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MATTERS REQUIRING JUDICIAL NOTICE.

(Continued.)

IX.

Customs, when so general in character as to be universally known, will receive judicial notice.

Of these may be noted,—That the running, directing and management of trains are generally controlled by the owners of a railroad: *South. & North. Ala. R. R. Co.* v. *Pilgreen* (1878), 62 Ala. 305; *Evansville, &c., R. R. Co.* v. *Smith* (1878), 65 Ind. 92. That mercantile agencies collect and distribute information as to the financial condition of persons in business: *Holmes* v. *Harrington* (1886), 20 Mo. App. 661. That Sundays and great festivals, such as Christmas, are *dies non* in law; and the commercial usage to observe them; so that, if a note falls due on one of them, it should be presented for payment or protest on the day previous thereto: *Sasscer* v. *Farmer's Bank* (1853), 4 Md. 409. The custom of the road, in passing to the right or left: *Turley* v. *Thomas* (1837), 8 C. & P. 103. The customs of the sea, to be observed by vessels, when such customs are general and notorious: *The Scotia* (1871), 14 Wall. (81 U. S.) 170. The initials C. O. D., affixed to packages sent by common carriers, may be taken notice of, as meaning to collect the price of the goods and charges for carrying them, on delivery: *State* v. *Intoxicating Liquors* (1882), 73 Me. 278; compare *McNichol* v. *Pacific Ex. Co.* (1882), 12 Mo. App. 401. Established weights and measures: *Mays* v. *Jennings* (1843), 4 Humph. (Tenn.) 102.

X.

As a general rule, customs local in their character, will not be judicially noticed. Of these may be mentioned,—The customs of mining camps for the use of water for mining purposes, under the provisions of the United States statute giving preference to prior occupants: *Lewis* v. *McClure* (1880), 8 Or. 273. The usages and customs of a particular denomination of Christians, as the Methodist Episcopal Church: *Youngs* v. *Ransom* (1859), 31 Barb. (N. Y.) 49. Where a white man married a Choctaw woman and took up his abode with that nation, whether or not he would, by law, be the head of a family, was held to depend upon the local customs of the tribe, and could not be judicially noticed: *Turner* v. *Fish* (1854), 28 Miss. 306. So of local customs for the use of water for irrigation: *Sullivan* v. *Hense* (1874), 2 Colo. 424. The rules of a board of brokers, where they do not constitute a usage of trade, independent of the action of the board in adopting them, will not receive notice: *Goldsmith* v. *Sawyer* (1873), 46 Cal. 209; *Sarahass* v. *Armstrong* (1876), 16 Kan. 192. It has been held, that a usage of merchants, by which they sold goods to each other's clerks and customers and charged the same, on credit, to the firm, would be judicially noticed as an established custom: *Cameron* v. *Blackman* (1878), 39 Mich. 108.

XI.

Unless specially required by law, courts will not take judicial notice of private or special statutes: *Workingmen's Bank* v. *Converse* (1881), 33 La. An. 963. In Kentucky, where, by statute, they are not required to be pleaded, private and special acts receive judicial notice: *Halbert* v. *Skyles* (1818), 1 A. K. Marsh. (Ky.) 368; *Collier* v. *Baptist Ed. Soc.* (1847–8), 8 B. Mon. (Ky.) 68. Under like circumstances, the same rule prevails in Virginia: *Somerville* v. *Wimbish* (1850), 7 Grat. (Va.) 205. In Alabama, where a similar provision exists, the courts have refused to notice a private act for the purpose of determining the sufficiency of a demurrer to the complaint, referring to the act by date and title only: *Broad Street Hotel Co.* v. *Weaver's Adm'rs* (1876), 57 Ala. 26.

XII.

Courts of general jurisdiction do not judicially notice municipal ordinances: *Garvin* v. *Wells* (1859), 8 Iowa 286. They will take such notice of the charter, and the power under it, to make by-laws, but not of those laws themselves: *Case* v. *Mayor of Mobile* (1857), 30 Ala. 538. Where the charter provides that the printed ordinances shall be received in evidence in all courts and places, they will not be judicially noticed, unless so introduced to the knowledge of the court: *Cox* v. *City of St. Louis* (1848), 11 Mo. 431. In all cases they are required to be pleaded in whole or in substance: *Mooney* v. *Kennett* (1854), 19 Mo. 551; *State ex rel Oddle* v. *Sherman* (1868), 42 Id. 214; *Lucker* v. *Commonwealth* (1868), 4 Bush (Ky.), 440. The ordinances of a municipality will be judicially noticed by its own courts; and where a conviction for a violation of an ordinance is had, and an appeal taken, the district court should take judicial notice of the ordinance. But it is not error to admit it in evidence, over the objection of the defendant: *Downing* v. *City of Miltonvale* (1887), 36 Kan. 740.

XIII.

Courts take judicial notice of the prominent geographical facts and features of the country; as its large lakes, rivers and mountains: *Mossman* v. *Forrest* (1866). 27 Ind. 233; *Winnipiseogee Lake Co.* v. *Young* (1860), 40 N. H. 420. The Supreme Court of Indiana takes notice of the falls in the Ohio river, and that no pilots are appointed for any other falls in the State: *Cash* v. *Auditor of Clark County* (1855), 7 Ind. 227. Notice will be taken that the State of Missouri is east of the Rocky Mountains: *Price* v. *Page* (1856), 24 Mo. 65. Courts will know that there are no tidal streams in an inland county: *Walker* v. *Allen* (1882), 72 Ala. 456. The Supreme Court of Wisconsin takes notice that the capacity of many small navigable streams in the State has been increased for lumbering purposes by a system of dams to retain and discharge the water: *Tewksbury* v. *Schulenberg* (1877), 41 Wis. 584.

In admiralty it has been held that the court would take judicial notice of the situation of a town upon a river, in a for-

eign country, and that a bar exists at its mouth, over which vessels of the draft of the one in suit cannot pass: *The Peterhoff* (1863), Bl. Pr. Cas. (U. S. D. Ct.) 463.

XIV.

Courts will take judicial notice of the boundaries of a State, and of the extent of its territorial jurisdiction; and also of its civil divisions, created by public laws, such as counties and towns: *Goodwin* v. *Appleton* (1843), 22 Me. 453; *Gilbert* v. *Moline Water Power Co.* (1865), 19 Iowa, 319. Where a question of title had been tried, regardless of the fact that the land in controversy was within an Indian reservation, the court, on the ground of public policy, took judicial notice of this fact, and held that there was a mistrial, notwithstanding a stipulation of the parties: *French* v. *Lancaster* (1880), 2 Dak. 346.

Where the declaration, in an action for personal injuries against a railroad company, alleged that the injury occurred in the county where the suit was brought, and the proof showed it to have been on the line between two post-offices in the county, the court took judicial notice that the locality shown was within the county: *Central R. R. &c. Co.* v. *Gamble* (1886), 77 Ga. 584. That lands are within a certain county will be noticed from the numbers of the township and range appearing in their description: *Fogg* v. *Holcomb* (1884), 64 Iowa 621. The court will judicially know that a certain judicial district is within and for a certain county, although it comprises only a portion of the territory of that county: *People* v. *Robinson* (1861), 17 Cal. 363. The Supreme Court of Alabama took judicial notice that all lands for sale in the district of Cahaba are within the State; and that a description of lands in a petition stating the section, town and range in said district was sufficient: *King* v. *Kent* (1857), 29 Ala. 542. In a suit against a railroad company for personal damages the proof was that the accident occurred at a certain locality, without showing the same to be within the county; the court took judicial notice of the county boundaries and that the place designated was within their limits, and the proof was held sufficient: *Indianapolis, &c., R. R. Co.* v. *Case* (1860), 15 Ind.

42. The Supreme Court of the United States takes judicial notice that, for internal revenue purposes, the United States is by law divided into collection districts, with defined geographical boundaries: *U. S.* v. *Jackson* (1881), 104 U. S. 41.

The Supreme Court of California has taken judicial notice of the relation of the streets in San Francisco to one another and of the direction in which they run: *Brady* v. *Page* (1881), 59 Cal. 52. And so, in Texas, that a town is situated in a county of which it is the county seat: *Carson* v. *Dalton* (1883), 59 Tex. 500.

XV.

Courts will take judicial notice of the Government surveys and legal subdivisions of the public lands: *Atwater* v. *Schenck* (1859), 9 Wis. 160; *Hill* v. *Bacon* (1867), 43 Ill. 477; *Prieger* v. *Exchange, &c., Ins. Co.* (1857), 6 Wis. 89. And of other public surveys made by the Government: *Wright* v. *Phillips* (1849), 2 G. Gr. (Iowa) 191. The courts of Illinois take notice of the meaning of initials used in the description of land in conveyances, levies of executions, judicial sales, surveys, assessments for taxes, &c., without further proof; where, in the description of land, the number of a township is given, without indicating whether north or south, in the county where the land is described as being, the court will take judicial notice of the fact that the township referred to is north; and that the south line of the section and the south line of the township are one and the same: *Kile* v. *Town of Yellowhead* (1875), 80 Ill. 208. Surveys of blocks and lots in towns and cities will also be noticed: *Gardner* v. *Eberhart* (1876), 82 Ill. 316. That the State of Oregon is a Congressional and judicial district of the United States: *U. S.* v. *Johnson* (1873), 2 Saw. (U. S. C. Ct., D. Or.) 482. Of the area of any established county in the State: *Board of Com'rs* v. *Spitler* (1859), 13 Ind. 235; *Buckinghouse* v. *Gregg* (1862), 19 Id. 401; *Wright* v. *Hawkins*, 28 Tex. 452. Also, of where the lines of counties run and the towns embraced therein; *Ham* v. *Ham* (1855), 39 Me. 263; *Brown* v. *Elms* (1849), 10 Humph. (Tenn.), 135.

Courts will take judicial notice of the intended area of a government quarter section of land, and where it was claimed

that a fractional quarter contained a larger area it was held that proof must be made that the lines were so run on the ground as to include the increased area: *Quinn* v. *Windmiller* (1885), 67 Cal. 461. In North Carolina the Supreme Court will take judicial notice of the judicial districts of the State, and what counties each embraces, and, where the judges of the Superior Courts are, in the course of their ridings and in the discharge of their official duties: *State* v. *Ray* (1887), 97 N. C. 510.

XVI.

Judicial notice will be taken of the distance between well-known cities of the United States and the ordinary speed of railway trains between the same: *Pearce* v. *Langfit* (1882), 101 Pa. 507; *Rice* v. *Montgomery* (1866), 4 Biss (U. S. C. Ct., D. Ind.) 75.

Where a territorial statute provided that acts should take effect at the seat of government on their passage, and allowing one day for each fifteen miles distant therefrom, on the question as to whether a certain act was in force at a given locality on a particular day, the court took judicial notice of the distance of the place named from the seat of government: *Hoyt* v. *Russell* (1885), 117 U. S. 401.

Judicial notice will be taken of the geographical positions of the towns in a county: *Indianapolis, &c., R. R. Co.* v. *Stephens* (1867), 28 Ind. 429; *State* v. *Tootle* (1837), 2 Harr. (Del.) 541. And of the county in which a town created by law is situated: *Martin* v. *Martin* (1863), 51 Me. 366; *Vanderwerker* v. *People* (1830), 5 Wend. (N. Y.) 530. That the State and the government township are two distinct organizations: *La Grange* v. *Chapman* (1863), 11 Mich. 499. Of the fact that there is but one township of a given description in a county of the State: *Stoddard* v. *Sloan* (1885), 65 Iowa 680. And of the fact that Galveston is in a county of the same name: *Solyer* v. *Romanet* (1880), 52 Tex. 562.

XVII.

Courts are bound to take judicial notice of public history affecting the whole people: *Payne* v. *Treadwell* (1860), 16 Cal.

220. That slavery was destroyed by act of war, prior to the passage of the State ordinance to that effect, approved on the 22nd day of September, 1865, is judicially noticed by the Supreme Court of Alabama: *Ferdinand* v. *State* (1866), 39 Ala. 706. The separation of the Methodist Episcopal Church in 1844 into two Methodist Episcopal Churches, the one north and the other south of a common boundary line, was an event that connected itself with and formed a part of the history of the country, of which judicial notice will be taken: *Humphrey* v. *Burnside* (1868), 4 Bush (Ky.) 215. Courts will take judicial cognizance that the civil war was terminated prior to June 1st, 1865; and, in Alabama, it will be judicially noticed that the United States mails were established between Huntsville and New Orleans prior to December 18, 1865: *Turner* v. *Patton* (1873), 49 Ala. 406.

XVIII.

The court will take judicial notice that certain portions of a State in insurrection were under the control of the forces of the United States, but will not infer therefrom that individuals resided there or in the territory over which the government had re-established its authority as against the averments of a plea that they were public enemies: *Rice* v. *Shook* (1871), 27 Ark. 137. The courts of Tennessee will take notice of when the courts in a particular county were closed, civil law suspended and military law prevailing, in the civil war: *Killebrew* v. *Murphy* (1871), 3 Heisk. (Tenn) 546. The courts of Texas take notice that in 1869 the government of that State was administered by military authority, under the reconstruction acts of Congress; and that the orders of the commander of the 5th military district had the force of law: *Gates* v. *Johnson County* (1871–2), 36 Tex. 144. The courts take notice that the Confederate currency was imposed only by force, and that its dollars were of different value from those of the United States: *Keppel* v. *Petersburg R. R. Co.* (1868), Chase (U. S. C. Ct., D. Va.) 167. The Alabama courts take cognizance of the fact, as a matter of the history of the times, that the people of that State, in 1867, were in a condition of very

great pecuniary depression, as affecting the duties of a guardian, at that time, in making investment of trust funds: *Ashley* v. *Martin* (1874), 50 Ala. 537. The result of an election for the removal of a county seat, when the matter is drawn in issue collaterally, will be judicially noticed: *Andrews* v. *Knox County* (1873), 70 Ill. 65. The courts will take notice of the different classes of notes and bills in circulation as money at a particular time: *Hart* v. *State* (1877), 55 Ind. 591. The general facts connected with the issuing, use, and depreciation of the Confederate currency, will be taken notice of as matters of general history: *Simmons* v. *Trumbo* (1876), 9 W. Va. 358. The courts of the State will know who is the Executive, at any time when the fact may be called in question: *Deweese* v. *Colorado County* (1870), 32 Tex. 570. And that gold coin in 1868 did not circulate as money: *U. S.* v. *American Gold Coin* (1868), 1 Wool. (U. S. C. Ct., D. Mo.) 217. The Alabama courts will notice that, as a general thing, contracts made in that State, in 1865, were made with reference to Confederate currency: *Buford* v. *Tucker* (1870), 44 Ala. 89. The courts of Indiana are bound to notice that, during and since the civil war, the Adjutant-General of that State has made muster rolls of her regiments in the service, and that a certified copy of the same is sufficient evidence to prove the enlistment, etc., of a party as a volunteer, in an action by him to recover bounty; and that the certificate is sufficient, if made by the present incumbent of the office: *Monroe County Com'rs* v. *May* (1879), 67 Ind. 562. Transactions and objects which necessarily connect themselves with the history of a country will be judicially noticed: *Hart* v. *Bodley* (1807), Hardin (Ky.) 516.

The fact that the United States was the proprietor of, and made a grant of land to the State of Illinois, and the location of such land, is judicially noticed by the courts of the State: *Smith* v. *Stevens* (1876), 82 Ill. 554. Fremont's public career in California, in 1846 and 1847, is taken notice of as a matter of history, affecting the people and the government; an interesting sketch of which, showing its legal aspects, is given in the text of the following decision: *De Celis* v. *United States* (1877), 13 Ct. Cl. (U. S.) 117. Courts will notice such a

public event as Sherman's march to the sea: *Williams* v. *State* (1881), 67 Ga. 260. And the results of a taking of the census: *People* v. *Williams* (1883), 64 Cal. 87. The courts of Tennessee take judicial notice of the suspension of the statute of limitations in that State, from May 6th, 1861, to January 1st, 1867: *East Tenn. Iron Manuf'ng Co.* v. *Gaskell* (1879), 2 Lea. (Tenn.) 742.

XIX.

Courts will take judicial notice of the history of their State, and its topography and condition: *Williams* v. *State* (1878), 64 Ind. 553. The Supreme Court of Alabama takes judicial notice, as a matter of history in the State, that the evil sought to be remedied by a certain law was to prevent County Treasurers from speculating in State warrants; and that the constitutional provision, "No money shall be drawn from the treasury but in pursuance of an appropriation made by law," was to prevent the executive power from controlling the public moneys and not to restrict the legislative power: *Smith* v. *Speed* (1874), 50 Ala. 276.

The claim of Virginia, before the year 1783, to the Northwest Territory; her cession of it, in that year, to the United States, reserving a tract of land granted by her to the soldiers of the Illinois regiment, and her statutes for the final disposal of the soil of this reservation, now known as the "Illinois Grant," are taken notice of by the courts of Indiana, as part of the history of the State: *Henthorn* v. *Doe on dem. of Shepherd* (1822), 1 Blackf. (Ind.) 159. The history of a county, as to the times of holding courts and as to the seat of justice, will be noticed: *Ross* v. *Austill* (1852), 2 Cal. 183. The courts of Alabama take notice that all the lands in a certain county in the State are held under title from the United States: *Lewis* v. *Harris* (1858), 31 Ala. 689. In order to regulate the fees of the Clerk of the Circuit Court, by determining which class the county falls within, under the Constitution, the Supreme Court will take judicial notice of the population of the county by the last census: *Worcester Bank* v. *Cheeney* (1880), 94 Ill. 430. Finally, the Supreme Court of California broadly states the rule that, "Every judge is bound to know the history and the

leading traits which enter into the history of the country over which he presides." The court takes judicial notice of all the leading features and peculiar facts in the history of the State; its physical development and social condition, mainly growing out of the fact that the United States Government has parted with comparatively a small portion of the soil by sale to individuals; that, in consequence, the mining regions have become public domain, the usages in regard to which have assumed the character of matters of notoriety and history, to be regarded by the courts as having in many instances the force of positive law: *Conger* v. *Weaver* (1856), 6 Cal. 548.

XX.

All courts of general jurisdiction take judicial notice of the day of holding general elections, and of the officers to be elected, under the Constitution and laws of their respective States: *State* v. *Minnick* (1863), 15 Iowa 123; and of the recurrence of the day on which the general election is held: *Himmelmann* v. *Hoadley* (1872), 44 Cal. 213. And of the accession of a new governor: *Hizer* v. *State* (1859), 12 Ind. 330; and of the civil officers of the county where such courts hold their sittings: *Dyer* v. *Flint* (1859), 21 Ill. 80; *Scott* v. *Jackson* (1857), 12 La. An. 640; *Thielman* v. *Burg* (1874), 73 Ill. 293; and of who are their own officers, but not those of other courts: *Norvell* v. *McHenry* (1849), 1 Mich. 227. It has been held that, on the ground of general notoriety, the official character of mustering officers, during the civil war, should be recognized at least presumptively: *Chapman, &c.*, v. *Herrold* (1868), 58 Pa. 106.

Courts take judicial notice of accession of persons to, and holding of, offices under the Constitution; and while remaining in office and exercising official duties, they are regarded by the courts as officers *de facto*: *State ex rel. Knowlton* v. *Williams* (1856), 5 Wis. 308. Where the court has appointed a sheriff, it will be presumed to have acted upon judicial knowledge of the vacancy. *Doe on dem. of Saltonstall* v. *Riley* (1856), 28 Ala. 164.

The Supreme Court of the United States takes judicial notice of the persons who, from time to time, preside over the patent office, whether permanently or temporarily, and the production of their commissions is not necessary to support their official acts: *York, &c., R. R. Co.* v. *Winans* (1854), 17 How. (58 U. S.) 30.

Courts take notice of the election or appointment of sheriffs, as well as other administrative officers, and will treat them as officers *de facto*, when the validity of their acts is collaterally called in question: *Thompson* v. *Haskell* (1859), 21 Ill. 215; *Alexander* v. *Burnham* (1864), 8 Wis. 199. So of the sheriffs of the several counties: *Ingram* v. *State* (1855), 27 Ala. 17; the time at which a sheriff's office expired: *Ragland* v. *Wynn* (1860), 37 Ala. 32; that a tax collector, duly appointed, is a sheriff under a certain statute: *Burnett* v. *Henderson* (1858), 21 Tex. 588. For the purpose of sustaining the authenticity of a certificate of acknowledgment of a power of attorney, notice has been taken, that, under the Constitution of another State, a county clerk is, *ex officio*, clerk of a court of record: *Morse* v. *Hewitt* (1874), 28 Mich. 481. Courts in Louisiana take notice of military orders during the civil war, which affected the proceedings of courts in portions of that State: *Lanfear* v. *Mestier* (1866), 18 La. An. 497; *Taylor* v. *Graham* (1866), 18 Id. 656; *New Orleans Canal, &c., Co.* v. *Templeton* (1868), 20 Id. 141. Cognizance will be taken, that under the constitution and laws of a State, the terms of all justices of the peace terminate on a certain day: *Stubbs* v. *State* (1876), 53 Miss. 437; and in Indiana, of the legal times for the Boards of County Commissioners to hold their sessions: *Collins* v. *State* (1877), 58 Ind. 5; and that, by law, the trustee of the civil, is also trustee of the school township: *Inglis* v. *State* (1878), 61 Ind. 212. Courts will know who are their own officers, and supply the word "clerk," when omitted in a jurat: *Dyer* v. *Last* (1869), 51 Ill. 179; and that a certain person is clerk, and that it is his endorsement of the date of filing on a complaint: *Yell* v. *Lane* (1883), 41 Ark. 53; *Hammann* v. *Mink* (1884), 99 Ind. 279. Notice will also be taken of the term of office of a notary public, during which time he has authority to issue warrants:

Carey v. *State* (1884), 76 Ala. 78. Where it appears to the court, that by law in another State, a notary has authority to do the act in question, his certificate and seal will be judicially noticed: *Denmead* v. *Maack* (1876), 2 MacAr. (D. C.) 475.

XXI.

A certificate endorsed on a county treasurer's bond, by the Deputy Auditor General, will be recognized as the act of a State officer: *People* v. *Johr* (1871), 22 Mich. 461. Where its clerk signed a jurat as C. P. C. C., the court noticed the meaning of these initials to be "Clerk Porter Circuit Court:" *Buell* v. *State* (1880), 72 Ind. 523. Notice will be taken that a notary public, who signs a jurat to an affidavit, holds his office within and for the county where the same was made: *Stoddard* v. *Sloan* (1885), 65 Iowa 680. Courts will take judicial notice of who fill the county offices within their jurisdiction, and the genuineness of their signatures; hence, it is not necessary to prove that one who made a tax deed, was tax collector at the time the sale was made: *Wetherbee* v. *Dunn* (1867), 32 Cal. 106; *Templeton* v. *Morgan* (1862), 16 La. An. 438.

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(To be continued.)