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MATTERS REQUIRING JUDICIAL NOTICE.

(Continued.)

XXII.

The Supreme Court of a State will take judicial notice of the times prescribed by law for holding the terms of the various courts in the State: *Lindsay* v. *Williams* (1850), 17 Ala. 229; *Morgan* v. *State* (1859), 12 Ind. 448; *State* v. *Hammett* (1847), 7 Ark. 492; *Gilliland* v. *Sellers* (1853), 2 Ohio St. 223; *Pugh* v. *State* (1858), 2 Head. (Tenn.) 227; and of who are the judges of the inferior courts: *Tucker* v. *State* (1857), 11 Md. 322; *Ex Parte Peterson* (1858), 33 Ala. 74; *Kilpatrick* v. *Commonwealth* (1858), 31 Pa. 198. Circuit Courts will take notice of who are justices of the peace within the county where the court is held: *Graham* v. *Anderson* (1867), 42 Ill. 514. But not of the official acts of a justice, offered in evidence in a county other than where he resides: *Chambers* v. *People* (1843), 5 Ill. 351. Notice will be taken of the terms of court, to determine whether an execution was levied in the lifetime of the writ: *Williams* v. *Hubbard* (1850), 1 Mich. 446. Where the Common Pleas tried a party for a felony, the Supreme Court took notice, from the time the offence was committed until the trial, and the terms of the Circuit Court, that the latter could not have been in session so as to find an indictment: *McGinnis* v. *State* (1865), 24 Ind. 500. Territorial courts are bound to know the officers and enforce the judgments of United States courts, within their jurisdiction: *Buford* v. *Hickman* (1834), Hemp. (U. S. C. Ct. Ter. Ark.) 292. But, as a general rule, superior courts will not judicially notice the customs, rules or proceedings of

inferior courts of limited jurisdiction, unless justice requires it in reviewing their decisions: *March* v. *Commonwealth* (1851), 12 B. Mon. (Ky.) 25. From the date, and the term of the court below, an appellate court will take notice of whether a judgment by default was prematurely rendered: *Bethune* v. *Hale* (1871), 45 Ala. 522.

From the commencement and duration of the terms of the Circuit Court, the Supreme Court will take notice that a specified day fell in the second week of the term: *Rodgers* v. *State* (1874), 50 Ala. 102. And in like manner, of what was "the twentieth judicial day" of the term of the court below, next succeeding a certain other day: *Lewis* v. *Wintrode* (1881), 76 Ind. 13.

XXIII.

All courts have official knowledge that proper judicial tribunals are established in the several States; and in order to give the transcript of the record or the probate of a will in a sister State in evidence, it is not necessary to show that probate and registry are required in such State: *Dozier* v. *Joyce* (1839), 8 Por. (Ala.) 303. The seal of a State court proves itself: *DeSobry* v. *DeLaistre* (1807), 2 H. & J. (Md.) 191; *State* v. *Snowdon* (1868), 1 Brewst. (Pa.) 218. Where a deed mentions the premises, as within a certain town, not naming the State, the court will notice that the town named is within a certain county in the State: *Harding* v. *Strong* (1866), 42 Ill. 148. A judgment which is enjoined, will be noticed as part of the record in the proceedings: *Minor* v. *Stone* (1846), 1 La. An. 283. So, an order of the court entered upon the minutes, is a part of the record: *Pagett* v. *Curtis* (1860), 15 Id. 451.

Where there had been a reversal and a second judgment rendered, one error assigned for its reversal was, that the cause had not been remitted to the court below; and nothing in regard to it appearing from the record sent up, it was held that the appellate court would take judicial notice of its own record and proceedings on the former writ of error: *Brucker* v. *State* (1865), 19 Wis. 539.

Courts take judicial notice of all prior proceedings in a case, hence, on a plea in bar of "once in jeopardy," the former trial and verdict are before the court: *State* v. *Bowen* (1876), 16 Kan.

475. The book of records of judgments, in the same court, proves itself: *Robinson* v. *Brown* (1876), 82 Ill. 279. An appellate court will take notice of its own records; but, in deciding a case, will not take notice of what may be in the record of another case, unless made a part of the record in the case under consideration: *National Bank of Monticello* v. *Bryant* (1877), 13 Bush (Ky.) 419.

XXIV.

In an action on a transcript of a judgment of the Circuit Court of another State, the Supreme Court of Wisconsin took notice that the circuit courts of the several States are courts of general jurisdiction: *Jarvis* v. *Robinson* (1867), 21 Wis. 523. To support the jurisdiction of the District Court, in a case involving the claimant's right to the office of judge, the Supreme Court took judicial notice that the salary of the office exceeded one hundred dollars: *McKinney* v. *O'Connor* (1861), 26 Tex. 5.

The Orphans' Court of Washington county, in the District of Columbia, being created by a public statute of the United States, its seal will be judicially recognized by the courts in Maryland: *Mangun* v. *Webster* (1848), 7 Gill (Md.) 78.

XXV.

If, pending a suit against an executor for an accounting, the will be revoked in another proceeding, the court cannot take notice of the fact, without proof: *Daniel* v. *Bellamy* (1884), 91 N. C. 78. From the records of the Chancery Court, the Supreme Court will know that there never was, legally, a county of a certain name in the State: *Brown* v. *Elms* (1849), 10 Humph. (Tenn.) 135. Where a bill is filed ostensibly to protect the interests of the State, the court will take judicial notice of the laws of the State, even if they contradict the allegations in the bill; so held with reference to a law enabling a particular officer to qualify: *State* v. *Jarrett* (1861), 17 Md. 309. The court will take notice that a person, present in the grand jury room when the charge laid in the indictment was being investigated, was a duly authorized assistant United States District Attorney: *People* v. *Lyman* (1877), 2 Utah 30. The court will take notice of the expiration of a bank charter,

and dismiss an action pending against the bank on a dormant judgment: *Terry* v. *Merchants' and Planters' Bank* (1880), 66 Ga. 177.

Where it does not affirmatively appear that a statute was put in force by publication, as allowed by law, the court will recognize its existence and validity: *People* v. *Hopt* (1884), 3 Utah 396. Courts will take notice that a certain city is within a particular county of the State, and proof that a crime was committed in such city is sufficient to establish the fact that it was perpetrated in the county: *Sullivan* v. *People* (1887), 122 Ill. 385; *State* v. *Reader* (1883), 60 Iowa 527; *Luck* v. *State* (1884), 96 Ind. 16. The office of treasurer of a school district will be recognized without proof of how it was created: *State* v. *Dahl* (1886), 65 Wis. 510. Courts take judicial notice of the signatures of their own officers as such, but no rule extends such notice to the signatures of the parties to a cause: *Alderson* v. *Bell* (1858), 9 Cal. 315. Their notice of the signatures of attorneys extends only to acts done in the performance of their professional duties as attorneys, and the signature of an attorney, admitting service of summons as a defendant in the suit, is a private act which the court cannot judicially notice: *Masterson* v. *Le Claire* (1860), 4 Minn. 163. Where an act of the legislature, establishing a certain county, was declared unconstitutional by the Supreme Court of Tennessee, it was held that the circuit judge, in the trial of a cause, had a right to declare to the jury his judicial knowledge of such decision, and its effect in fixing the boundaries of counties: *Cash* v. *State* (1849), 10 Humph. (Tenn.) 111.

Where a case is reversed and remanded by the Supreme Court, and after proceedings had below, another appeal is taken; and an appearance entered in the inferior court in the first instance has never been withdrawn, the Supreme Court will judicially know what attorneys have appeared in the cause: *Symmes* v. *Major* (1863), 21 Ind. 443. The record in garnishee proceedings is virtually a part of the record in the cause and may be judicially noticed: *Farrar* v. *Bates* (1881), 55 Tex. 193. Where the facts are within the judge's knowledge, no proof is required; as on a motion to strike a paper from the files because it was never presented to or signed by

the judge: *Scerist* v. *Petty* (1883), 109 Ill. 188. A judge may take judicial notice of the existence, before his court, of a prosecution for crime against one called as a juror: *State* v. *Jackson* (1883), 35 La. An. 769.

Where it appears from the record, that a contract was given for contingent compensation in obtaining an act of the legislature, it is the duty of the court, of its own motion, to declare it void, as against public policy and to discountenance any attempt to enforce it: *Git* v. *Williams* (1857), 12 La. An. 219.

XXVI.

Courts will take judicial notice of the regular course of nature, as the revolution of the seasons in relation to vegetables and animals: *Patterson* v. *M'Causland* (1830), 3 Bland. (Md.) 69; of the usual course of agriculture, and whether the crops of the country are matured at a certain date, so as to be removed from the soil: *Floyd* v. *Ricks* (1853), 14 Ark. 286; of facts of unvarying occurrence, but not of vicissitudes of climate or seasons: *Dixon* v. *Niccolls* (1866), 39 Ill. 372; that a mortgage given in January on a certain cotton crop, is on a crop not yet in being: *Tomlinson* v. *Greenfield* (1876), 31 Ark. 557; of the seasons and husbandry, and that the use of a farm is worth much more during the cropping season than for the six months including winter: *Ross* v. *Boswell* (1877), 60 Ind. 235.

XXVII.

Notice will be taken from the time of their ancestor's death, that his children had arrived at majority before the suit was brought: *Floyd* v. *Johnson* (1822), 2 Littell (Ky.) 109. With reference to a part of a ship's cargo being wet with salt water in the river Mersey, in England, it has been judicially noticed that the tide ebbs and flows in that stream to a great height: *Whitney* v. *Ganche* (1856), 11 La. An. 432. Courts will take notice of the ordinary computation of time and what day of the week a certain day of the month falls on: *Allman* v. *Owen* (1857), 31 Ala. 167; *Sprowl* v. *Lawrence* (1859), 33 Id. 674; *Philadelphia, &c., R.R. Co.* v. *Lehman* (1881), 56 Md. 209; and that a certain day falls on Sunday: *McIntosh* v. *Lee* (1881), 57 Iowa 356; and the difference of time in different latitudes:

Curtis v. *Marsh* (1858), 4 Jur. N. S. (Lond.) 1112; and of the ordinary period of gestation: *King* v. *Leuffe* (1807), 8 East 193.

That distilled spirits are intoxicating: *Carmon* v. *State* (1862), 18 Ind. 450; *Egan* v. *State* (1876), 53 Id. 162; *Commonwealth* v. *Peckham* (1854), 2 Gray. (Mass.) 514. That whisky is an intoxicating liquor: *Schlicht* v. *State* (1877), 56 Ind. 173; that beer is a malt liquor: *Watson* v. *State* (1876), 55 Ala. 158; *State* v. *Goyette* (1877), 11 R. I. 592; and that blackberry brandy is an intoxicating liquor: *Fenton* v. *State* (1884), 100 Ind. 598. Of the navigability of streams: *Neaderhouser* v. *State* (1867), 28 Ind. 257; *Wood* v. *Fowler* (1882), 26 Kas. 682.

Judicial notice has been taken, as a fact for the court and not for the jury, that a box freight car standing still at a highway crossing, will not frighten horses of ordinary gentleness: *Gilbert* v. *Flint, &c., R. R. Co.* (1883), 51 Mich. 488. In adjudicating upon surveys, courts are bound to notice the magnetic variation from the true meridian: *Bryan* v. *Beckley* (1809), 6 Littell (Ky.) 91.

XXVIII.

In an action to restrain an infringement of a patent, for preserving articles of food by the application of cold air, the court took judicial notice that the scientific principles claimed in the patent were generally known and had been long in use in the ice cream freezer, and held the patent was void for want of any novelty in their application: *Brown* v. *Piper* (1875), 91 U. S. 37. Courts will take judicial notice of the art of photography, the mechanical and chemical process employed, the scientific principles on which they are based, and their results: *Luke* v. *Calhoun Co.* (1875), 52 Ala. 115. On a trial for arson, it need not be alleged or proved that coal oil is inflammable: *State* v. *Hayes* (1883), 78 Mo. 307. It cannot be objected that an almanac was put in evidence to show when the sun rose on a certain day, as the court, in any event, would take judicial notice of that fact: *People* v. *Chee Kee* (1882), 61 Cal. 404. The courts will notice that carrying on the business of a barber on Sunday is not work of necessity, within the statute: *State* v. *Frederick* (1885), 45 Ark. 347. That the superintendent of

a railroad company has authority to refuse or receive cord-wood: *Sacalaris* v. *Eureka & Palisade R. R. Co.* (1883), 18 Nev. 155.

Of what is meant by a "gift enterprise," upon the trial of one indicted for advertising the same: *Lohman* v. *State* (1881), 81 Ind. 15; for, as to judicial notice of epithets, courts have no right to be ignorant of the meaning of current phrases which everybody else understands; and so, in this action, which was by a clergyman, for libel in printing certain charges concerning him, while a candidate for Congress, the court took notice of the meaning of the following words: "Then there was that Iowa Beecher business of his, which beat him out of a station at Grass Lake:" *Bailey* v. *Kalamazoo Pub. Co.* (1879), 40 Mich. 251.

Courts will take notice of ordinary abbreviations, such as "admr.," for "administrator;" and of the usual abbreviation of Christian names: *Moseley* v. *Mastin* (1861), 37 Ala. 216; *Stephen* v. *State* (1852), 11 Ga. 225; *Weaver* v. *McElhenon* (1850), 3 Mo. 89. Where a statute prohibited the keeping of gaming tables, excepting billiard tables, the court took judicial notice of what a billiard table is, and that, under this statute, a party may be punished for allowing faro to be played on it: *State* v. *Price* (1841), 12 G. & J. (Md.) 260.

XXIX.

As a matter of general notoriety, courts will take notice of the peculiar nature of lotteries and the modes in which they are generally managed: *Boullemet* v. *State* (1856), 28 Ala. 83. Of the character of the circulating medium, and the popular language in reference to it: *Lampton* v. *Haggard* (1826), 3 T. B. Mon. (Ky.), 149. As affecting the rights of parties, courts will take notice of changes in the course of business in the country, and of new processes of practical utility in facilitating trade: *Wiggins Ferry Co.* v. *Chicago & A. R.R. Co.* (1878), 5 Mo. App. 347; and it has been held in Kentucky, that the chancellor will take notice of the prices of ordinary labor: *Bell* v. *Barnett* (1829), 2 J. J. Marsh. (Ky.) 516.

XXX.

In construing an instrument granting a power, where a long time has elapsed from the date of its execution, in order to carry out the intention of the parties, courts will take notice that the language of all countries is subject to fluctuation and change, and that certain terms, the meaning of which was universally known and understood at the time they were employed, may come to have an entirely different meaning: *Vanada* v. *Hopkins* (1829), 1 J. J. Marsh. (Ky.) 285. As the only means of determining the present value of a wife's inchoate right of dower, courts will recognize the use of "annuity tables," and adopt the "American Table of Mortality," as the standard in this country: *Goodon* v. *Tweedy* (1883), 74 Ala. 232.

In determining whether a trustee acted with prudence in the management of assets during war times, the courts of Alabama take judicial notice of the disturbed condition of business during that period: *Foscue* v. *Lyon* (1876), 55 Ala. 440.

Courts will take notice that Free-masonry is a charitable institution; and that, in a suit against his lodge, a member is not, for that reason, disqualified as a juror: *Burdine* v. *Grand Lodge of Alabama* (1861), 37 Ala. 478. The court will take notice of the ordinary incidents of railway travel: *Downey* v. *Hendrie* (1881), 46 Mich. 386.

XXXI.

There remains a vast array of facts which can become generally known only through the uniform results of experience in life. From the immense multiplicity of these matters, they may never receive, in the usual form, either historical or scientific endorsement. They lie in the region of traditional or actual knowledge, common to civilization, and may be known as "a knowledge of men and things." The rule for their judicial reception is, that "courts will not pretend to be more ignorant that the rest of mankind." Such matters can never be given in evidence by means of spoken or written language, and hence, they can leave no impression upon the record of a cause. They are noticed and considered in the trial of every question of fact; and all courts, especially those of appellate

jurisdiction, recognize this to be true. They are impressed upon the attention of trial courts in the hearing of causes, and it is because they are thus enabled to apply them, in arriving at the truth from the too often careless, perverse, or corrupt statements of the witnesses, whether conflicting, contradictory or false, that these courts are endowed with a supervisory power, even over the findings of juries, and it is made their duty to see that the verdict is sufficiently sustained by proper testimony. It may often occur that this intangible information will lay bare the motives of men and afford the only correct interpretation of the peculiar conduct of parties. In this respect, appellate courts can have no such means of enlightenment as they readily concede to the courts of first instance, and it is for this reason that they so reluctantly disturb the findings and judgments of the latter courts, upon the evidence.

XXXII.

In this connection, a number of decisions are given in which the courts refused to take judicial notice of matters which were claimed to be proper subjects therefor. While, in some instances, it may be somewhat difficult to mark the lines of distinction, the grounds of rejection will be seen, generally, to rest on the primary rules governing the subject.

The Supreme Court of California refused to take notice of the rules established by the Board of Land Commissioners or Surveyor General of the United States, forbidding original papers from being taken from the files; and refused to allow evidence of the contents of such papers, without proof of the existence of the rule: *Hensley* v. *Tarpey* (1857), 7 Cal. 288. And in New York, where a question in a cause depended on the construction of several regulations of the Canal Board, the court refused to take judicial notice of them: *Palmer* v. *Aldridge* (1852), 16 Barb. (N. Y.) 131. The court cannot take notice of the rate of interest in another State, from a table of the same prepared by the Secretary of State and appended to the statutes, as required by law: *Clarke* v. *Pratt* (1852), 20 Ala. 470; *Dorsey* v. *Dorsey* (1831), 5 J. J. Marsh. (Ky.) 280. And the Supreme Court of Wisconsin refused to notice that there are county judges in New York, or that they have authority to

administer oaths: *Fellows* v. *Menasha* (1860), 11 Wis. 558. The court cannot take notice that a railroad company has a seal, other than a scrawl purporting to be a seal, which appears on an appeal bond filed by them: *Illinois Central R. R. Co.* v. *Johnson* (1864), 40 Ill. 35. Courts will take judicial notice of public treaties, and of the authority conferred by them on the President; but not that such authority to do an act affecting only a small number of persons, and they not citizens of the United States, has been exercised: *Dole* v. *Wilson* (1871), 16 Minn. 525. The courts do not take judicial notice of the various orders issued by a military commander, in the exercise of the military authority conferred upon him: *Burke* v. *Miltenberger* (1873), 19 Wall. (86 U. S.) 519. Courts cannot take judicial notice of the duties required of or performed by the servants of the company, in managing a railroad train, nor of the degrees of supremacy existing among them: *McGowan* v. *St. Louis, &c., R.R. Co.* (1876), 61 Mo. 525. Nor of the duties of officers of railroad companies: *Brown* v. *Missouri, &c., R.R. Co.* (1877), 67 Mo. 122. It is not the duty of the courts to take judicial notice of the various means by which public statutes are carried into effect by the executive officers of the government: *Canal Co.* v. *Railroad Co.* (1832), 4 G. & J. (Md.) 1.

Courts cannot judicially know that a sale of land has been made, because they are bound to know that there is a law providing for such sale: *Bledsoe* v. *Doe* (1839), 4 How. (Miss.) 13.

In Alabama, New Jersey and North Carolina, charters of private corporations are not judicially noticed: *City Council of Montgomery* v. *Plank Road Co.* (1857), 31 Ala. 76; *Perdicaris* v. *Trenton, &c., Co.* (1862), 29 N. J. L. 367; *Carrow* v. *Washington Toll Bridge* (1867), Phil. (N. C.) 118. Notice will not be taken of special acts of the legislature: *Hailes* v. *State* (1880), 9 Tex. Ct. App. 170. The court will not take judicial notice that a private corporation was organized under a general law: *Crawfordsville, &c., Co.* v. *Fletcher* (1885), 104 Ind. 97.

XXXIII.

The statute law of Great Britain now in force, or created since the Revolution, cannot be judicially noticed by our courts,

except in the same manner as the criminal laws of any other foreign state: *Ocean Insurance Co.* v. *Fields* (1841), 2 Story (U. S. C. Ct., D. Mass.) 59. In the absence of proof of the foreign law, showing a legal liability, a payment of debts by a stockholder for a foreign corporation will be deemed to have been a voluntary payment: *Eastman* v. *Crosby* (1864), 8 Allen (Mass.) 206. As our courts do not take judicial notice of foreign revenue laws, a note not stamped in accordance with the laws of the country where made, will be held valid here: *Ludlow* v. *Van Rensselaer* (1806), 1 Johns. (N. Y.) 94.

Giving operation to a foreign law rests in mere comity, and no court will take cognizance of a matter concerning the internal policy of another State; therefore, courts will not sustain an action on a foreign contract, where none would lie by the law of the former: *Pickering* v. *Fisk* (1834), 6 Vt. 102. And the Supreme Court of Michigan will not recognize the value of Canada currency, nor the rate of interest in Canada: *Kermott* v. *Ayer* (1863), 11 Mich. 181.

XXXIV.

The rule that courts will presume the common law to be in force in other States, is not followed in Texas, where the Supreme Court has refused to take such notice: *Bradshaw* v. *Mayfield* (1856), 18 Tex. 21. The New York courts will not take judicial notice that the law of any other State differs from their own: *New York Phœnix Ins. Co.* v. *Church* (1880), 59 How. Pr. (N. Y.) 293. In Illinois, in an action of assumpsit, evidence of the statute incorporating the Chamber of Commerce of Milwaukee, Wisconsin, with certain proceedings of the board of arbitrators, was held inadmissible: *Kelderhouse* v. *Saveland* (1877), 1 Bradw. (Ill.) 63.

Courts will not take judicial notice of local customs, such as the taking of one-third of the land by the locator for his services: *Longes* v. *Kennedy* (1812), 2 Bibb (Ky.) 607. Nor what are fair and usual commissions on acceptances, paid without funds: *Seymour* v. *Marvin* (1851), 11 Barb. (N. Y.) 80. Nor of the customs of a particular trade or calling, as the meaning of printers' marks or abbreviations, showing the date and number of insertions of matter in a newspaper: *Johnson* v.

Robertson (1869), 31 Md. 476. Nor the rule for the measurement of corn in the shock; nor whether a railroad car of given dimensions will not contain three hundred bushels thereof: *S. & N. A. R. R. Co.* v. *Wood* (1883), 74 Ala. 449. Nor that playing "policy" is playing a game of chance: *State* v. *Russell* (1885), 17 Mo. App. 16; *State* v. *Sellner* (1885), Id. 39. Nor that the words "drawing" and "Kentucky drawing," designate a game of chance: *State* v. *Bruner* (1885), Id. 274.

XXXV.

The Supreme Court of Indiana cannot judicially know the names of towns and cities that have adopted the general incorporation law: *Johnson* v. *Common Council* (1861), 16 Ind. 227. Courts cannot take notice of the width of streets and sidewalks in a city, when the same is established by ordinance: *Porter* v. *Waring* (1877), 69 N. Y. 250. Nor of the intersection of a street in a city with a railroad track: *Pennsylvania R. R. Co.* v. *Frana* (1883), 13 Bradw. (Ill.) 91. Nor that a county has adopted township organization: *State* v. *Cleveland* (1883), 80 Mo. 108. Where every community of two hundred inhabitants may incorporate itself into a town, the courts will not take judicial notice of such incorporation: *Temple* v. *State* (1883), 15 Tex. Ct. App. 304.

Where, in an instrument of conveyance of land, the name of a place is given, but not of the State where the same was made, courts will take notice of a place of the same name within the State and presume it to have been intended: *Richardson* v. *Williams* (1835), 2 Por. (Ala.) 239. The courts of Indiana will not take judicial notice of the division of counties and the erection of new ones by county commissioners: *Buckinghouse* v. *Gregg* (1862), 19 Ind. 401. Nor will courts notice the local situations of towns within a county, or their distances from each other: *Goodwin* v. *Appleton* (1843), 22 Me. 453. It has been held by the Supreme Courts of Missouri, Wisconsin and Texas, upon what ground does not clearly appear, that they could not take judicial notice of prominent cities in other States, as New York, New Orleans, &c.: *Riggin* v. *Collier* (1840), 6 Mo. 568; *Whitlock* v. *Castro* (1858), 22 Tex. 108; *Woodward* v. *Chicago, &c., R. R. Co.* (1867), 21 Wis. 309. The

Supreme Court of Indiana will not notice the existence of ferries, as they are established by the county commissioners: *State* v. *Wise* (1856), 7 Ind. 645. In Ohio, courts will not notice the subdivision of the refugee township; although the court will take notice, from the description, that the township is a fractional one: *Stanberry* v. *Nelson* (1834), Wright (Ohio) 766. The Supreme Court of Texas refused to notice that, "St. Louis, Mo.," means St. Louis in the State of Missouri; the same appearing in the date of a contract: *Ellis* v. *Park* (1852), 8 Tex. 205; and the same court refused notice that a note made payable in "New Orleans, La.," was meant to be payable in the State of Louisiana: *Russell* v. *Martin* (1855), 15 Tex. 238. It has been held that, while courts will take notice of the distances between well-known geographical points in the United States, they cannot take such notice of what would be a reasonable time for an express company to carry a sum of money from one to the other: *Rice* v. *Montgomery* (1866), 4 Biss. (U. S. C. Ct., D. Ind.) 75. On the other hand, it is held, with much more satisfaction, in Pennsylvania, that the ordinary speed of railway trains is a matter for judicial cognizance, and hence a very simple calculation will demonstrate, with approximate certainty, the time within which mails may be transported between such cities as New York and Pittsburgh: *Pearce* v. *Langfit* (1882), 101 Pa. 507. Notice will be taken of the usual duration of voyages across the Atlantic; so far, at least, as to determine when the presumption of death attaches to one who was known to have embarked on a vessel that has never been heard of after a great lapse of time: *Oppenheim* v. *Wolf* (1846), 3 Sandf. Ch. (N. Y.) 571. Judicial notice will not be taken of the locality of the office of a justice of the peace; nor that a particular number of a certain street is in a given ward or district of a city: *Allen* v. *Scharrnighausen* (1880), 8 Mo. App. 229. Nor that certain land is not subject to location, because it lies under a navigable lake: *Wilcox* v. *Jackson* (1883), 109 Ill. 261.

XXXVI.

Facts of history must be well authenticated or universally known, to receive judicial notice. The Supreme Court of

Tennessee refused to take notice of the extent of military occupation of the State by the forces of either side, during the civil war, relating to the time when such occupation was still being contested; on the ground that those matters were of too uncertain character to be regarded as having passed into history; and as still being readily susceptible of proof: *McDonald* v. *Kirby* (1871), 3 Heisk. (Tenn.) 607. The same court refused to take cognizance of the positions of the armies in the field, at any particular period of the war: *Kelley* v. *Story* (1871), 6 Id. 202.

The Supreme Court of Texas, in a decision which seems to have been much misunderstood by writers on this subject, held, that the trial court, on the 16th day of April, 1861, could not take judicial notice, from the newspaper reports of the firing on Fort Sumter, on the 12th of the same month, that civil war existed, in the absence of any official declaration to that effect, by either the United States or Confederate authorities: *Bishop* v. *Jones* (1866), 28 Tex. 294.

The courts in New York hold that judicial notice will be taken of matters of general history or universal notoriety, if they are of a general and public nature, but not where they merely concern individuals or local communities: *McKinnon* v. *Bliss* (1860), 21 N. Y. 206. Facts stated in encyclopedias, dictionaries, or other publications, will not be judicially noticed, unless they are of such universal notoriety as to be regarded as forming a portion of the common knowledge of every person: *Kaolatype Engraving Co.* v. *Hoke* (U. S. C. Ct. E. D. Mo., 1887), 30 Fed. Repr. 444. Courts cannot take judicial notice of geographical and similar facts, not historical or traditional, as the capacity of a small stream for navigable or other purposes: *Buffalo Pipe Line Co.* v. *New York, Lake Erie, &c., R. R. Co.* (1880), 10 Abb. New Cas. (N. Y.), 107. Nor of the extent of the depreciation of the currency, during the war period: *Modawell* v. *Holmes* (1867), 40 Ala. 391. Nor, that during certain seasons of the year, Texas cattle are liable to produce disease: *Bradford* v. *Floyd* (1883), 80 Mo. 207. At the present time, the germ of the Texas cattle fever has been discovered, and identified, by Billings and others, and the fact that those cattle do communicate disease is established; and

it would seem now to be only a question of sufficient notoriety for courts to recognize such facts in regard to it.

Courts do not take notice of the market value of lead ore: *Cook* v. *Decker* (1876), 63 Mo. 328. Nor of the usages and customs of mining districts: *Sullivan* v. *Hense* (1874), 2 Colo. 424. Nor that concentric circles or layers in the trunk of a tree, each mark a year's growth: *Patterson* v. *McCausland* (1830), 3 Bland (Md.) 69. Nor that kerosene oil is a refined coal oil, or a refined earth oil: *Bennett* v. *North British Ins. Co.* (1879), 8 Daly (N. Y.) 471.

XXXVII.

In a criminal cause, where the person who was prosecuting attorney, when the indictment was found, has come upon the bench when the case was tried, the court does not judicially know that the prosecuting attorney and presiding judge is the same person: *Shropshire* v. *State* (1851), 12 Ark. 190. In Texas, notice will not be taken of any officer, unless enumerated in the code: *Alford* v. *State* (1880), 8 Tex. Ct. App. 545. Courts will not take judicial notice of the official character of a deputy marshal: *Ward* v. *Henry* (1865), 19 Wis. 76; *Potter* v. *Luther* (1808), 3 Johns. (N. Y.) 431. Where constables are appointed by the town authorities, their official character will not be presumed by the courts: *Broughton* v. *Blackman* (1797), 1 D. Chip. (Vt.) 109.

The jury cannot take judicial notice of the facts of history, but some proof thereof must be given; therefore, on an appeal from a non-suit, the appellate court cannot take notice of historical facts not put in evidence before the jury: *McKinnon* v. *Bliss* (1860), 21 N. Y. 206. In an action against an insurance company to recover for a loss by fire, the court cannot take judicial notice that gin and turpentine are inflammable liquids, within the meaning of that term as used in a clause providing that the policy shall be void, etc.: *Mosely* v. *Vermont Mutual Fire Ins. Co.* (1882), 55 Vt. 142. The court cannot judicially know whether or not there are legitimate modes of expending money in procuring the passage of an act of the legislature; and, therefore, it cannot say that an averment, in an answer, of such expenditure with such purpose

and result, is either immaterial or vicious: *Judah* v. *Trustees, &c.* (1861), 16 Ind. 56. Where two corporations each commence proceedings against the same person in the same court, for the condemnation of the same lands, the court cannot, of its own motion, in one action, take judicial notice of the pendency of the other, and refuse to take any action in the matter, on the ground of the pendency of the other action: *Lake Merced Water Co.* v. *Cowles* (1866), 31 Cal. 215. Neither the Supreme, nor the District Court, of a State, will take judicial notice of proceedings pending in the Federal courts for confirmation of a Pueblo title, unless it is stated in the pleadings: *Vassault* v. *Seitz* (1866), Id. 225. In the trial of a case, the court cannot take cognizance of the record of another case in the same court, unless it is introduced in evidence; much less can it take such notice of a case in a different court: *People* v. *De La Guerra* (1864), 24 Cal. 73. A court cannot take judicial notice that an affidavit of a party had been admitted in another cause, to which he was not a party; nor can it be admitted in evidence upon the ground that the court remembers that it was in that case stated by the court that it would be evidence in the case at bar: *Baker* v. *Mygatt* (1862), 14 Iowa 131. Nor can a judge sitting in one county take notice of a conviction or *nol. pros.*, previously had before him in another county: *State* v. *Edwards* (1854), 19 Mo. 674. And an appellate court cannot become cognizant of the value of an attorney's services in a cause, by looking at his argument, as shown in the printed reports: *Pearson* v. *Darrington* (1858), 32 Ala. 227. An act which requires the courts of the county in which the articles of association are recorded, to take judicial notice of the existence of corporations thus formed, does not require the Supreme Court to take such notice: *Cicero, &c., Co.* v. *Craighead* (1867), 28 Ind. 274. And the value of the notes of a certain bank, at any particular time, will not be judicially noticed: *Feemster* v. *Ringo* (1827), 5 T. B. Mon. (Ky.) 336. Nor can the Supreme Court take judicial notice of the rules of the District Courts, unless they are incorporated in the record: *Cutter* v. *Caruthers* (1874), 48 Cal. 178. In the absence of evidence to that effect, the Supreme Court cannot take notice that a case before the Court is connected

with one previously decided by it: *Banks* v. *Burnam* (1875), 61 Mo. 76.

Courts will not take notice of military orders extending the time for a stay of execution on judgments: *Johnson* v. *Wilson* (1877), 29 Grat. (Va.) 379. A State court is not required to notice judicially, that proceedings in bankruptcy have been instituted by or against parties to a suit pending therein: *Esterbrook Mf'g Co.* v. *Ahern* (1879), 30 N. J. Eq. 341. Nor can the courts in Minnesota take notice of the proper orthography or pronunciation of the Polish language: *State* v. *Johnson* (1879), 26 Minn. 316. Nor that a bank in another State is in an insolvent condition: *Market Bank* v. *Pacific Bank* (1882), 27 Hun (N. Y.) 465. The court cannot take official cognizance that an election has been held, as provided by a local option law, or of its result: *Grider* v. *Talley* (1884), 77 Ala. 422. And where, in an action for slander, the defence was, that the crime charged was a physical impossibility, the court could not take judicial knowledge of this fact for the want of sufficient information in regard to it, but held, that, if it were so impossible, this fact was not generally known to the people, who, though bound to know the law, are not required to be acquainted with philosophic or scientific facts and principles; therefore, the injury to the plaintiff might not be affected by the truth or falsity of those facts and principles, and that the action might well lie: *Ausman* v. *Veal* (1858), 10 Ind. 355.

While it is evident that a due administration of justice will not be enhanced by an enlargement of the grounds upon which courts take judicial notice of facts, it is equally clear that our system of jurisprudence must not be allowed to fall behind the rapid advancement of general knowledge. Through discoveries, and the application of new methods to the forces of nature, many results are constantly being developed, which, in some instances, produce complete changes in commercial, scientific, and even social affairs. It becomes, then, a question for the courts to determine, when such matters have attained sufficient notoriety, by becoming incorporated into daily life, to entitle them to judicial notice.

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