JOHNSON *vs.* COCKS, USE, &c.

The printed statutes of the other States of the Union, purporting to have been published by authority, may be read in evidence in our courts, and the burthen of discrediting such books is upon the party against whom they are offered, as held in *Clarke v. The Bank of Miss.*, 5 *Eng. R.* 516: approved *May v. Jamison*, 6 *Eng. Rep.* 377.

Depositions taken before a commissioner of deeds, &c., appointed by the Governor of this State, to act in another State, under the 32d chap. Digest, may be read in evidence without other proof of the appointment and authority of such commissioner than his own certificate and official seal.

A notarial protest is evidence of demand, &c., and may be read in evidence, although there is a variance between it and the bill sued on, in order to permit the plaintiff to connect the bill sued on with the protest by other evidence, and thus identify it as the same that was protested.

For such purpose of identifying the bill, the deposition of a legally appointed deputy of the notary, and an authenticated copy of the notarial register, were properly admitted as evidence.

Where a deputy of the notary swears that a paper, offered in evidence, is a correct copy of the original entry in the notarial register, it may be read in evidence, though he does not state in express terms, that he has compared it with the original, as it is the duty of the opposite party to ascertain the source of his knowledge by cross-examination, if he desires it.

As to the authentication of a transcript of the register of one notary by another acting for him, in his absence, under a statute of Louisiana, and as to proof of the official character of the notary so acting in the place of the other.

Writ of Error to Pulaski Circuit Court.

Assumpsit, on a bill of exchange, brought by John G. Cocks, use of Samuel D. Walker, against Robert W. Johnson, and determined in Pulaski Circuit Court, at December term, 1849, before the Hon. WM. H. FEILD, Judge.

There are two counts in the declaration on the bill, and the common counts.

The first count alleges that on the 15*th June*, 1848, at Wash-

ington City, Ambrose H. Sevier, drew a bill of that date, upon Messrs. Hill, McLane & Co., of New Orleans, in favor of the defendant Johnson, for $2,446, payable 22d November, of that year. That Johnson endorsed the bill to plaintiff, who presented it for payment at maturity, which was refused, and the bill duly protested for non-payment, and the parties notified, &c.

The second count on the bill is similar to the first, except that it describes the bill as drawn, and bearing date *15th July*, 1848.

The cause was submitted to the court, sitting as a jury, on the plea of non-assumpsit, and a finding for the plaintiff. The defendant moved for a new trial, which was refused, and he excepted. From his bill of exceptions, it appears that upon the trial, plaintiff read in evidence a certified copy of an act of the General Assembly of Louisiana, *"relative to protest of Bills of Exchange,"* as follows:

"No. 49. *Be it enacted, &c.* That it shall be lawful for each and every Notary Public in New Orleans to appoint one or more deputies to assist him in making protests and delivery of notices of protests of Bills of Exchange and promissory notes: *Provided,* That each notary shall be personally responsible for the acts of each deputy employed by him, and provided that each deputy shall take an oath faithfully to perform his duties as such before the judge of the parish in which he may be appointed, and *provided* the certificate of notice of protest shall state by whom made or served." *Approved* 1844, *by the Gov.*

2d. The plaintiff then offered to read in evidence a certain printed act of the General Assembly of Louisiana, contained in printed book or pamphlet, at page 94, and which book or pamphlet appeared to have the following printed title page—"Acts passed at the second session of the thirteenth Legislature of the State of Louisiana, begun and held in the city of New Orleans, the eleventh day of December, eighteen hundred and thirty-seven: published by authority, New Orleans, Jerome Bayou, State printer, 1838."

Which act is as follows:

"*No.* 91. *An act authorizing the Governor to grant leave of absence to Notaries Public, and for other purposes.*

Sec. 1. *Be it further enacted, &c.*, That from and after the passage of this act, the governor be, and he is hereby authorized, to grant leave of absence to notaries public for a period not exceeding eight months, to date from the day of the permission granted by the Governor.

Sec. 2. *Be it further enacted, &c.*, That notaries public thus permitted to absent themselves, shall be, and they are hereby required to name and designate another notary public to represent them in their absence." Signed by the Speaker of the House, President of the Senate, and approved by the Governor, 12th March, 1838.

To the reading of which act in evidence, defendant objected on the grounds: 1st. That there was no proof of the authenticity of said act, and that it purported to be a copy of a copy. 2d, That the court could not judicially notice a law of the State of Louisiana, and that to make it evidence, a copy must be procured under the seal of the Secretary of State. But the court overruled the objections, and permitted the act to be read as evidence, &c., to which defendant excepted.

3d. The plaintiff proved by several witnesses, that the defendant resided in Little Rock, and considered it his place of residence, and that he generally received letters and communications at the post-office in Little Rock.

4th. The plaintiff then offered to read in evidence the depositions of William J. Clements and George Rareshide, and the papers and documents referred to by them, [*copied below*] to the reading of which as evidence the defendant objected on the following grounds. "1st. Said depositions purport to have been taken by one A. C. Ainsworth, commissioner of deeds, &c., for the State of Arkansas," and that his appointment and authority to act as such is not shown, otherwise than by his own certificate and seal, &c. 2d. That it is not shown that said William J. Clements was appointed or qualified as the deputy of said Ricardo according to said law, *No.* 49, (*above copied,*) or that he was such

deputy at all, other than by his own oath. 3d. That the paper marked B., referred to in the deposition of said Clements, is incompetent, and cannot be read as evidence, because the said Ricardo does not certify the same under his notarial seal to be a true and exact copy of his notarial record, he appearing to be alive and the proper person to certify the same. It is not shown that J. R. Beard had any authority or lawful right to certify said copy from the notarial records of the said Ricardo. It is not shown in any legal manner that said Beard is a notary public at all, nor when said Ricardo obtained leave from the governor of Louisiana, to be absent, nor is such leave or a copy produced, and such leave may have expired for aught the court may know. 4th. That there is no proof that said paper marked B., is an examined copy of the notarial record of the said Ricardo; and if the said Beard had a procuration from said Ricardo as spoken of by said Rareshide, such procuration should have been produced, and secondary evidence is not admissible. 5th. The said depositions and papers therein referred to, are in other respects incompetent."

But the court overruled the said objections, and permitted said depositions and papers to be read in evidence, which are as follows:

William J. Clements, deposes: "'I am employed as a clerk in the office of Daniel Israel Ricardo, notary public in New Orleans. I act when circumstances require as his deputy. I have been appointed by Mr. Ricardo as such, under the authority of a law of Louisiana, a certified copy of which marked A. is annexed, &c. [*Same as copied above.*] In my capacity as deputy, I presented a draft described in paper B., hereto annexed, to Mr. McLean, one of the firm in this city of Hill, McLean & Co., the drawees of said draft, and demanded payment thereof; I was answered that the said draft could not be paid for want of funds of the drawer. Thereupon, the said draft was protested in the usual form, and the parties were notified thereof in the following manner: By letters to them written by D. J. Ricardo, and addressed to them: to A. H. Sevier and R. W. Johnson, respectively, at Little Rock, Arkansas. Both these letters were deposited, on the same date of

protest, in the post-office in New Orleans. A copy of the original record as it stands in the register of Mr. Ricardo's office is annexed, marked B. Mr. Ricardo is absent from the city by leave from the Governor of Louisiana, and is legally represented by J. R. Beard, a duly authorized notary public."

George Rareshide, deposes: "I am clerk in the office of D. J. Ricardo, Esq., notary public in New Orleans. The protest of the draft named in paper B. was made in usual form. I signed my name to it as one of the witnesses. The copy B. is a correct transcript from Mr. Ricardo's original records. The notices to drawer and endorser were made and served as therein described. Mr. Ricardo is now absent from the State. He got leave so to do from the Governor of Louisiana. All his acts, as notary, are, in his absence, certified to by Mr. J. R. Beard, who has his procuration for that purpose."

The following is the paper marked B., referred to in said depositions:

"*United States of America,*
State of Louisiana.

By this public instrument of protest, be it known, that on the 25th day of November, A. D. 1848, at the request of Mr. John G. Cocks, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Daniel Israel Ricardo, a notary public in and for the City of and Parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to Mr. McLean, one of the members of the firm of Hill, McLean & Co., the drawees, at their counting-house in this city, by my deputy, Wm. J. Clements, who demanded payment thereof, and who was answered that the same could not be paid for want of funds of the drawer. Whereupon, I, the said notary, at the request aforesaid, did *protest,* and by these presents do publicly and solemnly protest, as well against the drawer or maker of the draft as against all others whom it doth or may concern, for all exchange, or re-exchange, damages, costs, charges and interest suffered, or to be suffered for want of payment of the said draft

This done and protested in the presence of George Rareshide and William J. Clements, witnesses. Original signed

G. RARESHIRE.
WM. J. CLEMENTS.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

D. J. RICARDO,
Notary Public.

WASHINGTON CITY, }
June 15th, 1848. }

Messrs. Hill, McLean & Co.:

GENTLEMEN—On the 22d day of November next, please pay to the order of R. W. Johnson, at your counting-house, in New Orleans, the sum of twenty-four hundred and forty-six dollars, and oblige your ob't serv't.

$2,446. A. H. SEVIER.

Endorsed: R. W. JOHNSON.

I, the undersigned notary do hereby certify that the parties to the draft, whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them, by me written and addressed, dated on the day of the said protest, and served on them respectively in the manner following: By directing them for A. H. Sevier and R. W. Johnson to them respectively, at Little Rock, Arkansas, both of which I deposited in the post-office, in this city, on the same day of said protest.

In faith whereof, I have hereunto signed my name, together with George Rareshide and Wm. J. Clements, witnesses, at New Orleans, this twenty-fifth day of November, 1848.

Original signed D. I. RICARDO.
G. RARESHIDE,
WM. J. CLEMENTS.

I, Joseph R. Beard, a notary public of New Orleans, herein representing Daniel Israel Ricardo, also a notary public of this city, at present absent from this State, by consent of the Gover-

nor thereof, do certify the foregoing to be a true copy of the original protest, draft and memorandum of the manner in which the notices were served.

In testimony whereof, I grant these presents under my [L. S.] signature, and seal of office, at the city of New Orleans, on this 8th day of September, 1849.

J. R. BEARD,
Not. Public."

The above depositions were taken under a rule, and commission directed to any judge or justice of the peace of any of the United States, &c., or any commissioner appointed by the Governor of the State of Arkansas to take depositions, &c., and were taken by A. C. Ainsworth, in the city of New Orleans, who states in his certificate that he was a commissioner of deeds, &c., for the State of Arkansas, duly appointed by the governor thereof, to act in the State of Louisiana, &c.

5th. The plaintiff then read in evidence the bill sued on, which is the same as copied in the above paper marked B. He then offered to read in evidence a protest similar to the one copied above as part of paper B., except that the bill copied on the reverse thereof bears date 15*th July*, 1848, instead of 15*th June;* to the reading of which bill and protest in evidence the defendant objected on the grounds of the variance aforesaid; and because payment of a bill could not be demanded by a deputy, &c., but the Court overruled the objections.

S. H. HEMPSTEAD, for the plaintiff. The laws of other States are foreign laws, and must be proved like any other fact, and cannot be judicially noticed. 1 *Phill. on Ev., by Cowen & Hill,* 401. 1 *Stark. Ev.,* 248. 1 *Greenl. on Ev.* 488. The proper mode of proving the written law of another State is by an exemplification under the great seal of State, or by an examined and sworn copy. *Church v. Hubbard,* 2 *Cranch* 187. *United States v. Jolins,* 4 *Dallas,* 413. *Robinson v. Clifford,* 2 *Wash. C. C.* 1. *Packard v. Hill,* 2 *Wend.* 411. *Strother v. Lucas,* 6 *Pet.*

768. 1 *id.* 225. *Id.* 352. 1 *Bald. C. C. R.* 615. 2 *Wash. C. C. R.* 1, 175. 4 *id.* 531. 1 *J. C. R.* 238. *Id.* 125. 8 *J. R.* 193. 1 *id.* 394. 2 *Wend.* 69. 6 *id.* 482. 2 *id.* 412. 3 *id.* 269. 10 *id.* 78. 5 *id.* 384. 8 *Mass.* 99. 9 *Pick.* 112. 4 *Conn.* 116, 517, 520. 6 *id.* 508. 11 *id.* 388. 5 *Yerg.* 379. *Hardin* 164. 2 *A. K. Marsh.* 609. 4 *Bibb.* 75. 1 *Blackf.* 71. 2 *id.* 82. 5 *Gill & John.* 508. 1 *Rawle* 386. And though the cases in 3 *Pick.* 293, 7 *Mon.* 585, 12 *Serg. & Rawle* 263, 6 *Bin.* 321, 8 *Miss.* 421, 9 *Porter* 9, 5 *Leigh* 471, 5 *Blackf.* 375, seem to establish the doctrine that printed statute books are admissible, and *prima facie* sufficient to prove such statutes, the mere weight of authority is against the admissibility of printed statute books of sister States as evidence.

The 2d section of our statute concerning evidence, *Dig.* 490, must be construed in connection with the third, and when taken together, mean that any law contained in the statute book of a sister State, purporting to have been printed by authority and deposited in the office of the Secretary of State, may be copied and certified under the seal of State, and thus be admitted in evidence.

The depositions of Clements and Rareshide should have been rejected.

The notarial record of Ricardo was illegally certified by Beard; it is not shown that Beard was a notary, the act of procuration is not exhibited; nor does the certificate show on its face that the copy was taken from the books of Ricardo.

CUMMINS, for the defendant, as to the sufficiency of the evidence to prove the laws of Louisiana, relied upon *secs.* 2, 3, *ch.* 66. *Dig.*

Mr. Justice SCOTT delivered the opinion of the Court.

The first question presented was settled in the case of *Clarke v. The Bank of Mississippi,* where it was held that the printed statute books of the other States of the Union, purporting to have been published by authority, may be read in evidence in our courts, and the burthen of discrediting such books is upon the party against whom they are offered, (5 *Eng.* 516, *Dig., p.* 490,

sec. 2;) and this case was afterwards approved in the case of *May v. Jamison*, (6 *Eng.* 377.) We have, however, again looked to the statute in connexion with the argument on this point now urged, and feel clear that the law, as to the point in question, was in these cases correctly ruled.

It is next objected that the two depositions ought to have been excluded because they were not supported by any other evidence of the appointment and authority of the commissioner before whom they purported to have been taken than his own certificate and seal. We do not think this objection tenable, because the statute authorizing the appointment and commission of these functionaries, (*Dig. ch.* 32, *p.* 253,) and prescribing their duties and powers, provides, among other things, (in section 2,) that all depositions taken and certified by them "shall be as effectual in law to all intents and purposes as if done and certified by any justice of the peace, or other authorized officer within this State." And it is expressly provided by the statute of depositions, (*Dig., ch.* 55, *p.* 434, *sec.* 16,) that no authentication of the official character of any judge, justice of the peace, or other judicial officer, shall be necessary when a deposition shall be taken before any such within the State.

As this is a case of a foreign bill of exchange, the notarial protest was evidence of itself in chief of the fact of demand, and the notary's acts touching the same, were legitimately official acts. The protest therefore purporting to have been made by a notary and authenticated by his seal of office was competent evidence; and as such should have been allowed to be read although it differed in some respects from the bill offered in evidence, in order to permit the plaintiff below to connect the bill sued on with the protest by other evidence, and thus identify it as the same that was protested. (*Br. Bk. at Decatur v. Rhodes*, 11 *Ala. R.* 283. *Leigh v. Lightfoot*, 11 *Ala. R.* 935. 3 *Porter R.* 355.) And for this purpose, the testimony of Clements as to the presentation and protest of the bill was competent, accompanied as it was, by proof of the statute of the State of Louisiana, No. 49, authorizing notaries to appoint deputies to assist them in

making protest, and the further proof that the witness acted, at the time when the protest was made and touching the same, as the deputy for the notary who made the protest.

And for the same purpose an authenticated copy of the notarial register, in reference to the protest, was competent testimony, because, besides the known general usage of notaries to keep a register of their official acts, the inference from the testimony is almost irresistible that in this case one was kept, and it was not legally possible for the plaintiff below to produce the original in the courts of this State. It is objected, however, that the copy produced ought not to have been read, although authenticated by the certificate and official seal of another notary purporting to act in the stead of Mr. Ricardo during his absence, and accompanied by proof of his actual absence, and of a law of Louisiana authorizing the absence of notaries with the consent of the Governor, and in such case authorizing another notary to be designated to act in his place; because it was not also shown in proof, otherwise than by the official certificate and seal of Mr. Beard, (who officiated for Mr. Ricardo in his absence,) and the testimony of the two witnesses that he (Mr. Beard) was a notary public, and as such was in fact named and designated by Mr. Ricardo to represent him during his absence, under the provisions of the statute of Louisiana, No. 91, proven in evidence.

Although it might have been incompetent thus to show Mr. Beard's actual designation and procurement to act in Mr. Ricardo's stead, yet we are inclined to think the objection not well taken under the circumstances, because under the existing state of the proofs—the law allowing substitution having been proven—so much of this testimony as showed that he in fact officially acted in the stead of Mr. Ricardo, was competent as far as it went, and perhaps the ordinary presumptions of law as to persons who act in official stations, would apply here and fill up the hiatus. But it is unnecessary for us to decide this point, because the paper marked B. is well enough supported by the testimony of the two witnesses without any aid from Mr. Beard's certificate. Clements swears that it is "a copy of the original record as it

stands in the register of Mr. Ricardo." And Rareshide swears that it "is a correct transcript from Mr. Ricardo's original records."

It is true that neither of these witnesses swear in express terms that they have examined the original entries, and compared this carefully with it, or to other matter of like particularity in support of what they do swear, and to this extent there is consequently some ambiguity in their testimony, but all such could have been readily cleared up by cross-examination. If the opposite party had desired to know the source of the knowledge of the witnesses, he should have brought it out on cross-examination; and having failed to do so, he cannot now have their depositions rejected for uncertainty, which it was his duty to have prevented if in any way likely to operate to his prejudice. (*Old v. Powell,* 10 *Ala. R.* 393.)

And there being ample testimony in the record to sustain the verdict and judgment of the court below, we are of the opinion that the motion for a new trial was properly overruled.

Judgment affirmed with costs.