CHAPTER IV.

OF WRITTEN EVIDENCE.

§ 470. WRITINGS are divisible into two classes, namely, PUBLIC and PRIVATE. The former consist of the acts of public functionaries, in the *Executive*, *Legislative* and *Judicial* Departments of Government; including, under this general head, the transactions which official persons are required to enter in books or registers, in the course of their public duties, and which occur within the circle of their own personal knowledge and observation. To the same head may be referred the consideration of documentary evidence of the acts of State, the Laws, and Judgments of Courts of foreign governments. Public writings are susceptible of another division, they being either (1.) judicial, or (2.) not judicial; and with respect to the means and mode of proving them, they may be classed into, (1.) those which are of record, and (2.) those which are not of record. It is proposed to treat, *first*, of public documents, and *secondly*, of those writings which are private. And in regard to both classes, our inquiries will be directed, (1.) to the mode of obtaining an inspection of such documents and writings; (2.) to the method of proving them; and, (3.) to their admissibility and effect.

§ 471. And *first*, in regard to the INSPECTION OF PUBLIC DOCUMENTS, it has been admitted, from a very early period, that the inspection and exemplification of the *records of the King's Courts* is the common right of the subject. This right was extended, by an ancient statute,[1] to cases where the subject was concerned against the King. The exercise of this right does not appear to have been restrained, until the reign

[1] 46 Ed. 3, in the Preface to 3 Coke's Rep. p. iv.

of Charles II., when in consequence of the frequency of actions for malicious prosecution, which could not be supported without a copy of the record, the Judges made an order for the regulation of the Sessions at the Old Bailey, prohibiting the granting of any copy of an indictment for felony, without a special order, upon motion in open Court, at the general gaol delivery.[1] This order, it is to be observed, relates only to indictments for felony. In cases of misdemeanor the right to a copy has never been questioned.[2] But in the United States, no regulation of this kind is known to have been expressly made; and any limitation of the right to a copy of a judicial record or paper, when applied for by any person having an interest in it, would probably be deemed repugnant to the genius of American institutions.[3]

§ 472. Where writs or other papers in a cause are officially in the *custody of an officer of the Court*, he may be compelled by a rule of Court to allow an inspection of them, even though it be to furnish evidence in a civil action against himself.

[1] Orders and Directions, 16 Car. 2, prefixed to Sir J. Kelyng's Reports, Order vii. With respect to the general records of the realm, in such cases, copies are obtained upon application to the Attorney-General. Leggatt *v.* Tollervey, 14 East, 306. But if the copy were obtained without order, it will not, on that account, be rejected. Ibid. Jordan *v.* Lewis, Ib. 395, note (b); Caddy *v.* Barlow, 1 M. & Ry. 275. But Lord Chief Justice Willes, in Rex *v.* Brangam, 1 Leach, Cr. Cas. 32, in the case of a prosecution for robbery, evidently vexatious, refused an application for a copy of the record, on the ground, that no order was necessary; declaring, that "by the laws of the realm, every prisoner, upon his acquittal, had an undoubted right and title to a copy of the record, of such acquittal, for any use he might think fit to make of it; and that, after a demand of it had been made, the proper officer might be punished for refusing to make it out." A strong doubt of the legality of the order of 16 Car. 2, was also raised in Browne *v.* Cumming, 10 B. & C. 70.

[2] Morrison *v.* Kelly, 1 W. Bl. 385.

[3] The only case, known to the author, in which the English rule was acted on, is that of The People *v.* Poyllon, 2 Caines, 202, in which a copy was moved for and granted.

Thus, a rule was granted against the marshal of the King's Bench prison, in an action against him for an escape of one arrested upon mesne process, to permit the plaintiff's attorney to inspect the writ, by which he was committed to his custody.[1]

§ 473. In regard to the *records of inferior tribunals*, the right of inspection is *more limited.* As all persons have not necessarily an interest in them, it is not necessary that they should be open to the inspection of all, without distinction. The party, therefore, who wishes to inspect the proceedings of any of those Courts, should first apply to that Court, showing that he has some interest in the document, and that he requires it for a proper purpose. If it should be refused, the Court of Chancery, upon affidavit of the fact, may at any time send, by a writ of *certiorari*, either for the record itself, or an exemplification. The King's Bench in England, and the Supreme Courts of Common Law in America, have the same power, by *mandamus;*[2] and this whether an action be pending or not.[3]

§ 474. There are *other records*, which partake *both of a public and private character*, and are treated as the one or the other, according to the relation in which the applicant stands to them. Thus, the books of a corporation are public with respect to its members, but private with respect to strangers.[4] In regard to its members, a rule for inspection of the writings of the corporation will be granted of course, on their application, where such inspection is shown to be necessary, in regard to some particular matter in dispute, or where the granting of

[1] Fox *v.* Jones, 7 B. & C. 732.

[2] Gresley on Evid. p. 115, 116; Wilson *v.* Rogers, 2 Stra. 1242; Rex *v.* Smith, 1 Stra. 126; Rex *v.* Tower, 4 M. & S. 162; Herbert *v.* Ashburner, 1 Wils. 297; Rex *v.* Allgood, 7 T. R. 746; Rex *v.* Sheriff of Chester, 1 Chitty, R. 479.

[3] Rex *v.* Lucas, 10 East, 235, 236, per Ld. Ellenborough.

[4] Gresley on Evid. 116.

it is necessary, to prevent the applicant from suffering injury, or to enable him to perform his duties; and the inspection will then be granted, only so far as is shown to be essential to that end.[1] But a stranger has no right to such rule, and it will not be granted, even where he is defendant in a suit brought by the corporation.[2] In this class of records, are enumerated parish books,[3] transfer books of the East India Company,[4] public lottery books,[5] the books of incorporated banking companies,[6] a bishop's registry of presentations,[7] and some others of the like kind. If an inspection is wanted by a stranger, in a case not within this rule of the Common Law, it can only be obtained by a bill for a discovery; a Court of Equity permitting a discovery in some cases, and under some circumstances, where Courts of Law will not grant an inspection.[8] And an inspection is granted only where civil rights are depending; for it is a constant and invariable rule, that, in criminal cases, the party shall never be obliged to furnish evidence against himself.[9]

[1] Rex *v.* Merchant Tailor's Co. 2 B. & Ad. 115; State of Louisiana, ex rel. Hatch *v.* City Bank of New Orleans, Sup. Court, La., March T. 1842; The People *v.* Throop, 12 Wend. 183.

[2] Mayor of Southampton *v.* Greaves, 8 T. R. 590. The party in such case, can only give notice to the corporation to produce its books and papers, as in other cases between private persons. See accordingly, Burrell *v.* Nicholson, 3 B. & Ad. 649; Bank of Utica *v.* Hillard, 5 Cowen, 419; 6 Cowen, 62, S. C.; Imperial Gas. Co. *v.* Clarke, 7 Bing. 95; Rex *v.* Justices of Buckingham, 8 B. & C. 375.

[3] Cox *v.* Copping, 5 Mod. 395; Newell *v.* Simkin, 6 Bing. 565.

[4] Geery *v.* Hopkins, 2 Ld. Raym. 851; 7 Mod. 129, S. C.; Shelling *v.* Farmer, 1 Stra. 646.

[5] Schinotti *v.* Bumstead, 1 Tidd's Pr. 594.

[6] Brace *v.* Ormond, 1 Meriv. 409; The People *v.* Throop, 12 Wend. 183; Union Bank *v.* Knapp, 3 Pick. 96; Mortimer *v.* M'Callan, 6 M. & W. 58.

[7] Rex *v.* Bp. of Ely, 8 B. & C. 112; Finch *v.* Bp. of Ely, 2 M. & Ry. 127.

[8] Gresley on Evid. 116, 117.

[9] 1 Tidd's Pr. 593. Under this rule an information, in the nature of a *quo warranto*, is considered as merely a civil proceeding. Rex *v.* Babb, 3 T. R. 582. See also Rex *v.* Dr. Purnell, 1 Wils. 239.

§ 475. Inspection of the *books of public offices* is subject to the same restriction, as in the case of corporation books; and access to them will not be granted in favor of persons, who have no interest in the books. Thus, an inspection of the books of the post-office has been refused, upon the application of the plaintiff in a *qui tam* action against a clerk in the post-office, for interfering in the election of a member of parliament, because the action did not relate to any transaction in the post-office, for which alone the books were kept.[1] Upon the same ground, that the subject of the action was collateral to the subject-matter and design of the books, an inspection of the books of the custom-house has been refused.[2] Such inspections are also sometimes refused on grounds of public policy, the disclosures sought being considered detrimental to the public interest. Upon the same principle of an interest in the books, the tenants of a manor are generally entitled to an inspection of the court-rolls, wherever their own rights are concerned; but this privilege is not allowed to a stranger.[3]

§ 476. But, in all cases of public writings, if the disclosure of their contents would, either in the judgment of the Court, or of the Chief Executive Magistrate, or the Head of department, in whose custody or under whose control they may be kept, be *injurious to the public interests*, an inspection will not be granted.[4]

§ 477. The motion for a rule to inspect and take copies of books and writings, *when an action is pending*, may be made at any stage of the cause, and is founded on an *affidavit*, stating the circumstances under which the inspection is

[1] Crew *v.* Blackburn, cited 1 Wils. 240; Crew *v.* Saunders, 2 Stra. 1005.

[2] Atherfold *v.* Beard, 2 T. R. 610.

[3] Rex *v.* Shelley, 3 T. R. 141; Rex *v.* Allgood, 7 T. R. 746. See 2 Phil. Evid. 182 – 190; Rex *v.* Hostmen of Newcastle, 2 Stra. 1223, note (1), by Nolan.

[4] Ante, § 250, 251, and cases there cited.

claimed, and that an application therefor has been made to the proper quarter, and refused.[1]

§ 478. But *when no action is pending*, the proper course is to move for a rule to show cause why a *mandamus* should not issue, commanding the officer having custody of the books to permit the applicant to inspect them, and take copies. The application in this case should state some specific object sought by the inspection, and be supported by an *affidavit*, as in the case preceding. If a rule is made to show cause why an *information* in the nature of a *quo warranto* should not be filed, a rule for an inspection will be granted to the prosecutor, immediately upon the granting of a rule to show cause. But if a rule be made to show cause why a *mandamus* should not be awarded, the rule for an inspection will not be granted, until the *mandamus* has been issued and returned.[2]

§ 479. We proceed now, in the SECOND PLACE, to consider the MODE OF PROOF of public documents, beginning with those which are *not judicial*. And first, of *acts of State*. It has already been seen, that Courts will judicially take notice of the political constitution, or frame of the government of their own country, its essential political agents, or officers, and its essential ordinary and regular operations. The great seal of the State and the seals of its judicial tribunals require no proof. Courts also recognise, without other proof than inspection, the seals of State of other nations, which have been recognised by their own sovereign. The seals also of foreign Courts of Admiralty, and of notaries public, are recognised in the like manner.[3] Public statutes, also, need no proof, being

[1] 1 Tidd's Pr. 595, 596; 2 Phil Evid 189, 190.

[2] 1 Tidd's Pr. 596; Rex *v.* Justices of Surrey, Sayer, R. 144; Rex *v.* Shelley, 3 T. R. 141; Rex *v.* Hollister, Cas. Temp. Hardw. 245.

[3] Ante, § 4, 5, 6; Story on Confl. of Laws, § 643. A protest of a bill of exchange, in a foreign country, is sufficiently proved by the seal of the foreign

supposed to exist in the memories of all; but, for certainty of recollection, reference is had either to a copy from the legislative rolls or to the book printed by public authority.[1] Acts of State may be proved by production of the original printed document, from a press authorized by government.[2] Proclamations, and other acts and orders of the Executive, of the like character, may be proved by production of the government Gazette, in which they were authorized to be printed.[3] Printed copies of public documents, transmitted to Congress by the President of the United States, and printed by the printer to Congress, are evidence of those documents.[4] And here it may be proper to observe, that, in all cases of proof by a copy, if the copy has been taken by a machine, worked by the witness who produces it, it is sufficient.[5] The certificate of the Secretary of State is evidence that a particular person has been recognised as a foreign minister.[6] And the certificate of a foreign governor, duly authenticated, is evidence of his own official acts.[7]

§ 480. Next, as to *legislative acts*, which consist of statutes, resolutions, and orders, passed by the legislative body. In regard to *private statutes*, resolutions, &c., the only mode of proof, known to the Common Law, is either by means of a

notary. Willes, 550; Anon. 12 Mod. 345; Bayley on Bills, 515, (Phillips & Sewall's Ed.); Story on Bills, § 276, 277; La Caygas *v.* Larionda, 4 Mart. 283.

[1] Bull. N. P. 225.

[2] Rex *v.* Withers, cited 5 T. R. 446; Watkins *v.* Holman, 16 Peters, R. 25.

[3] Rex *v.* Holt, 5 T. R. 436; Van Omeron *v.* Dowick, 2 Campb. 42; Bull. N. P. 226; Attor. Gen. *v.* Theakstone, 8 Price, 89. An appointment to a commission in the army cannot be proved by the Gazette. Rex *v.* Gardner, 2 Campb. 513; Kirwan *v.* Cockburn, 5 Esp. 233. See also Rex *v.* Forsyth, R. & Ry. 274, 275.

[4] Radcliff *v.* United Ins. Co. 7 Johns. 38, per Kent, C. J.

[5] Simpson *v.* Thoreton, 2 M. & Rob. 433.

[6] United States *v.* Benner, 1 Baldw. 238.

[7] United States *v.* Mitchell, 3 Wash. 95.

copy, proved on oath to have been examined by the roll itself; or, by an exemplification under the great seal. But in several of the United States, the printed copies of the laws and resolves of the legislature, published by its authority, are held competent evidence; and it is sufficient, *primâ facie*, that the book purports to have been so printed.[1] It is the invariable course of the legislatures of the several States, as well as of the United States, to have the laws and resolutions of each session printed by authority. Confidential persons are selected to compare the copies with the original rolls, and superintend the printing. The very object of this provision is to furnish the people with authentic copies; and, from their nature, printed copies of this kind, either of public or private laws, are as much to be depended on, as the exemplification, verified by an officer, who is a keeper of the record.[2]

§ 481. If in a *private statute* a *clause* is inserted, that it shall be *taken notice of*, *as* if it were *a public act;* this not only dispenses with the necessity of pleading it specially, but also changes the mode of proof, by dispensing with the production of an exemplified or sworn copy.[3]

§ 482. In regard to the *Journals* of either branch of the legislature, a former remark[4] may be here repeated, equally applicable to all other *public records and documents*, namely, that they constitute an exception to the general rule, which requires the production of the best evidence, and may be

[1] Young *v.* Bank of Alexandria, 4 Cranch, 388; Biddis *v.* James, 6 Binn. 321, 326; 1 Rev. Stat. New York, p. 184, § 12; Rex *v.* Forsyth, Rus. & Ry. 275.

[2] Per Tilghman, C. J., 6 Binn. 326. See also Watkins *v.* Holman, 16 Peters, R. 25; Holt, C. J. held, that an act, printed by the King's printers, was always good evidence to a Jury; though it was not sufficient upon an issue of *nul tiel record*. Anon. 2 Salk. 566.

[3] Beaumont *v.* Mountain, 10 Bing. 404. The contrary seems to have been held in Brett *v.* Beales, 1 M. & Malk. 421; but that case was overruled, as to this point, in Woodward *v.* Cotton, 1 C. M. & R. 44, 47.

[4] Ante, § 91.

proved by examined copies. This exception is allowed, because of their nature, as original public documents, which are not removable at the call of individuals; and because, being interesting to many persons, they might be necessary, as evidence, in different places at the same time.[1] Moreover, these being public records, they would be recognised as such by the Court, upon being produced, without collateral evidence of their identity or genuineness; and it is a general rule, that, whenever the thing to be proved would require no collateral proof upon its production, it is provable by a copy.[2] These journals may also be proved by the copies printed by the government printer, by authority of the House.[3]

§ 483. The next class of public writings to be considered, consists of *official registers*, or books kept by persons in public office, in which they are required, whether by statute or by the nature of their office, to write down particular transactions, occurring in the course of their public duties, and under their personal observation. These documents, as well as all others of a public nature, are generally admissible in evidence, notwithstanding their authenticity is not confirmed by those usual and ordinary tests of truth, the obligation of an oath, and the power of cross-examining the persons, on whose authority the truth of the documents depends. The extraordinary degree of confidence, it has been remarked, which is reposed in such documents, is founded principally upon the circumstance, that they have been made by authorized and accredited agents, appointed for the purpose; but partly also on the publicity of their subject-matter. Where the particular facts are inquired into and recorded for the benefit of

[1] Ld. Melville's case, 29 Howell's St. Tr. 683–685; Rex *v.* Ld. George Gordon, 2 Doug. 593, and note (3); Jones *v.* Randall, Lofft, 383, 428; Cowp. 17, S. C.

[2] Rex *v.* Smith, 1 Stra. 126.

[3] Root *v.* King, 7 Cowen, 613, 636; Watkins *v.* Holman, 16 Peters, R. 25.

the public, those who are empowered to act in making such investigations and memorials, are in fact the agents of all the individuals who compose the State; and every member of the community may be supposed to be privy to the investigation. On the ground, therefore, of the credit due to agents so empowered, and of the public nature of the facts themselves, such documents are entitled to an extraordinary degree of confidence; and it is not necessary that they should be confirmed and sanctioned by the ordinary tests of truth. Beside this, it would always be difficult, and often impossible, to prove facts of a public nature, by means of actual witnesses upon oath.[1]

§ 484. These books, therefore, are recognised by law, because they are required by law to be kept, because the entries in them are of public interest and notoriety, and because they are made under the sanction of an oath of office, or at least under that of official duty. They belong to a particular custody, from which they are not usually taken but by special authority, granted only in cases where inspection of the book itself is necessary, for the purpose of identifying the book, or the handwriting, or of determining some question arising upon the original entry, or of correcting an error, which has been duly ascertained. Books of this public nature being themselves evidence, when produced, their contents may be proved by an immediate copy, duly verified.[2] Of this description are parish registers;[3] the books of the Bank of England, which contain the transfers of public stock;[4] the transfer books of the East India Company;[5]

[1] 1 Stark. Evid. 195; Ante, § 128.

[2] Lynch *v.* Clerke, 3 Salk. 154, per Holt, C. J.; 2 Doug. 593, 594, note (3).

[3] Phil. & Am. on Evid. 594–597; 2 Phil. Evid. 183–186; Lewis *v.* Marshall, 5 Peters, 472, 475; 1 Stark. Evid. 205.

[4] Breton *v.* Cope, Peake's Cas. 30; Marsh *v.* Collnett, 2 Esp. 655; Mortimer *v.* M'Callan; 6 M. & W. 58.

[5] 2 Doug. 593, note, (3).

the rolls of Courts baron;[1] the books which contain the official proceedings of corporations, and matters respecting their property, if the public at large is concerned with it;[2] books of assessment of public rates and taxes;[3] vestry books;[4] bishops' registers, and chapter-house registers;[5] terriers;[6] the books of the post-office, and custom-house, and registers of other public offices;[7] prison registers;[8] enrollment of deeds;[9] the registers of births and of marriages, made pursuant to the statutes of any of the United States;[10] the registration of vessels in the custom-house;[11] and the books of records of

[1] Bull. N. P. 247; Doe *v.* Askew, 10 East, 520; 2 Phil. Evid. 185.

[2] Warriner *v.* Giles, 2 Stra. 954; Ibid. 1223, note (1); Marriage *v* Lawrence, 3 B. & Ald. 144, per Abbott, C. J.; Gibbon's case, 17 Howell's St. Tr. 810; Moore's case, Ib. 854; Owings *v.* Speed, 5 Wheat. 420.

[3] Doe *v.* Seaton, 2 Ad. & El. 171, 178, per Patteson, J.; Doe *v.* Arkwright, Ib. 182, (note), per Denman, C. J.; Rex *v.* King, 2 T. R. 234; Ronkendorff *v.* Taylor, 4 Peters, 349, 360; Doe *v.* Cartwright, Ry. & M. 62.

[4] Rex *v.* Martin, 2 Campb. 100. See, as to Church Records, Sawyer *v.* Baldwin, 11 Pick. 494.

[5] Arnold *v.* Bp. of Bath and Wells, 5 Bing. 316; Coombs *v.* Coether, 1 M. & Malk. 398.

[6] Bull. N. P. 248; 1 Stark. Evid. 201.

[7] Bull. N. P. 249; Rex *v.* Fitzgerald, 1 Leach, Cr. Cas. 24; Rex *v.* Rhodes, Ib. 29; D'Israeli *v.* Jowett, 1 Esp. 427; Barber *v.* Holmes, 3 Esp. 190; Wallace *v.* Cook, 5 Esp. 117; Johnson *v.* Ward, 6 Esp. 48; Tomkins *v.* Attor. Gen. 1 Dow, 404; Rex *v.* Grimwood, 1 Price, 369; Henry *v.* Leigh, 3 Campb. 499; United States *v.* Johns, 4 Dall. 412, 415.

[8] Salte *v.* Thomas, 3 B. & P. 188; Rex *v.* Aickles, 1 Leach, Cr. Cas. 435.

[9] Bull. N. P. 229; Phil. & Am. on Evid. 616; 2 Phil. Evid. 132; Hastings *v.* Blue Hill Turnp. Corp. 9 Pick. 80.

[10] Milford *v.* Worcester, 7 Mass 48; Commonwealth *v.* Littlejohn, 15 Mass. 163; Sumner *v.* Sebec, 3 Greenl. 223; Wedgwood's case, 8 Greenl. 75; Jacock *v.* Gilliam, 3 Murphy, 47; Martin *v.* Gunby, 2 H. & J. 248; Jackson *v.* Boneham, 15 Johns. 226; Jackson *v.* King, 5 Cowen, 237; Richmond *v.* Patterson, 3 Ohio R. 368.

[11] United States *v.* Johns, 5 Dall. 415; Colson *v.* Bonzey, 6 Greenl. 474; Hacker *v.* Young, 6 N. Hamp. 95; Coolidge *v.* N. York Firemen's Ins. Co. 14 Johns. 308; Catlett *v.* Pacific Ins. Co. 1 Wend. 651.

the transactions of towns, city councils, and other municipal bodies.[1] In short, the rule may be considered as settled, that every document of a public nature, which there would be an inconvenience in removing, and which the party has a right to inspect, may be proved by a duly authenticated copy.[2]

§ 485. It is deemed *essential to the official character* of these books, that the entries in them be made promptly, or at least without such long delay as to impair their credibility, and that they be made by the person whose duty it was to make them, and in the mode required by law, if any has been prescribed.[3] When the books themselves are produced, they are received as evidence, without further attestation. But they must be accompanied by proof that they come from the *proper repository*.[4] Where the proof is by a copy, an examined copy, duly made and sworn to by any competent witness is always admissible. Whether a *copy*, *certified* by the officer having legal custody of the book or document, he not being specially appointed by law to furnish copies, is admissible, has been doubted; but though there are decisions against the admissibility, yet the weight of authority seems to have established the rule, that a copy given by a public officer, whose duty it is to keep the original, ought to be received in evidence.[5]

[1] Saxton *v.* Nimms, 14 Mass. 320, 321; Thayer *v.* Stearns, 1 Pick. 309; Taylor *v.* Henry, 2 Pick. 401; Denning *v.* Roome, 6 Wend. 651; Dudley *v.* Grayson, 6 Monroe, 259; Bishop *v.* Cone, 3 N. Hamp. 513.

[2] Gresley on Evid. 115.

[3] Doe *v.* Bray, 8 B. & C. 813; Walker *v.* Wingfield, 18 Ves. 443.

[4] 1 Stark. Evid. 202; Atkins *v.* Hatton, 2 Anstr. 387; Armstrong *v.* Hewett, 4 Price, 216; Pulley *v.* Hilton, 12 Price, 625; Swinnerton *v.* Marquis of Stafford, 3 Taunt. 91. See Ante, § 142, as to the nature of the repository required.

[5] United States *v.* Percheman, 7 Peters, 51, 85, [A. D. 1833,] per totam Curiam; Oakes *v.* Hill, 14 Pick. 442, 448; Abbott on Shipping, p. 63, note 1, (Story's Ed.); United States *v.* Johns, 4 Dall. 412, 415; Judice *v.* Chrétien, 3 Rob. Louis. R. 15; Wells *v.* Compton, Ib. 171. In accordance with the principle of this rule, is the statute of the United States, of March

§ 486. In regard to *foreign laws*, the established doctrine now is, that no Court takes judicial notice of the laws of a foreign country, but they must be proved as facts. And the better opinion seems to be, that this proof must be made to the Court, rather than to the Jury. "For," observes Mr. Justice Story, "all matters of law are properly referable to the Court, and the object of the proof of foreign laws is to enable the Court to instruct the Jury what, in point of law, is the result of the foreign law to be applied to the matters in controversy before them. The Court are, therefore, to decide what is the proper evidence of the laws of a foreign country; and when evidence is given of those laws, the Court are to judge of their applicability, when proved, to the case in hand."[1]

27, 1804, (3 LL. U. S. 621, ch. 409, Bioren's Ed.) by which it is enacted, that "all records and exemplifications of office books, which are or may be kept in any public office of any State, not appertaining to a Court, shall be proved or admitted in any other Court or Office in any other State, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding Justice of the Court of the county or district, as the case may be, in which such office is or may be kept; or of the Governor, the Secretary of State, the Chancellor or the Keeper of the great seal of the State, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding Justice of a Court, shall be farther authenticated by the Clerk or Prothonotary of the said Court, who shall certify, under his hand and the seal of his office, that the said presiding Justice is duly commissioned and qualified; or if the said certificate be given by the Governor, the Secretary of State, the Chancellor or Keeper of the great seal, it shall be under the great seal of the State, in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every Court and office within the United States, as they have by law or usage in the Courts or Offices of the State, from whence the same are or shall be taken." By another section this provision is extended to the records and public books, &c. of all the Territories of the United States. The earlier American authorities, opposed to the rule in the text, are cited in Cowen & Hill's notes 786, 787, 802, to 1 Phil. Evid. 411, 412, 423. These cases are in accordance with the English rule. 2 Phil. Evid. 130 – 134.

[1] Story on Confl. of Laws, § 638, and cases there cited.

§ 487. "Generally speaking, authenticated copies of the written laws, or of other public instruments, of a foreign government, are expected to be produced. For it is not to be presumed, that any civilized nation will refuse to give such copies duly authenticated, which are usual and necessary for the purpose of administering justice in other countries. It cannot be presumed, that an application to a foreign government to authenticate its own edict or law will be refused; but the fact of such a refusal must, if relied on, be proved. But if such refusal is proved, then inferior proofs may be admissible.[1] Where our own government has promulgated any foreign law or ordinance of a public nature as authentic, that may of itself be sufficient evidence of the actual existence, and terms of such law or ordinance."[2]

§ 488. "In general, foreign laws are required to be verified by the sanction of an oath, unless they can be verified by some high authority, such as the law respects, not less than it respects the oath of an individual.[3] The usual mode of authenticating foreign laws (as it is of authenticating foreign judgments) is by an exemplification of a copy under the great seal of a State; or by a copy proved to be a true copy by a witness, who has examined and compared it with the original;

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[1] Church *v.* Hubbart, 2 Cranch, 237, 238. It is now settled in England, upon great consideration, that a foreign written law may be proved by parol evidence of a witness, learned in the law of that country; without first attempting to obtain a copy of the law itself. Baron de Bode *v.* Reginam, 10 Jur. 217.

[2] Story on Confl. of Laws, § 640; Talbot *v.* Seeman, 1 Cranch, 38. The Acts of State of a foreign government can only be proved by copies of such Acts, properly authenticated. Richardson *v.* Anderson, 1 Campb. 65, note (a).

[3] Church *v.* Hubbart, 2 Cranch, 237; Brackett *v.* Norton, 4 Conn. 517; Hempstead *v.* Reed, 6 Conn. 480; Dyer *v.* Smith, 12 Conn. 384. But the Court may proceed on its own knowledge of foreign laws, without the aid of other proof; and its judgment will not be reversed for that cause, unless it should appear that the Court was mistaken as to those laws. The State *v.* Rood, 12 Verm. 396.