

## NY CLS CPLR R 4522

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*New York*

*Consolidated Laws Service* >

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

*Article 45 Evidence (§§ 4501 — 4551)*

### **R 4522. Ancient filed maps, surveys and records affecting real property.**

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All maps, surveys and official records affecting real property, which have been on file in the state in the office of the register of any county, any county clerk, any court of record or any department of the city of New York for more than ten years, are prima facie evidence of their contents.

### **History**

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Formerly § 4522, add, L 1962, ch 308; amd, L 1962, ch 315, § 1, eff Sept 1, 1963.

Annotations

### **Notes**

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### **Prior Law**

Earlier statutes: CPA §§ 389, 389-a; CCP § 955.

### **Advisory Committee Notes**

This rule is the same as former § 389-a, except that the words “or any department of the city of New York” have been added in order to incorporate former § 389, which dealt with proof of public records in the city of New York. Section 389-a, which was added in 1923, applied

throughout the state—apparently including New York city—and should have superseded § 389, which dated from the Code of Civil Procedure.

On its face, § 389-a was apparently not restricted to any particular type of record and it would appear to have covered such matters as statements made in affidavits filed with motion papers. The original legislation indicates, however, that the failure to restrict the section to records affecting real property was an oversight. Thus, chapter 360 of the laws of 1923, which enacted § 389-a, is entitled “An Act to amend the civil practice act, in relation to maps of real property and judgments, decrees or orders in actions in courts of record affecting real property as evidence.” This design harmonizes with the details of the section which excludes records kept by towns, cities and villages. Accordingly, this rule has been limited to records affecting real property. The twenty-year period appears to be completely arbitrary in view of former civil practice act sections making fifteen years instead of twenty years the basic time period in real property actions. CPA §§ 34–37; Laws 1932, c. 261–64. The period has been reduced to ten years in view of the identical reduction in statutes of limitation affecting real property. See CPLR § 212.

Section 389 has been limited in the same way as § 389-a, since the rule should be the same throughout the state. In considering the effect of this restriction it should be noted that a required certificate or affidavit of a public officer is prima facie evidence under CPLR rule 4520, marriage certificates are prima facie evidence of the marriage under rule 4526 and that the business records exception in rule 4518 is broad enough to cover public offices. Cf. Uniform Rules of Evidence, Rules 63(17), 63(19), 64. Moreover, the normal thirty-year ancient documents rule is applicable in other than real estate cases. Richardson, Evidence 324 (8th ed, Prince 1955).

The concluding phrase of both §§ 389 and 389-a of the CPA, “and shall be receivable in evidence as such upon any trial in any of the courts of this state in any controversy pending therein between any parties,” is omitted as unnecessary. These sections were directed to the hearsay problem of certain ancient documents affecting real property. They provided a special twenty-year rule different from the thirty-year rule applicable whether or not the document was

filed. The problem of authentication which is apparently what is adverted to in this phrase is treated in CPLR rules 4534, 4537, 4538 and 4539.

## **Notes to Decisions**

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### **I.Under CPLR**

#### **1.Generally**

### **II.Under Former Civil Practice Laws**

#### **2.Generally**

#### **3.Death certificate**

#### **4.Records in surrogate's office**

#### **5.Maps**

#### **6.Surveys**

### **I. Under CPLR**

#### **1. Generally**

Generally, the quasi-public nature of a plat map delineation gives rise to an easement by implication such as when a party conveys realty by reference in the deed to a filed map which designates areas such as streets, parks or beaches. Where deeds of homeowners contained express provision restricting their land to residential use only, plat of adjoining land indicated presence of easement for drainage purposes while the notation on the plat of "R-2 Zoning" merely reflected an accurate notation of the former zoning status of the adjoining property, the notation did not create a negative easement which would restrict the use of the adjoining property to residential purposes only and preclude its sale to automobile dealer for construction

of a showroom. While a conveyance with reference to a plat map may comprise a written memorandum sufficient to satisfy the statute of frauds, this is only true where the agreement is subscribed and contains all the terms of the agreement so as to manifest a definite intent to create the restriction. *Huggins v Castle Estates, Inc.*, 36 N.Y.2d 427, 369 N.Y.S.2d 80, 330 N.E.2d 48, 1975 N.Y. LEXIS 1823 (N.Y. 1975).

In action seeking damages for encroachment on plaintiff's real property, paper survey dated "6-30-72" was not admissible as ancient document, absent proof that it had been recorded and where encroachment commenced in 1969 or 1970. *Greenberg v Manlon Realty, Inc.*, 43 A.D.2d 968, 352 N.Y.S.2d 494, 1974 N.Y. App. Div. LEXIS 5697 (N.Y. App. Div. 2d Dep't 1974).

Trial court properly declared that defendant had no ownership interest in underwater land in a bay that bordered plaintiffs' property, based on consideration of deeds, which were prima facie evidence of their contents due to their age, and defendant's failure to raise an issue of fact. *Kernan v Williams*, 125 A.D.3d 1440, 3 N.Y.S.3d 806, 2015 N.Y. App. Div. LEXIS 1113 (N.Y. App. Div. 4th Dep't), app. dismissed, 125 A.D.3d 1440, 999 N.Y.S.2d 912, 2015 N.Y. App. Div. LEXIS 1121 (N.Y. App. Div. 4th Dep't 2015), app. denied, 128 A.D.3d 1426, 6 N.Y.S.3d 926, 2015 N.Y. App. Div. LEXIS 3709 (N.Y. App. Div. 4th Dep't 2015).

Supreme court should have granted abutting owners' motion for a directed verdict and dismissed homeowners' cause of action to quiet title because it should not have considered the contents of survey maps without an expert opinion when neither survey had been filed with the appropriate clerk for over 10 years; although each of the abutting owners testified as to their personal understanding of the common boundary line, their testimony, alone, was insufficient to establish such. *Miller v Carter*, 212 A.D.3d 918, 182 N.Y.S.3d 771, 2023 N.Y. App. Div. LEXIS 24 (N.Y. App. Div. 3d Dep't 2023).

Official records and contents affecting real property on file with the Building Department of the City of New York in excess of 10 years are held to be prima facie evidence. *Bardach v Mayfair-Flushing Corp.*, 49 Misc. 2d 380, 267 N.Y.S.2d 609, 1966 N.Y. Misc. LEXIS 2205 (N.Y. Sup.

Ct.), aff'd, 26 A.D.2d 620, 272 N.Y.S.2d 969, 1966 N.Y. App. Div. LEXIS 5940 (N.Y. App. Div. 2d Dep't 1966).

If description in certificate by commissioner of highways for the town, establishing a four-rod highway on January 3, 1806, agreed with the course of the identically named road as it runs today, the city would be entitled to a judgment declaring that the road was four rods in width, since the certificate was prima facie evidence of its contents. *Hering v Canandaigua*, 52 Misc. 2d 98, 275 N.Y.S.2d 56, 1966 N.Y. Misc. LEXIS 1277 (N.Y. Sup. Ct. 1966).

## **II. Under Former Civil Practice Laws**

### **2. Generally**

Where there was no proof substantiating or corroborating declarations in documents relating to adoption of children in surrogate's court, decree as to adoption was reversed. *In re Bacon's Estate*, 259 A.D. 968, 19 N.Y.S.2d 889, 1940 N.Y. App. Div. LEXIS 7456 (N.Y. App. Div. 1940).

Development map of Iroquois Park, made in 1906 and filed in 1918, is ancient document, and as such proves itself. *Crisafulli v State*, 100 N.Y.S.2d 773, 198 Misc. 941, 1950 N.Y. Misc. LEXIS 2188 (N.Y. Ct. Cl. 1950).

Certified copy of bay property map filed in 1925 was admissible in evidence in action to restrain defendant from interfering with plaintiff's free access to navigable waters adjacent to plaintiff's property, and presumptive evidence of its recitals, despite legend on map stated Board of Estimate's approval in 1925 did not include "indicated position on boundary line of adjoining property." *Schatz v Guthrie*, 132 N.Y.S.2d 665, 1954 N.Y. Misc. LEXIS 2666 (N.Y. Sup. Ct. 1954).

### **3. Death certificate**

The death certificate made by an attending physician and filed with the health department was not admissible to prove the cause of death notwithstanding the provision of CPA § 389 that official records which had remained on file for a period of twenty years were presumptive evidence of their contents. *Robinson v Supreme Commandery, United Order of Golden Cross*, 77 A.D. 215, 79 N.Y.S. 13, 1902 N.Y. App. Div. LEXIS 2837 (N.Y. App. Div. 1902), *aff'd*, 177 N.Y. 564, 69 N.E. 1130, 177 N.Y. (N.Y.S.) 564, 1904 N.Y. LEXIS 1004 (N.Y. 1904).

#### **4. Records in surrogate's office**

Under former law, a petition for letters of administration and waivers of right to administer, on file in the surrogate's office of New York county for twenty years, was admissible in evidence to show the date of the decedent's death, and was presumptive evidence thereof. *Lalor v Tucker*, 130 A.D. 11, 114 N.Y.S. 403, 1909 N.Y. App. Div. LEXIS 129 (N.Y. App. Div. 1909).

#### **5. Maps**

Ancient map was entitled to be recognized, because of its ancientness, as presumptively correct, in action to determine title to realty based upon such map, but such presumption was overcome by testimony of surveyor that map was incorrect. *Manchik v Pinelawn Cemetery*, 33 N.Y.S.2d 714, 1941 N.Y. Misc. LEXIS 2612 (N.Y. Sup. Ct. 1941), *aff'd*, 263 A.D. 961, 32 N.Y.S.2d 976, 1942 N.Y. App. Div. LEXIS 7612 (N.Y. App. Div. 1942).

#### **6. Surveys**

Under former law, state highway surveys, filed in county clerk's office, were admissible as ancient documents after they had been filed for 20 years. *Beisheim v People*, 26 Misc. 2d 684, 39 N.Y.S.2d 333, 1942 N.Y. Misc. LEXIS 1225 (N.Y. Sup. Ct. 1942).

### **Research References & Practice Aids**

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### **Federal Aspects:**

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

Records of documents affecting interest in property as exception to hearsay rule in United States courts, USCS Federal Rules of Evidence, Rule 803(14).

Statements in ancient documents as exception to hearsay rule in United States courts, USCS Court Rules, Federal Rules of Evidence, Rule 803(15).

### **Jurisprudences:**

1 NY Jur 2d Adjoining Landowners § 144. .

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

58 NY Jur 2d Evidence and Witnesses § 560. .

90 NY Jur 2d Real Property–Possessory and Related Actions § 438. .

1 Am Jur Proof of Facts 523., Ancient Documents.

2 Am Jur Trials 669., Preparing and Using Maps.

### **Law Reviews:**

Evidence symposium. 52 Cornell L.Q. 177.

### **Treatises**

#### **Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4522, Ancient Filed Maps, Surveys and Records Affecting Real Property.

3 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 1421.08, 1422.01.

**Matthew Bender's New York AnswerGuides:**

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

**Warren's Weed New York Real Property:**

Warren's Weed: New York Real Property Ch. 50. Evidence and Proof of Facts in Real Property Actions and Proceedings.

**Matthew Bender's New York Evidence:**

1 Bender's New York Evidence § 117.01. General Principles of Ancient Documents.

1 Bender's New York Evidence § 117.02. Establishing Admissibility of Ancient Documents.

1 Bender's New York Evidence § 117.03. Statutory Presumptions Concerning Ancient Documents.

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

**Annotations:**

Admissibility in evidence of ancient maps and the like. 46 ALR2d 1318.

**Matthew Bender's New York Checklists:**

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

**Texts:**

3 New York Trial Guide (Matthew Bender) §§ 40.11, 40.13, 40.53.

**Hierarchy Notes:**



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