

NY CLS CPLR R 4526

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New York

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Civil Practice Law And Rules (Arts. 1 — 100) >
Article 45 Evidence (§§ 4501 — 4551)

R 4526. Marriage certificate

An original certificate of a marriage made by the person by whom it was solemnized within the state, or the original entry thereof made pursuant to law in the office of the clerk of a city or a town within the state, is prima facie evidence of the marriage.

History

Formerly § 4526, add, L 1962, ch 308; amd, L 1962, ch 315, § 1, eff Sept 1, 1963.

Annotations

Notes

Prior Law:

Earlier statutes: CPA § 372; CCP § 928.

Advisory Committee Notes:

This rule is the same as former § 372 with a shortening of the title and minor language changes. The reference to a certified copy in the former section is covered by CPLR rule 4539.

Notes to Decisions

I.Under CPLR

1.Generally

II.Under Former Civil Practice Laws

2.Generally

3.Sufficiency of memorandum

4.Continuance and legitimacy

5.Presumptions as to former marriage

I. Under CPLR

1. Generally

Cemetery was entitled to summary judgment in a widow's suit alleging the wrongful cremation of a decedent's body because the cemetery submitted evidence that its actions were taken reasonably and in good faith and in compliance with Public Health Law § 4201(7) based on an authorization given by the decedent's apparent surviving spouse; although the widow asserted that the apparent surviving spouse was not in fact the surviving spouse, on its face, the authorization given satisfied § 4201(7) and the cemetery had no reason to question the apparent surviving spouse's authority, as the relevant documents were facially sufficient. Among other things, the cemetery's manager stated in his affidavit that the apparent surviving spouse had provided a Certificate of Marriage identifying her as the decedent's spouse. *Mack v Brown*, 82 A.D.3d 133, 919 N.Y.S.2d 166, 2011 N.Y. App. Div. LEXIS 1720 (N.Y. App. Div. 2d Dep't 2011).

II. Under Former Civil Practice Laws

2. Generally

A certificate of marriage between defendant and her former husband and the proof that the former husband was alive when the defendant married the plaintiff do not prove whether or not the wife of the former husband was alive. Such certificate is only evidence of the marriage. *Appelbaum v Appelbaum*, 9 Misc. 2d 677, 168 N.Y.S.2d 970, 1957 N.Y. Misc. LEXIS 2146 (N.Y. Sup. Ct. 1957).

3. Sufficiency of memorandum

A marriage certificate from the records of a municipal clerk raises a presumption of a valid marriage. *In re Foote's Estate*, 5 Misc. 2d 58, 160 N.Y.S.2d 85, 1957 N.Y. Misc. LEXIS 3619 (N.Y. Sur. Ct. 1957).

4. Continuance and legitimacy

Marriage certificate is presumptive evidence of the continuance and of the legitimacy of the marriage. *McCarter v McCarter*, 27 Misc. 2d 610, 208 N.Y.S.2d 876, 1960 N.Y. Misc. LEXIS 2309 (N.Y. Sup. Ct. 1960), vacated in part, 227 N.Y.S.2d 608 (N.Y. Sup. Ct. 1962).

5. Presumptions as to former marriage

Certificate of wife's former marriage though presumptive evidence that the marriage took place does not prove that parties to the former marriage were competent to marry. *McCarter v McCarter*, 27 Misc. 2d 610, 208 N.Y.S.2d 876, 1960 N.Y. Misc. LEXIS 2309 (N.Y. Sup. Ct. 1960), vacated in part, 227 N.Y.S.2d 608 (N.Y. Sup. Ct. 1962).

Research References & Practice Aids

Federal Aspects:

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

Marriage certificates as exception to hearsay rule in United States courts, USCS Court Rules, Federal Rules of Evidence, Rule 803(12).

Jurisprudences:

45 NY Jur 2d Domestic Relations § 81. .

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

58 NY Jur 2d Evidence and Witnesses § 506. .

29A Am Jur 2d, Evidence § 1372.

7 Am Jur Proof of Facts 617., Marriage.

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. 4526, Marriage Certificate.

1 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 7.06; 2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 37.04.

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.

Matthew Bender's New York Evidence:

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

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

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) § 40.51.

Hierarchy Notes:

NY CLS CPLR, Art. 45

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