Recent Legislation

EVIDENCE—COURTS TO TAKE JUDICIAL NOTICE OF PUBLIC STATUTES AND JUDICIAL DECISIONS OF OTHER STATES OF THE UNITED STATES

Connection, intercourse, and constitutional ties which bind the several states of the United States together have demanded relaxation from the strictness of the common law rule requiring that statutes of other states be regarded and proved as matters of fact. The Missouri Legislature, in an act approved on April 6, 1927, enacted abrogation of this common law rule thus:

> Section 1. In every action or proceeding wherein the law of another state of the United States of America is pleaded, the courts of this state shall take judicial notice of the public statutes and judicial decisions. Laws of Missouri, 1927, p. 156.

Formerly, where a cause of action or defense rested on the law of another state, that law had to be pleaded and proved. *McDonald v. Bankers Life Ass'n. of Des Moines,* 154 Mo. 618, 55 S. W. 999; *Steele v. Steele,* 161 Mo. 566, 61 S. W. 815; *Lillard v. Lurley,* 200 Mo. App. 140, 202 S. W. 1057. However, where the foreign law was not the basis of the action, but merely an evidential part thereof, it might be proved without having been pleaded. *Schroeder Wine & Liquor Co. v. Willis Coal & Mining Co.,* 179 Mo. App. 93, l. c. 104, 161 S. W. 352; *Steele v. Steele, supra.* Perhaps the latter rule will not be affected by the new statute, for it should be noted that the enactment provides, "where pleaded," hence courts are not authorized to take judicial notice of foreign laws not set out in the pleadings. Furthermore, in allowing courts to take judicial notice of foreign law, the legislature did not put such law on a par with the public laws of Missouri, for to avail himself of these, a plaintiff only need state the facts which bring his case within the statutory provisions. *Kennayde v. Railway Co.,* 45 Mo. 255. *Fallon v. Fenton,* 118 Mo. 541, 24 S. W. 436. The statute makes no mention of taking judicial notice of the laws of Congress, the reason being, perhaps, that Missouri courts have taken the stand that laws of Congress are not foreign laws which must be pleaded or proved. *Wentz v. Chicago B. & Q. R. Co.,* 259 Mo. 450, 168 S. W. 1166, Ann. Cas. 1916 B, 317. Hence the statute does not place the laws of sister states on a parity with the national enactments.

In Lee v. Mo. Pac. Ry. Co., 195 Mo. 400, 92 S. W. 614, is found a general statement of the old Missouri stand on the principal proposition: "The courts of one state will not take judicial notice of the statutes of another state, and the party relying upon such statutes to support his cause of action or defense must not only plead them, but must also produce satisfactory evidence of their subject-matter and validity. It

is not sufficient to make a general averment of the existence of a foreign statute relating to the subject, nor the mere statement of a conclusion of law derived from the application of the statute to the facts; nor a reference to the statute by its title, or the date of its enactment, or both, or by its chapter number." See also *McDonald v. Life Ass'n., supra.*

In the matter of proving foreign statutes generally, there have been three accepted methods: (1) by a certified copy of the statute in question; (2) by witnesses, testifying as to their familiarity with the law in reference to a certain subject; and (3) by judicial notice. The method of proving foreign statutes by authenticated copies, however, was not exclusive, and in Missouri they could be proved by the introduction of printed copies, published by authority of the state. *Bradley v. West,* 60 Mo. 33. In New York prior to 1848, statutes of other states could be proved only by a copy exemplified by the officer having custody of them, *Toulandon v. Lachenmeyer, 37* How. Pr. 145; but by the Civil Code, they were authorized to be proved by copies printed by authority. In New York editions printed by private individuals were not admissible, but in Missouri they were admissible as printed volumes purporting to contain the laws of a sister state or territory, and as *prima facie* evidence of the statutes of such state or territory. *Cummings v. Brown,* 31 Mo. 309; *Glenn v. Hunt,* 120 Mo. 330, 25 S. W. 181. The views of these two courts as manifesting a distrust of private ways of getting at information is further exemplified in the Colorado Statute: "An exemplification by the secretary of state, of the laws of the several states and territories, which may be transmitted by order of the executives or legislatures of such states to the government of this state, and by him deposited in the office of the said secretary, shall be admissible as evidence in any court of this state." Compiled Laws of Colorado, 1921, Sec. 6541.

In *Chattanooga etc. Co. v. Jackson,* 86 Ga. 676, 13 S. E. 109, the testimony of skilled attorneys who practised in the court of the state whose foreign statute was referred to was held proper when offered to prove that foreign statute. Contrasted with this is the stand taken by a New York tribunal that the testimony of an attorney of such other state that he was acquainted with the laws thereof and that the book in question was the Revised Statutes of that state was insufficient. *Lambert v. Hoffman,* 20 Misc. 331, 45 N. Y. S. 806. The modern Georgia Statute on the matter of proving foreign statutes is on its face more liberal than the new Missouri provision, but it has been rendered the equivalent of the wording of the latter by rigid interpretation: "The public laws of the United States and of the several states thereof as published by authority, shall be judicially recognized without proof." Georgia Code, 1926, Sec. 5818. Notwithstanding its wording, this section has been held not to dispense with the necessity of pleading a foreign law. The effect is merely to dispense with proving the authenticity of the statute. *Simms v. Southern Express Co.,* 38 Ga. 129, 133.

The Virginia Code likewise presents a very liberal statement of the proposition: "Whenever in any case it becomes necessary to ascertain what the law, statutory or otherwise, of another state or country, or of the United States is or was at any time, the court, judge or judicial officer or tribunal shall take judicial notice of it . . ." Virginia Code of 1924, Sec. 6192a.

Perhaps the most common-sense and practical statement of the law on the matter of proving foreign statutes is found in the New York Civil Practice Act, 1927, Sec. 391: "A printed copy of a statute, or other written law, of another state or of a territory, or of a foreign country, . . . contained in a book or publication purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the judicial tribunals thereof, is presumptive evidence of the statute, law, proclamation, edict, decree, or ordinance. The unwritten or common law of another state, or of a territory, or of a foreign country may be proved as a fact by oral evidence. The books of reports of cases adjudged in the courts thereof must also be admitted as presumptive evidence of the unwritten or common law thereof." It may be observed that this New York statute includes in part all three of the accepted methods combined with a greater faith in human nature.

The new Missouri act, insofar as it abrogates the common law on the matter of proving foreign law, will dispense with a considerable amount of useless detail-work. It certainly is within the spirit of the code of civil procedure in particular, and judicial reform in general.

A. E. M., '29.