975 U.S. Dist. LEXIS 16092 (E.D. Pa. 1975).

37. Foreign statutes

It must be proved that the book contains the existing law. *Hynes v McDermott*, 82 N.Y. 41, 82 N.Y. (N.Y.S.) 41, 1880 N.Y. LEXIS 323 (N.Y. 1880).

The presence of testimony that a book before the trial court printed in a foreign language of a foreign country, contained the copy of an ordinance of the government of that country, in existence by the force of law and was the official book of ordinances in general use, warrants the court of appeals, in sustaining its admission, although the record does not disclose in words that the book had been published by the authority of the foreign government. *Hecla Powder Co. v Sigua Iron Co.*, 157 N.Y. 437, 52 N.E. 650, 157 N.Y. (N.Y.S.) 437, 1899 N.Y. LEXIS 866 (N.Y. 1899).

Statutes of the state of Massachusetts are sufficiently proved where they purport to be published by that commonwealth and a member of the bar of Massachusetts testifies that they are the regular volumes for reporting such statutes, and as to where they were obtained. *Congregational Unitarian Soc. v Hale*, 29 A.D. 396, 51 N.Y.S. 704, 1898 N.Y. App. Div. LEXIS 1071 (N.Y. App. Div. 1898).

The statutes of a foreign country could only be proved in the manner prescribed by CPA § 391 by producing a printed copy of the statute, contained in a publication purporting or proved to have been published by the authority of the foreign country, or proved to be commonly admitted as evidence of the existing law in the judicial tribunals of the foreign country. *Pirrung v Supreme Council, C. M. B. A.*, 104 A.D. 571, 93 N.Y.S. 575, 1905 N.Y. App. Div. LEXIS 1809 (N.Y. App. Div. 1905).

The general statutes of another state printed in a book were admissible. *People v Portman*, 159 A.D. 702, 145 N.Y.S. 189, 1913 N.Y. App. Div. LEXIS 8915 (N.Y. App. Div. 1913).

Averments of public statutes of another state in a personal injury action were not put in issue by mere denial of information or knowledge sufficient to form a belief, and it was not necessary to read them in evidence from the official books published by authority of that state. *Koczenasz v Lehigh Portland Cement Co.*, 182 A.D. 287, 169 N.Y.S. 366, 1918 N.Y. App. Div. LEXIS 7866 (N.Y. App. Div. 1918).

A statute cannot be proved by oral testimony. *Russian Reinsurance Co. v Stoddard*, 211 A.D. 132, 207 N.Y.S. 574, 1925 N.Y. App. Div. LEXIS 10599 (N.Y. App. Div.), rev'd, 240 N.Y. 149, 147 N.E. 703, 240 N.Y. (N.Y.S.) 149, 1925 N.Y. LEXIS 714 (N.Y. 1925).

Foreign statute treated as sufficiently proven where publication containing it was received without objection. *Masocco v Schaaf*, 234 A.D. 181, 254 N.Y.S. 439, 1931 N.Y. App. Div. LEXIS 8325 (N.Y. App. Div. 1931).

Oral testimony of witnesses learned in the peculiar system of law to be proved is competent as showing what the real rule is as the result, not of one particular statute or decision, but of the

whole course of exposition, interpretation and adjudication. *Genet v Delaware & H. Canal Co.*, 35 N.Y.S. 147, 13 Misc. 409, 1895 N.Y. Misc. LEXIS 662 (N.Y. Super. Ct. 1895), rev'd, 2 A.D. 491, 37 N.Y.S. 1087, 1896 N.Y. App. Div. LEXIS 370 (N.Y. App. Div. 1896).

The supreme court of the state of New York may take judicial notice of the existence and jurisdiction of the high court of justice of the province of Ontario, and the jurisdiction is sufficiently proved where a book, purporting to be the last revision of the statutes of the legislature of the province and containing the judicature act establishing the jurisdiction of its high court, is given in evidence and identified by one who has been a solicitor and practitioner in that province, as issued officially by the Queen's printer. *Grant v Birrell*, 72 N.Y.S. 366, 35 Misc. 768, 1901 N.Y. Misc. LEXIS 509 (N.Y. Sup. Ct. 1901).

The written law of a foreign country must be proved in this state by the production of a duly authenticated record of the law itself or by reports or other authorized publications duly proved of such law. *People v Rosenzweig*, 96 N.Y.S. 103, 47 Misc. 584, 1905 N.Y. Misc. LEXIS 301 (N.Y. Gen. Sess. 1905).

A foreign statute itself or an official copy is the best and only competent evidence of its provisions. *In re Crum*, 164 N.Y.S. 149, 98 Misc. 160, 1916 N.Y. Misc. LEXIS 853 (N.Y. Sur. Ct. 1916).

38. —Constitution of another state

To prove the constitution of California, the plaintiff produced a book purporting to be the statutes of that state, published by the state printer. A member of the bar of California testified that the person named was the state printer; that the volume was the received official publication of the statutes and the constitution; that it was recognized by the bar, and was the only record the court had. Held, that the book was sufficiently proved to authorize its reception as evidence. *Pacific Pneumatic Gas Co. v Wheelock*, 80 N.Y. 278, 80 N.Y. (N.Y.S.) 278, 1880 N.Y. LEXIS 97 (N.Y. 1880).

39. Foreign reports

Reports of the state of Massachusetts were sufficiently proved under CPA § 391 where they purport to be published by the commonwealth and a member of the bar of Massachusetts testifies that they are the regular volumes of reports and as to where they were obtained. *Congregational Unitarian Soc. v Hale*, 29 A.D. 396, 51 N.Y.S. 704, 1898 N.Y. App. Div. LEXIS 1071 (N.Y. App. Div. 1898).

On a motion to dismiss a complaint, the reading of a citation of a decision of the New Jersey court, coupled with the offer by the attorney to “read the syllabus and hand the book for your honor to read,” is not equivalent to offering the decision in evidence. *De Maio v Standard Oil Co.*, 68 A.D. 167, 74 N.Y.S. 165, 1902 N.Y. App. Div. LEXIS 76 (N.Y. App. Div. 1902).

A report of a decision of the supreme judicial court of Maine is presumptive evidence of the common or unwritten law of Maine, as such an adjudication does not create the law but simply declares it, it is immaterial that the adjudication was not rendered until after a certain lease was executed. *Bath Gaslight Co. v Rowland*, 84 A.D. 563, 82 N.Y.S. 841, 1903 N.Y. App. Div. LEXIS 1819 (N.Y. App. Div. 1903), *aff'd*, 178 N.Y. 631, 71 N.E. 1127, 178 N.Y. (N.Y.S.) 631, 1904 N.Y. LEXIS 900 (N.Y. 1904).

Reports of foreign State not admissible in evidence under CPA § 391 where facts were different from instant case. *In re Hardenbergh's Estate*, 258 N.Y.S. 651, 144 Misc. 248, 1932 N.Y. Misc. LEXIS 1484 (N.Y. Sur. Ct. 1932).

40. Foreign common law

The presumption as to the common law being in force extends only to England and the states which have taken the common law from her. *Savage v O'Neil*, 44 N.Y. 298, 44 N.Y. (N.Y.S.) 298, 1871 N.Y. LEXIS 43 (N.Y. 1871).

No presumption as to law of foreign state in action in equity. *Pancoast v Elting*, 263 N.Y.S. 493, 147 Misc. 151, 1933 N.Y. Misc. LEXIS 1039 (N.Y. Sup. Ct. 1933).

Common law of New Jersey proved as fact by oral evidence. *In re Sherman's Will*, 71 N.Y.S.2d 492, 1947 N.Y. Misc. LEXIS 2584 (N.Y. Sup. Ct. 1947).

41. Foreign judgments

As to the record of a judgment, in court of another state. *Morris v Patchin*, 24 N.Y. 394, 24 N.Y. (N.Y.S.) 394, 1862 N.Y. LEXIS 79 (N.Y. 1862).

Although in an action upon a judgment of a foreign court, the record of the judgment was not authenticated in the manner required by the Code of Civil Procedure to be read in evidence, the defect could have been remedied by the presentation of a duly authenticated record in the appellate record. *Milliken v Dotson*, 117 A.D. 527, 102 N.Y.S. 564, 1907 N.Y. App. Div. LEXIS 295 (N.Y. App. Div. 1907), app. dismissed, 195 N.Y. 523, 89 N.E. 1105, 195 N.Y. (N.Y.S.) 523, 1909 N.Y. LEXIS 1074 (N.Y. 1909).

The presumption as to the regularity of a judgment of the Cour de Cassation of France includes its power to entertain the appeal involved. *Gould v Gould*, 192 N.Y.S. 572, 119 Misc. 845, 1922 N.Y. Misc. LEXIS 997 (N.Y. Sup. Ct.), *aff'd*, 201 A.D. 670, 194 N.Y.S. 745, 1922 N.Y. App. Div. LEXIS 6386 (N.Y. App. Div. 1922), *aff'd*, 202 A.D. 492, 195 N.Y.S. 959, 1922 N.Y. App. Div. LEXIS 4922 (N.Y. App. Div. 1922).

The judgment of the court of another state, not authenticated according to § 905 of the United States Revised Statutes which governs in the absence of any New York statute thereon, cannot be admitted in evidence. *H. G. Bittleston Law & Collection Agency v Fontaine*, 215 N.Y.S. 796, 127 Misc. 284, 1926 N.Y. Misc. LEXIS 973 (N.Y. App. Term 1926).

That defendant was not served in the suit on which judgment was had in another state is a jurisdictional question which can always be raised to impeach the judgment when introduced in the courts of this state. *H. G. Bittleston Law & Collection Agency v Fontaine*, 215 N.Y.S. 796, 127 Misc. 284, 1926 N.Y. Misc. LEXIS 973 (N.Y. App. Term 1926).

Where both the judgment recovered in Florida and the assignment thereof, as filed and recorded in the public records of that state, were duly attested as a "correct copy" they were properly authenticated so as to entitle them to be received in evidence. *Wright v Bedford*, 17 Misc. 2d 211, 182 N.Y.S.2d 660, 1958 N.Y. Misc. LEXIS 2071 (N.Y. Sup. Ct. 1958).

42. Federal court records

The records of an action in the Federal court are prima facie evidence and admissible without notice. *O'Donnell v Marine Transit Corp.*, 261 N.Y.S. 588, 146 Misc. 502, 1932 N.Y. Misc. LEXIS 1724 (N.Y. Sup. Ct. 1932), *aff'd*, 240 A.D. 840, 266 N.Y.S. 982, 1933 N.Y. App. Div. LEXIS 6617 (N.Y. App. Div. 1933).

43. Marriage certificates

Marriage certificate having no official seal to establish situs where it was made or of person who signed it as Justice of Peace, was not authenticated as required by CPA § 398-b. *In re Rappoport's Estate*, 129 N.Y.S.2d 472, 205 Misc. 661, 1954 N.Y. Misc. LEXIS 3166 (N.Y. Sur. Ct. 1954).

44. Charter of corporation

A charter of a private corporation enacted by another state was within CPA § 391. *Persse & Brooks Paper Works v Willett*, 24 Super Ct (1 Robt) 131.

F. Records And Documents In United States Departments

45. Generally

Compiled reports from public records will not be excluded as "incompetent" where no objection is then made that they were hearsay and admitted without proper foundation laid. *People ex rel.*

New York C. R. Co. v Vincent, 68 N.Y.S.2d 202, 1947 N.Y. Misc. LEXIS 2051 (N.Y. Sup. Ct. 1947).

When bankrupt's discharge is offered in evidence, jurisdiction to grant it is presumed until contrary is proved. Morse v Cloyes, 11 Barb. 100, 1851 N.Y. App. Div. LEXIS 6 (N.Y. Sup. Ct. May 5, 1851).

46. Administrative and departmental regulations

The regulations issued by the Federal Food and Drug Commission and the State Commissioner of Agriculture and Markets were inadmissible in evidence where not authenticated as provided by CPA § 400 and § 382. Lash, Inc. v A. C. Ogden Milk Co., 297 N.Y.S. 1008, 163 Misc. 407, 1937 N.Y. Misc. LEXIS 1430 (N.Y. City Ct. 1937).

OPA regulations may be proved by original or certified copy, but not by printed circular characterized as copy. People ex rel. Liebert v Lipoff, 45 N.Y.S.2d 636, 181 Misc. 618, 1943 N.Y. Misc. LEXIS 2680 (N.Y. Magis. Ct. 1943).

47. Departmental reports and communications

Reports of Department of Agriculture, under US Rev St, § 520, when duly authenticated, were admissible in evidence for any proper purpose. Russell v Brooklyn Daily Eagle, 168 A.D. 121, 153 N.Y.S. 450, 1915 N.Y. App. Div. LEXIS 8275 (N.Y. App. Div. 1915).

Interdepartmental communications, from files of Secretary of Interior, containing admissions by parties of facts in issue or official action taken and grounds therefor, are admissible. Vanadium Corp. v Fidelity & Deposit Co., 159 F.2d 105, 1947 U.S. App. LEXIS 2440 (2d Cir. N.Y. 1947).

48. National banks

What evidence of validity of appointment of receiver of national bank. Platt v Beebe, 57 N.Y. 339, 57 N.Y. (N.Y.S.) 339, 1874 N.Y. LEXIS 291 (N.Y. 1874).

As to certificate of organization of national bank. See *Merchants' Exch. Nat. Bank v Cardozo*, 35 Super Ct (3 Jones & S) 162.

49. Miscellaneous records

Testimony of defendant that he did not receive notice of presentment of note was competent and material evidence to rebut presumption that notice was mailed, arising from certificates of protest filed in office of Comptroller of the Currency. *Latham v Sheff*, 193 A.D. 576, 185 N.Y.S. 278, 1920 N.Y. App. Div. LEXIS 5604 (N.Y. App. Div. 1920).

Discharges from military service are to be inferred as genuine. *Thompson v Fargo*, 2 Hun 379 (N.Y. 1874), *aff'd*, 63 N.Y. 479, 63 N.Y. (N.Y.S.) 479, 1875 N.Y. LEXIS 73 (N.Y. 1875).

Opinion Notes

Agency Opinions

1. Under prior law

Death certificates are public records and may be copied by either physical or mechanical means and the sufficiency of the copies is a matter for determination by the court, person or agency to whom they are submitted. 1957 N.Y. Op. Att'y Gen. No. 220, 1957 N.Y. AG LEXIS 55.

Research References & Practice Aids

Cross References:

This rule referred to in CLS CPLR Rules 4521., 8021.

Making and recording maps, CLS Canal §§ 24., 25.

Certificates as evidence, CLS N-PCL § 106.

Corporate seal as evidence, CLS N-PCL § 107.

Certified copies of papers filed to be evidence, CLS Pub Ser § 17.

Certificate of title as evidence, CLS Real P § 399.

Certificate of convenience and necessity, CLS R R § 9.

Proof of ordinance; maps, CLS Town § 134.

Proof of ordinance adopted prior to September first, nineteen hundred seventy-four, CLS Village § 20-2004.

Federal Aspects:

Proof of official record in United States District Courts, USCS Court Rules, Federal Rules of Civil Procedure, Rule 44.

Absence of public record as exception to hearsay rule in United States courts, USCS Court Rules, Federal Rules of Evidence, Rule 803(10).

Copies of government records and papers in United States courts, 28 USCS § 1733.

Copies of Patent and Trademark Office documents in United States courts, 28 USCS § 1744.

Jurisprudences:

45 NY Jur 2d Domestic Relations § 82. .

57 NY Jur 2d Evidence and Witnesses §§ 109., 240. .

58 NY Jur 2d Evidence and Witnesses §§ 497., 500., 502., 510., 518., 521., 522., 526., 528., 543. .

58A NY Jur 2d Evidence and Witnesses § 979. .

29A Am Jur 2d, Evidence §§ 929.– 933.

2 Am Jur Trials 409., Locating Public Records.

Law Reviews:

Use of Civil Aeronautics Board investigation materials in civil litigation. 32 Brook. L. Rev. 58.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4540, Authentication of Official Record of Court or Government Office in the United States.

1 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 2.01; 4 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 65.12.

. 2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 31.09., 37.04.

1 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶103.03; 3 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 1401.03, 1422.01, 1423.01, 1424.02; 4 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 1614.01, 1715.09, 1716.05; 6 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶2501.02.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 27.28. Enforcement of judgment entitled to full faith and credit.

Matthew Bender's New York Practice Guides:

LexisNexis Practice Guide New York e-Discovery and Evidence § 15.08. CHECKLIST: Authenticating ESI.

LexisNexis Practice Guide New York e-Discovery and Evidence § 15.09. Authenticating Various Types of ESI.

LexisNexis Practice Guide New York e-Discovery and Evidence § 15.11. CHECKLIST: Admitting ESI.

LexisNexis Practice Guide New York e-Discovery and Evidence § 15.12. Examining Hearsay Issues in Use of ESI as Evidence.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 10.08. Admitting Record Under Exceptions to Admission Requirements.

LexisNexis AnswerGuide New York Civil Litigation § 11.18. Docketing and Filing Foreign Judgment.

Warren's Weed New York Real Property:

Warren's Weed: New York Real Property § 4.79.

Matthew Bender's New York Evidence:

6 Bender's New York Evidence § 23A.07. Proof of Foreign Will–Ancillary Probate.

8 Bender's New York Evidence § 29.04. Proof of marriage.

1 Bender's New York Evidence § 114.03. Original Writings.

1 Bender's New York Evidence § 114.06. Secondary Evidence.

1 Bender's New York Evidence § 118.02. Authentication of Public and Official Documents Dealing with Natural Persons.

1 Bender's New York Evidence § 118.04. Authentication of Public and Official Documents Dealing with Real Property.

1 Bender's New York Evidence § 118.05. Authentication of Public and Official Documents Dealing with Weather.

3 Bender's New York Evidence § 149.01. History and Rationale.

3 Bender's New York Evidence § 149.02. Scope of the Business Records Rule.

3 Bender's New York Evidence § 149.05. Record May Qualify For Admission Under Other Evidentiary Rules.

1 Bender's New York Evidence § 114.09. Original Not Reasonably Obtainable.

Annotations:

Mutilations, alterations, and deletions as affecting admissibility in evidence of public record. 28 ALR2d 1443.

Admissibility of report of police or other public officer or employee, or portions of report, as to cause of or responsibility for accident, injury to person, or damage to property. 69 A.L.R.2d 1148.

Federal Civil Procedure Rule 44 and Federal Criminal Procedure Rule 27, relating to proof of official records. 70 A.L.R.2d 1227.

Proof of public records kept or stored on electronic computing equipment. 71 ALR3d 232.

Admissibility of school records under hearsay exemptions. 57 ALR4th 1111.

Sufficiency, under Federal Civil Procedure Rule 44(a)(1), of authentication of copy of domestic official record. 2 A.L.R. Fed. 306.

Matthew Bender's New York Checklists:

Checklist for Introducing Documents and Information into Evidence LexisNexis AnswerGuide New York Civil Litigation § 10.05.

Checklist for Docketing and Filing Judgment LexisNexis AnswerGuide New York Civil Litigation § 11.15.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 4540:1 et seq.

LexisNexis Forms FORM 75-CPLR 4540:1.—Attestation or Certificate of Copy of Official Record.

LexisNexis Forms FORM 75-CPLR 4540:2.—Attestation or Certificate by Secretary of State That Copy of Record Is Correct.

LexisNexis Forms FORM 75-CPLR 4540:3.—County Clerk's Certificate to Copy of Paper on File in Office.

LexisNexis Forms FORM 75-CPLR 4540:4.—Certificate by Officer of Another State to Non-Judicial Record of Other State.

LexisNexis Forms FORM 75-CPLR 4540:5.—Certificate Authenticating Attestation of Non-Judicial Record of Another State.

LexisNexis Forms FORM 75-CPLR 4540:6.—Certificate of Clerk to Court Record of Another State, Territory or Possession of the United States or a Court Thereof.

LexisNexis Forms FORM 75-CPLR 4540:7.—Authenticating Certificate of Judge of Court of Record to Attestation by Clerk of Another State.

Texts:

Jonakait, Baer, Jones, & Imwinkelried, New York Evidentiary Foundations (Michie), Ch 4 .Authentication.

2 New York Trial Guide (Matthew Bender) §§ 30.17, 30.31, 31.01, 31.12; 3 New York Trial Guide (Matthew Bender) §§ 40.51, 40.52.

Hierarchy Notes:

NY CLS CPLR, Art. 45

Forms

Forms

Form 1

County Clerk's Certificate of Authentication of Paper on File in His Office

State of New York

County of _____

ss.

I _____, Clerk of the County of _____, and also
Clerk of the County and Supreme Court in and for said County, the same being courts of record,

Do Hereby Certify that I have compared the preceding [order] with the original [order] in the
action of _____ v _____, filed in this office on
_____, 20_____, and do hereby certify the same to be a correct
transcript therefrom and of the whole of the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Courts and
County, this _____ day of _____, 20_____.

Clerk of the County of _____

[SEAL]

Form 2

Form of Certificate Authenticating Copy of Proceedings of State Board or Commission

I, _____, secretary of the _____ commission, do hereby certify that I have compared the foregoing with the original _____ regulations prescribed by the mayor of the City of _____, and with the original regulations, minutes and proceedings of the _____ commission in relation to the approval of the _____ regulations prescribed by the said mayor, all of which are entered in the records of the said _____ commission, now on file in the office of said commission and in my custody, and that the same is a true and correct transcript from said records of said resolutions, minutes and proceedings, and all amendments thereto, and of the whole thereof, and also that the foregoing are true and correct copies of all _____ regulations prescribed by said mayor, and amendments made by him thereto, and of the whole thereof, now on file in the office of said commission and in my custody.

In Witness Whereof, I have hereunto set my hand and the official seal of said commission, this _____ day of _____, 20_____.

[Seal]

[Signature, or a facsimile of the signature, of the officer.]

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