

## NY CLS CPLR R 4541

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*New York*

*Consolidated Laws Service* >

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

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

### **R 4541. Proof of proceedings before justice of the peace.**

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**(a) Of the State.** A transcript from the docket-book of a justice of the peace of the state, subscribed by him, and authenticated by a certificate signed by the clerk of the county in which the justice resides, with the county seal affixed, to the effect that the person subscribing the transcript is a justice of the peace of that county, is prima facie evidence of any matter stated in the transcript which is required by law to be entered by the justice in his docket-book.

**(b) Of Another State.** A transcript from the docket-book of a justice of the peace of another state, of his minutes of the proceedings in a cause, of a judgment rendered by him, of an execution issued thereon or of the return of an execution, when subscribed by him, and authenticated as prescribed in this subdivision is prima facie evidence of his jurisdiction in the cause and of the matters shown by the transcript. The transcript shall be authenticated by a certificate of the justice to the effect that it is in all respects correct and that he had jurisdiction of the cause; and also by a certificate of the clerk or prothonotary of the county in which the justice resides, with his official seal affixed, to the effect that the person subscribing the certificate attached to the transcript is a justice of the peace of that county.

### **History**

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Formerly § 4541, add, L 1962, ch 308; redesignated as Rule 4541, L 1962, ch 315, § 1, eff Sept 1, 1963.

Annotations

## Notes

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### Prior Law

Earlier statutes: CPA §§ 387, 394; CCP §§ 939, 940, 948–951; Laws of 1836, ch 439, §§ 1–4; 2 RS 269, 270 §§ 246–248.

### Advisory Committee Notes

**Subd (a)** of this rule is the same as subdivision 1 of former § 387 with minor language changes. The former requirement that the clerk certify that he “is acquainted with his [the Justice of the Peace’s] handwriting and believes the signature to the transcript is genuine” is omitted since it is included in the certification that the person subscribing is the Justice of the Peace.

**Subd (b)** is the same as subds 1 and 2 of former § 394 with minor language changes. Subds 2 and 3 of former § 387 and subds 3 and 4 of former § 394 have been omitted as unnecessary in view of CPLR § 4535.

## Notes to Decisions

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### I. Under CPLR

#### 1. Generally

### II. Under Former Civil Practice Laws

#### A. Of New York State

#### 2. Generally

**3.Presumption as to jurisdiction**

**4.Proof by oral testimony of justice**

**5.Foreign judgment**

**B.Of Another State**

**6.Generally**

**7.Authentication**

**I. Under CPLR**

**1. Generally**

In probation revocation proceeding wherein prosecutor attempted to prove later conviction by photocopy of certificate of conviction of town court in which defendant was convicted, attorney's certification of town justice was deficient under CLS CPLR § 4541; transcript of proceedings before town justice must be authenticated by county clerk with county seal affixed in order to be admissible. *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).

**II. Under Former Civil Practice Laws**

**A. Of New York State**

**2. Generally**

A document purporting to be a copy of a warrant to the sheriff issued by a justice of the peace to remove a tenant from the premises, standing alone, presented no sufficient or proper proof of

the legality of the proceedings in the Justice's Court. *Chiarella v State*, 294 N.Y.S. 243, 162 Misc. 232, 1937 N.Y. Misc. LEXIS 1564 (N.Y. Ct. Cl.), *aff'd*, 252 A.D. 358, 300 N.Y.S. 281, 1937 N.Y. App. Div. LEXIS 5665 (N.Y. App. Div. 1937).

### **3. Presumption as to jurisdiction**

Jurisdiction of a justice's court not presumed, but must be shown to support action on judgment of that court. *Agar v Tibbets*, 46 Hun 52, 11 N.Y. St. 109 (N.Y.).

### **4. Proof by oral testimony of justice**

Under the corresponding provision of the RS, § 248, which did not vary materially from CPA § 387, held, that a judgment, recovered before a justice of the peace, could not be proved on a trial by his oral testimony as to the proceedings, without the production of his docket book; and that in such a case it can be proved only by production and verification of the docket book. *Dorr v Troy*, 19 Hun 223 (N.Y.).

### **5. Foreign judgment**

In order that a transcript of a judgment rendered by a justice's court in another state may be competent evidence here, it must be duly transcribed or authenticated. *Huie v Devore*, 138 A.D. 677, 123 N.Y.S. 12, 1910 N.Y. App. Div. LEXIS 1614 (N.Y. App. Div. 1910).

### **B. Of Another State**

### **6. Generally**

The state of Ohio was not an adjoining state within the meaning of CPA § 394 before the 1941 amendment of "adjoining" to "other," with reference to proof of judgments of justice's courts.

Bent v Glaenzer, 40 N.Y.S. 657, 17 Misc. 569, 1896 N.Y. Misc. LEXIS 482 (N.Y. App. Term 1896).

Factual issue as to judicial proceedings had in foreign state, bars motion for summary judgment. Valentine v Valentine, 109 N.Y.S.2d 466, 1951 N.Y. Misc. LEXIS 2693 (N.Y. Sup. Ct. 1951).

## **7. Authentication**

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 Act to be read in evidence, the defect may be 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 record of a judgment rendered in another state by a court composed of more than one judge, authenticated only by a certificate signed by a judge of the court, who also certifies that he is one of the judges with full authority to make the certificate, and from which it also appears that one of the associate judges of the court was present and presided at the trial of the action in which the judgment sued upon in this state was obtained, is properly excluded as evidence, upon the ground that it was not sufficiently and properly authenticated as required by § 905 of the US Rev St, relating to authentication of judgments in any state or territory to enable them to be proved or admitted in evidence in any other court within the United States. Rich v Cohen, 114 N.Y.S. 672, 61 Misc. 148, 1908 N.Y. Misc. LEXIS 47 (N.Y. Sup. Ct. 1908).

## **Research References & Practice Aids**

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### **Jurisprudences:**

58 NY Jur 2d Evidence and Witnesses § 523. .

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

29A Am Jur 2d, Evidence §§ 929.– 933.

### **Law Reviews:**

Evidence symposium. 52 Cornell L.Q. 177.

Civil jury trial: your proof. 42 NYSB J 52.

### **Treatises**

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

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4541, Proof of Proceedings Before Justice of the Peace.

#### **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.

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

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

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 § 4.79.

#### **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 § 118.02. Authentication of Public and Official Documents Dealing with Natural Persons.

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

1 Bender's New York Evidence § 118.10. Authentication of Transcript From Docket-Book of Justice of the Peace.

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

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

**Forms:**

Bender's Forms for the Civil Practice Form No. CPLR 4541:1 et seq.

LexisNexis Forms FORM 75-CPLR 4541:1.—Certificate of County Clerk Authenticating Transcript from Docket-Book of Justice of Peace.

LexisNexis Forms FORM 75-CPLR 4541:2.—Certificate of Justice of Peace of Adjoining State Authenticating Transcript from Docket-Book.

LexisNexis Forms FORM 75-CPLR 4541:3.—Certificate of County Clerk Authenticating Transcript from Docket-Book of Justice of Peace.

**Hierarchy Notes:**

NY CLS CPLR, Art. 45

**Forms**

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**Forms**

**Form 1**

**Transcript From Justice's Docket Made by Justice of Peace**

State of New York

County of \_\_\_\_\_

ss.

I, \_\_\_\_\_, a justice of the peace of the Town of \_\_\_\_\_, in the County of \_\_\_\_\_, State of New York, do hereby certify that the foregoing is a correct and true transcript from my docket book, as such justice of the peace.

In Witness Whereof, I have hereunto set my hand as such justice this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[Signature of justice of the peace]

**Form 2**

**Authenticating Certificate of County Clerk of Transcript of Docket Book of Justice of Peace**

State of New York

County of \_\_\_\_\_

ss.

I, \_\_\_\_\_, clerk of the County of \_\_\_\_\_ do hereby certify that the person whose signature appears subscribed to the foregoing [or annexed]



transcript was on the date of the judgment therein mentioned, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a justice of the peace of the County of \_\_\_\_\_, State of New York; and that the said \_\_\_\_\_ resides in the County of \_\_\_\_\_, State of New York.

In Witness Whereof I have hereunto set my hand and affixed the seal of the County of \_\_\_\_\_, State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Clerk of the County of \_\_\_\_\_

[Seal]

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