rejected.[1] So, where an officer's certificate is made evidence of certain facts, he cannot extend its effect to other facts, by stating those also in the certificate; but such parts of the certificate will be suppressed.[2] The same rules are applied to an officer's return.[3]

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[1] Oakes *v.* Hill, 14 Pick. 442, 448; Wolfe *v.* Washburn, 6 Cowen, 261; Jackson *v.* Miller, Ib. 751; Governor *v.* McAffee, 2 Dev. 15, 18; United States *v.* Buford, 3 Peters, 12, 29.

[2] Johnson *v.* Hocker, 1 Dall. 406, 407; Governor *v.* Bell, 3 Murph. 331; Governor *v.* Jeffreys, 1 Hawks. 297; Stewart *v.* Alison, 6 S. & R. 324, 329.

[3] Cator *v.* Stokes, 1 M. & S. 599; Arnold *v.* Tourtelot, 13 Pick. 172. See, on the general subject, the cases cited in Cowen & Hill's notes 702, & 741, to 1 Phil. Evid. p. 382, 391. A notary's certificate that no note of a certain description was protested by him, is inadmissible. Exchange, &c. Co. of N. Orleans *v.* Boyce, 3 Rob. Louis. R. 307.

CHAPTER V.

RECORDS AND JUDICIAL WRITINGS.

§ 499. The next class of Written Evidence consists of *Records* and *Judicial Writings*. And here also, as in the case of Public Documents, we shall consider, first, the *mode of proving* them; and, secondly, their *admissibility and effect*.

§ 500. The case of *statutes*, which are records, has already been mentioned, under the head of legislative acts, to which they seem more properly to belong, the term *record* being generally taken in the more restricted sense, with reference to judicial tribunals. It will only be observed in this place, that, though the Courts will take notice of all public statutes, without proof, yet private statutes must be proved, like any other legislative documents, namely, by an exemplification under the great seal, or by an examined copy, or by a copy printed by authority.

§ 501. As *to the proof of records*, this is done either by mere *production* of the records, without more, or by a copy. Copies of record are, (1.) exemplifications; (2.) copies made by an authorized officer; (3.) sworn copies. Exemplifications are either, first, under the great seal, or, secondly, under the seal of the particular Court where the record remains.[1] When a record is the *gist* of the issue, if it is not in the same Court, it should be proved by an exemplification. By the course of the Common Law, where an exemplification under the great seal is requisite, the record may be removed into the Court of

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[1] Bull. N. P. 227, 228. An exemplification under the great seal is said to be of itself a record, of the greatest validity. 1 Gilb. Evid. by Lofft, p. 19; Bull. N. P. 226. Nothing but a record can be exemplified in this manner. 3 Inst. 173.

Chancery by a *certiorari*, for that is the centre of all the Courts, and there the great seal is kept. But in the United States, the great seal being usually if not always kept by the Secretary of State, a different course prevails; and an exemplified copy, under the seal of the Court, is usually admitted, even upon an issue of *nul tiel record*, as sufficient evidence.[1] When the record is not the *gist* of the issue, the last mentioned kind of exemplification is always sufficient proof of the record, at Common Law.[2]

§ 502. The *record itself* is produced only when the cause is in the same Court, whose record it is; or, when it is the subject of proceedings in a superior Court. And in the latter case, although it may by the Common Law be obtained through the Court of Chancery, yet a *certiorari* may also be issued from a superior Court of Common Law, to an inferior tribunal, for the same purpose, whenever the tenor only of the record will suffice; for in such cases nothing is returned but the tenor, that is, a literal transcript of the record, under the seal of the Court; and this is sufficient to countervail the plea of *nul tiel record*.[3] Where the record is put in issue in a

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[1] Vail *v.* Smith, 4 Cowen, 71. See also Pepoon *v.* Jenkins, 2 Johns. Cas. 118; Colem. & Cain. Cas. 136, S. C. In some of the States, copies of record of the Courts of the same State, attested by the clerk, have, either by immemorial usage, or by early statutes, been received as sufficient in all cases. Vance *v.* Reardon, 2 Nott & McCord, 299; Ladd *v.* Blunt, 4 Mass. 402. Whether the seal of the Court to such copies is necessary, in Massachusetts, *quære;* and see Commonwealth *v.* Phillips, 11 Pick. 30.

[2] Gilb. Evid. 26.

[3] Woodcraft *v.* Kinaston, 2 Atk. 317, 318; 1 Tidd's Pr. 398; Butcher & Aldworth's case, Cro. El. 821. Where a domestic record is put in issue by the plea, the question is tried by the Court, notwithstanding it is a question of fact. And the judgment of a Court of record of a sister State in the Union, is considered, for this purpose, as a domestic judgment. Hall *v.* Williams, 6 Pick. 227; Carter *v.* Wilson, 1 Dev. & Bat. 362. But if it is a foreign record, the issue is tried by the Jury. The State *v.* Isham, 3 Hawks. 185; Adams *v.* Betz, 1 Watts, 425; Baldwin *v.* Hale, 17 Johns. 272. The reason is, that in the former case the Judges can themselves have an inspection of the very record. But in the latter, it can only be proved by a copy, the veracity of which is a mere fact, within the province of the Jury. And see Collins *v.* Matthews, 5 East, 473. But in New York, the question in every case is now, by statute, referred to the Jury. Trotter *v.* Mills, 6 Wend. 512.

superior Court of concurrent jurisdiction and authority, it is proved by an exemplification out of Chancery, being obtained and brought thither by a *certiorari* issued out of Chancery, and transmitted thence by *mittimus*.[1]

§ 503. In proving a record by a *copy under seal*, it is to be remembered, that the Courts recognise without proof the seal of State, and the seals of the superior Courts of Justice, and of all Courts, established by public statutes.[2] And by parity of reason it would seem, that no extraneous proof ought to be required of the seal of any department of State, or public office established by law, and required or known to have a seal.[3] And here it may be observed, that copies of records and judicial proceedings, under seal, are deemed of higher credit than sworn copies, as having passed under a more exact critical examination.[4]

§ 504. In regard to the several *States composing the United States*, it has already been seen, that though they are sovereign and independent, in all things not surrendered to the national government by the Constitution, and therefore, on general principles, are liable to be treated by each other in all other respects as foreign States, yet their mutual relations are rather those of domestic independence, than of foreign aliena-

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[1] 1 Tidd's Pr. 398.

[2] Olive *v.* Guin, 2 Sid. 145, 146, per Witherington, C. B.; Gilb. Evid. 19; 12 Vin. Abr. 132, 133, tit. Evid. A. b. 69; Delafield *v.* Hand, 3 Johns. 310, 314; Den *v.* Vreelandt, 2 Halst. 555. The seals of counties Palatine, and of the Ecclesiastical Courts, are judicially known, on the same general principle. See also, as to Probate Courts, Chase *v.* Hathaway, 14 Mass. 222; Judge, &c. *v.* Briggs, 3 N. Hamp. 309.

[3] Ante, § 6.

[4] 2 Phil. Evid. 130.

tion.[1] It is accordingly provided in the Constitution, that "full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State; and that the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."[2] Under this provision it has been enacted, that "the records and judicial proceedings of the Courts of any State shall be proved or admitted, in any other Court within the United States, by the attestation of the Clerk and the seal of the Court annexed, if there be a seal, together with a certificate of the Judge, Chief Justice, or presiding Magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every Court within the United States, as they have by law or usage in the Courts of the State, from whence said records are or shall be taken."[3] By a subsequent act, these provisions are extended to the Courts of all Territories, subject to the jurisdiction of the United States.[4]

§ 505. It seems to be generally agreed, that this method of authentication, as in the case of public documents before mentioned, is *not exclusive* of any other, which the States may think proper to adopt.[5] It has also been held, that these acts of Congress do not extend to judgments in *criminal* cases, so as to render a witness incompetent in one State, who has been

[1] Mills *v.* Duryee, 7 Cranch, 481; Hampton *v.* McConnel, 3 Wheat. 234; Ante, § 489.

[2] Const. U. S. Art. iv. § i.

[3] Stat. U. S. May 26, 1790, 2 LL. U. S. ch. 38, p. 102, (Bioren's Ed.)

[4] Stat. U. S. March 27, 1804, 3 LL. U. S. ch. 409, p. 621, (Bioren's Ed.)

[5] Kean *v.* Rice, 12 S. & R. 203, 208; The State *v.* Stade, 1 D. Chipm. 303; Raynham *v.* Canton, 3 Pick. 293; Biddis *v.* James, 6 Binn. 321; Ex parte Povall, 3 Leigh's R. 816; Pepoon *v.* Jenkins, 2 Johns. Cas. 119; Ellmore *v.* Mills, 1 Hayw. 359; Ante, § 489; Rev. Stat. Mass. ch. 94, § 57, 59, 60, 61.

convicted of an infamous crime in another.[1] The judicial proceedings, referred to in these acts, are also generally understood to be the proceedings of Courts of general jurisdiction, and not those which are merely of municipal authority; for it is required that the copy of the record shall be certified by the Clerk of the Court, and that there shall also be a certificate of the Judge, Chief Justice, or presiding Magistrate, that the attestation of the Clerk is in due form. This, it is said, is founded on the supposition that the Court, whose proceedings are to be thus authenticated, is so constituted as to admit of such officers; the law having wisely left the records of magistrates, who may be vested with limited judicial authority, varying in its objects and extent in every State, to be governed by the laws of the State, into which they may be introduced for the purpose of being carried into effect.[2] Accordingly it has been held, that the judgments of *Justices of the Peace* were not within the meaning of these constitutional and statutory provisions.[3] But the proceedings of Courts of Chancery, and of Probate, as well as of the Courts of Common Law, may be proved in the manner directed by the statute.[4]

§ 506. Under these provisions it has been held, that the *attestation of the copy* must be according to the form used in

[1] Commonwealth *v.* Green, 17 Mass. 515; Ante, § 376, and cases there cited.

[2] Warren *v.* Flagg, 2 Pick. 450, per Parker, C. J.

[3] Warren *v.* Flagg, 2 Pick. 448; Robinson *v.* Prescott, 4 N. Hamp. 450; Mahurin *v.* Bickford, 6 N. Hamp. 567; Silver Lake Bank *v.* Harding, 5 Ohio R. 545; Thomas *v.* Robinson, 3 Wend. 267. In Connecticut and Vermont, it is held, that if the Justice is bound by law to keep a record of his proceedings, they are within the meaning of the act of Congress. Bissell *v.* Edwards, 5 Day, 363; Starkweather *v.* Loomis, 2 Verm. 573; Blodget *v.* Jordan, 6 Verm. 580. See acc. Scott *v.* Cleveland, 3 Monroe, 62.

[4] Scott *v.* Blanchard, 8 Martin, N. S. 303; Hunt *v.* Lyle, 8 Yerg. 142; Barbour *v.* Watts, 2 A. K. Marsh. 290, 293; Balfour *v.* Chew, 5 Martin, N. S. 517; Johnson *v.* Rannels, 6 Martin, N. S. 621; Ripple *v.* Ripple, 1 Rawle, 386; Craig *v.* Brown, 1 Peters, C. C. R. 352.

the State, from which the record comes; and that it must be certified to be so, by the presiding Judge of the same Court, the certificate of the Clerk to that effect being insufficient.[1] Nor will it suffice for the Judge simply to certify that the person who attests the copy is the Clerk of the Court, and that the signature is in his handwriting.[2] The seal of the Court must be annexed to the record with the certificate of the Clerk, and not to the certificate of the Judge.[3] If the Court, whose record is certified, has no seal, this fact should appear, either in the certificate of the Clerk, or in that of the Judge.[4] And if the Court itself is extinct, but its records and jurisdiction have been transferred by law to another Court, it seems that the Clerk and presiding Judge of the latter tribunal are competent to make the requisite attestations.[5] If the copy produced purports to be a record, and not a mere transcript of minutes from the docket, and the Clerk certifies "that the foregoing is truly taken from the record of the proceedings" of the Court, and this attestation is certified to be in due form of law, by the presiding Judge, it will be presumed that the paper is a full copy of the entire record, and will be deemed sufficient.[6] It has also been held, that it must appear from the Judge's certificate, that at the time of certifying he is the presiding Judge of that Court; a certificate, that he is "the Judge that presided" at the time of the trial, or that he is "the senior Judge of the Courts of Law" in the State, being

[1] Drummond *v.* Magruder, 9 Cranch, 122; Craig *v.* Brown, 1 Pet. C. C. R. 352. The Judge's certificate is the only competent evidence of this fact. Smith *v.* Blagge, 1 Johns. Cas. 238. And it is conclusive. Ferguson *v.* Harwood, 7 Cranch, 408.

[2] Craig *v.* Brown, 1 Pet. C. C. R. 352.

[3] Turner *v.* Waddington, 3 Wash. 126. And being thus affixed, and certified by the clerk, it proves itself. Dunlap *v.* Waldo, 6 N. Hamp. 450.

[4] Craig *v.* Brown, 1 Pet. C. C. R. 352; Kirkland *v.* Smith, 2 Martin, N. S. 497.

[5] Thomas *v.* Tanner, 6 Monroe, 52.

[6] Ferguson *v.* Harwood, 7 Cranch, 408; Edmiston *v.* Schwartz, 13 S. & R. 135; Goodman *v.* James, 2 Rob. Louis. R. 297.

deemed insufficient.[1] The Clerk also who certifies the record, must be the clerk himself of the same Court, or of its successor, as above mentioned; the certificate of his under clerk, in his absence, or of the clerk of any other tribunal, office, or body, being held incompetent for this purpose.[2]

§ 507. An *office copy* of a record is a copy authenticated by an officer intrusted for that purpose; and it is admitted in evidence upon the credit of the officer, without proof that it has been actually examined.[3] The rule on this subject is, that an office copy, in the same Court, and in the same cause, is equivalent to the record; but in another Court, or in another cause in the same Court, the copy must be proved.[4] But the latter part of this rule is applied only to copies, made out by an officer having no other authority to make them, than the mere order of the particular Court, made for the convenience of suitors; for if it is made his duty by law to furnish copies, they are admitted in all Courts under the same jurisdiction. And we have already seen, that in the United States an officer having the legal custody of public records, is, *ex officio*, competent to certify copies of their contents.[5]

§ 508. The proof of records, by an *examined copy*, is by

[1] Stephenson *v.* Bannister, 3 Bibb, 369; Kirkland *v.* Smith, 2 Martin, N. S. 497.

[2] Attestation by an under clerk is insufficient. Sampson *v.* Overton, 4 Bibb, 409. So, by late clerk not now in office. Donohoo *v.* Brannon, 1 Overton, 328. So, by Clerk of the Council, in Maryland. Schnertzell *v.* Young, 3 H. & McHen. 502. See further, Conklin's Practice, p. 256; 1 Paine & Duer's Practice, 480, 481.

[3] 2 Phil. Evid. 131; Bull. N. P. 229.

[4] Denn *v.* Fulford, 2 Burr. 1179, per Ld. Mansfield. Whether, upon trial at law of an issue out of Chancery, office copies of depositions in the same cause in Chancery are admissible, has been doubted; but the better opinion is, that they are admissible. Highfield *v.* Peake, 1 M. & Malk. 109, (1827); Studdy *v.* Sanders, 2 D. & Ry. 347; Hennell *v.* Lyon, 1 B. & Ald. 142; Contra, Burnand *v.* Nerot, 1 C. & P. 578, (1824.)

[5] Ante, § 485. But his certificate of the substance or purport of the record is inadmissible. McGuire *v.* Sayward, 9 Shepl. 230.

producing a witness who has compared the copy with the original, or with what the officer of the Court or any other person read, as the contents of the record. It is not necessary for the persons examining to exchange papers, and read them alternately both ways.[1] But it should appear that the record, from which the copy was taken, was found in the proper place of deposit, or in the hands of the officer, in whose custody the records of the Court are kept. And this cannot be shown by any light, reflected from the record itself, which may have been improperly placed where it was found. Nothing can be borrowed, *ex visceribus judicii*, until the original is proved to have come from the proper Court.[2] And the record itself must have been finally completed, before the copy is admissible in evidence. The minutes from which the judgment is made up, and even a judgment in paper, signed by the master, are not proper evidence of the record.[3]

§ 509. If the *record is lost*, and is ancient, its existence and contents may sometimes be presumed;[4] but whether it be ancient or recent, after proof of the loss, its contents may be proved, like any other document, by any secondary evidence, where the case does not, from its nature, disclose the existence of other and better evidence.[5]

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[1] Reid *v.* Margison, 1 Campb. 469; Gyles *v.* Hill, Ib. 471, n.; Fyson *v.* Kemp, 6 C. & P. 71; Rolf *v.* Dart, 2 Taunt. 52; Hill *v.* Packard, 5 Wend. 387; Lynde *v.* Judd, 3 Day, 499.

[2] Adamthwaite *v.* Synge, 1 Stark. R. 183.

[3] Bull. N. P. 228; Rex *v.* Smith, 8 B. & C. 341; Godefroy *v.* Jay, 3 C. & P. 192; Lee *v.* Meecock, 5 Esp. 177; Rex *v.* Bellamy, Ry. & M. 171; Porter *v.* Cooper, 6 C. & P. 354. But the minutes of a judgment in the House of Lords are the judgment itself, which it is not the practice to draw up in form. Jones *v.* Randall, Cowp. 17.

[4] Bull. N. P. 228; Green *v.* Proude, 1 Mod. 117, per Ld. Hale.

[5] See Ante, § 84, note (2), and cases there cited. See also Adams *v.* Betz, 1 Watts, 425, 428; Stockbridge *v.* West Stockbridge, 12 Mass. 400; Donaldson *v.* Winter, 1 Miller, R. 137; Newcomb *v.* Drummond, 4 Leigh, 57; Bull. N. P. 228; Knight *v.* Dauler, Hard. 323; Anon. 1 Salk. 284, cited per Holt, C. J.; Gore *v.* Elwell, 9 Shepl. 442.

§ 510. A *verdict* is sometimes admissible in evidence, to prove the finding of some matter of reputation, or custom, or particular right. But here, though it is the verdict, and not the judgment, which is the material thing to be shown, yet the rule is, that where the verdict was returned to a Court having power to set it aside, the verdict is not admissible, without producing a copy of the judgment rendered upon it; for it may be that the judgment was arrested, or that a new trial was granted. But this rule does not hold in the case of a verdict upon an issue out of Chancery, because it is not usual to enter up judgment in such cases.[1] Neither does it apply where the object of the evidence is merely to establish the fact that the verdict was given, without regard to the facts found by the Jury, or to the subsequent proceedings in the cause.[2] And where, after verdict in ejectment, the defendant paid the plaintiff's costs, and yielded up the possession to him, the proof of these facts, and of the verdict, has been held sufficient to satisfy the rule, without proof of a judgment.[3]

§ 511. A *decree in Chancery* may be proved by an exemplification, or by a sworn copy, or by a decretal order in paper, with proof of the bill and answer.[4] And if the bill and

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[1] Bull. N. P. 234; Pitton *v.* Walter, 1 Stra. 162; Fisher *v.* Kitchingman, Willes, 367; Ayrey *v.* Davenport, 2 New Rep. 474; Donaldson *v.* Jude, 2 Bibb, 60. Hence it is not necessary, in New York, to produce a copy of the judgment upon a verdict given in a Justice's Court, the Justice not having power to set it aside. Felter *v.* Mulliner, 2 Johns. 181. In North Carolina, owing to an early looseness of practice in making up the record, a copy of the verdict is received, without proof of the judgment; the latter being presumed, until the contrary is shown. Deloah *v.* Worke, 3 Hawks, 36. See also Evans *v.* Thomas, 2 Stra. 833; Dayrell *v.* Bridge, Ib. 1264; Thurston *v.* Slatford, 1 Salk. 284. If the docket is lost before the record is made up, it will be considered as a loss of the record. Pruden *v.* Alden, 22 Pick. 184.

[2] Barlow *v.* Dupuy, 1 Martin, N. S. 442.

[3] Schaeffer *v.* Kreitzer, 6 Binn. 430.

[4] Trowel *v.* Castle, 1 Keb. 21, confirmed by Bayley, B. in Blower *v.* Hollis, 1 Crompt. & Mees. 396; 4 Com. Dig. 97, tit. *Evidence*, C. 1; Gresley on Evid. p. 109.

answer are recited in the order, that has been held sufficient, without other proof of them.[1] But though a former decree be recited in a subsequent decree, this recital is not proper evidence of the former.[2] The general rule is, that where a party intends to avail himself of a decree, as an adjudication upon the subject-matter, and not merely to prove collaterally that the decree was made, he must show the proceedings upon which the decree was founded. "The whole record," says Chief Baron Comyn, "which concerns the matter in question, ought to be produced."[3] But where the decree is offered merely for proof of the *res ipsa*, namely, the fact of the decree, here, as in the case of verdicts, no proof of any other proceeding is required.[4] The same rules apply to sentences in the Admiralty, and to judgments in Courts Baron, and other inferior Courts.[5]

§ 512. The proof of an *answer in Chancery* may, in civil cases, be made by an examined copy.[6] Regularly, the answer cannot be given in evidence without proof of the bill also, if it can be had.[7] But in general, proof of the decree is not necessary, if the answer is to be used merely as the party's admission under oath, or for the purpose of contradicting him as a witness, or to charge him upon an indictment for perjury. The absence of the bill, in such cases, goes only to the effect and value of the evidence, and not to its admissibility.[8] In an indictment for perjury in an answer, it is considered necessary to produce the original answer, together with proof of the

[1] Bull. N. P. 244; 1 Keb. 21.

[2] Winans *v.* Dunham, 5 Wend. 47; Wilson *v.* Conine, 2 Johns. 280.

[3] 4 Com. Dig. 89, tit. *Evidence*, A. 4; 2 Phil. Evid. 138, 139. The rule equally applies to decrees of the Ecclesiastical Courts. Leake *v.* Marquis of Westmeath, 2 M. & Rob. 394.

[4] Jones *v.* Randall, Cowp. 17.

[5] Com. Dig. 97, 98, tit. *Evidence*, C. 1.

[6] Ewer *v.* Ambrose, 4 B. & C. 25.

[7] Gilb. Evid. 55, 56; Gresley on Evid. p. 108, 109.

[8] Ewer *v.* Ambrose, 4 B. & C. 25; Rowe *v.* Brenton, 8 B. & C. 737, 765; Lady Dartmouth *v.* Roberts, 16 East, 334, 339, 340.

administration of the oath; but of this fact, as well as of the place where it was sworn, the certificate of the master, before whom it was sworn, his signature also being proved, is sufficient *primâ facie* evidence.[1] The original must also be produced, on a trial for forgery. In civil cases, it will be presumed that the answer was made upon oath.[2] But whether the answer be proved by production of the original, or by a copy, and in whatever case, some proof of the identity of the party will be requisite. This may be by proof of his handwriting; which was the reason of the order in Chancery requiring all defendants to sign their answers; or it may be by any other competent evidence.[3]

§ 513. The *judgments of inferior Courts* are usually proved, by producing from the proper custody the book containing the proceedings. And as the proceedings in these Courts are not usually made up in form, the minutes, or examined copies of them, will be admitted, if they are perfect.[4] If they are not entered in books, they may be proved by the officer of the Court, or by any other competent person.[5] In either case, resort will be had to the best evidence, to establish the tenor of the proceedings; and therefore, where the course is to record them, which will be presumed until the contrary is

[1] Bull. N. P. 238, 239; Rex *v.* Morris, 2 Burr. 1189; Rex *v.* Benson, 2 Campb. 508; Rex *v.* Spencer, Ry. & M. 97. The *jurat* is not conclusive as to the place. Rex *v.* Embden, 9 East, 437. The same strictness seems to be required in an action on the case for a malicious criminal prosecution. 16 East, 340; 2 Phil. Evid. 140. *Sed quære.*

[2] Bull. N. P. 238.

[3] Rex *v.* Morris, 2 Burr. 1189; Rex *v.* Benson, 2 Campb. 508. It seems that slight evidence of identity will be deemed *primâ facie* sufficient. In Hennell *v.* Lyon, 1 B. & Ald. 182, coincidence of name, and character as administrator, was held sufficient; and Lord Ellenborough thought, that coincidence of name alone ought to be enough to call upon the party to show that it was some other person. See also Hodgkinson *v.* Willis, 3 Campb. 401, and the cases cited in Phil. & Am. on Evid. p. 621, note (7); 2 Phil. Evid. 141.

[4] Arundel *v.* White, 14 East, 216; Fisher *v.* Lane, 2 W. Bl. 834; Rex *v.* Smith, 8 B. & C. 342, per Ld. Tenterden.

[5] Dyson *v.* Wood, 3 B. & C. 449, 451.

shown, the record, or a copy, properly authenticated, is the only competent evidence.[1] The caption is a necessary part of the record; and the record itself, or an examined copy, is the only legitimate evidence to prove it.[2]

§ 514. The usual modes of authenticating *foreign judgments* are, either 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 compared it with the original; or by the certificate of an officer, properly authorized by law to give a copy; which certificate must itself also be duly authenticated.[3] If the copy is certified under the hand of the Judge of the Court, his handwriting must be proved.[4] If the Court has a seal, it ought to be affixed to the copy, and proved; even though it be worn so smooth, as to make no distinct impression.[5] And if it is clearly proved that the Court has no seal, it must be shown to possess some other requisites to entitle it to credit.[6] If the copy is merely certified by an officer of the Court, without other proof, it is inadmissible.[7]

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[1] See, as to Justices' Courts, Mathews *v.* Houghton, 2 Fairf. 377; Holcomb *v.* Cornish, 8 Conn. 375, 380; Wolf *v.* Washburn, 6 Cowen, 261; Webb *v.* Alexander, 7 Wend. 281, 286. As to Probate Courts, Chase *v.* Hathaway, 14 Mass. 222, 227; Judge of Probate *v.* Briggs, 3 N. Hamp. 309. As to Justices of the Sessions, Commonwealth *v.* Bolkom, 3 Pick. 281.

[2] Rex *v.* Smith, 8 B. & C. 341, per Bayley, J.

[3] Church *v.* Hubbart, 2 Cranch, 238, per Marshall, C. J.; Ante, § 488, and cases there cited. Proof by a witness, who saw the clerk affix the seal of the Court, and attest the copy with his own name, the witness having assisted him to compare it with the original, was held sufficient. Buttrick *v.* Allen, 8 Mass. 273. So, where the witness testified that the Court had no seal. Packard *v.* Hill, 7 Cowen, 434.

[4] Henry *v.* Adey, 3 East, 221; Buchanan *v.* Rucker, 1 Campb. 63. The certificate of a notary public, to this fact, was deemed sufficient, in Yeaton *v.* Fry, 5 Cranch, 335.

[5] Cavan *v.* Stewart, 1 Stark. R. 525; Flindt *v.* Atkins, 3 Campb. 215, n.; Gardere *v.* Columbian Ins. Co., 7 Johns. 514.

[6] Black *v.* Ld. Braybrook, 2 Stark. R. 7, per Ellenborough; Packard *v.* Hill, 7 Cowen, 434.

[7] Appleton *v.* Ld. Braybrook, 2 Stark. R. 6; 6 M. & S. 34, S. C.; Thompson *v.* Stewart, 3 Conn. 171.

§ 515. In cases of *inquisitions post mortem*, and other *private offices*, the return cannot be read, without also reading the commission. But in cases of more general concern, the commission is of such public notoriety, as not to require proof.[1]

§ 516. With regard to the proof of *depositions in Chancery*, the general rule is, that they cannot be read, without proof of the bill and answer, in order to show that there was a cause depending, as well as who were the parties, and what was the subject-matter in issue. If there were no cause depending, the depositions are but voluntary affidavits; and if there were one, still the depositions cannot be read, unless it be against the same parties, or those claiming in privity with them.[2] But ancient depositions, given when it was not usual to enroll the pleadings, may be read without antecedent proof.[3] They may also be read upon proof of the bill, but without proof of the answer, if the defendant is in contempt, or has had an opportunity of cross-examining, which he chose to forego.[4] And no proof of the bill or answer is necessary, where the deposition is used against the deponent, as his own declaration or admission, or for the purpose of contradicting him as a witness.[5] So, where an issue is directed out of Chancery, and an order is made there, for the reading of the depositions upon the trial of the issue, the Court of Law will read them upon the order, without antecedent proof of the bill and answer, provided the witnesses themselves cannot be produced.[6]

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[1] Bull. N. P. 228, 229.

[2] 2 Phil. Evid. 149; Gresley on Evid. 185; Gilb. Evid. 56, 57.

[3] Gilb. Evid. 64; Gresley on Evid. 185; Bayley *v.* Wylie, 6 Esp. 85.

[4] Cazenove *v.* Vaughan, 1 M. & S. 4; Carrington *v.* Carnock, 2 Sim. 567.

[5] Highfield *v.* Peake, 1 M. & Malk. 109; Ante, § 512.

[6] Palmer *v.* Ld. Aylesbury, 15 Ves. 176; Gresley on Evid. 185; Bayley *v.* Wylie, 6 Esp. 85.