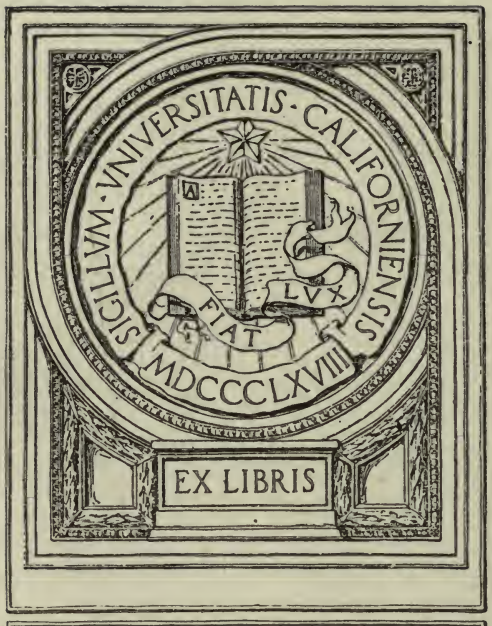
A NOTARIAL MANUAL FOR CONSULAR OFFICERS

C. E. GAUSS
AMERICAN CONSUL

1921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By

C. E. GAUSS
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1921

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Chapter I.

GENERAL.

1. A notary public is a public officer whose function is to attest and certify by his hand and official seal certain classes of documents in order to give them credit and authenticity in foreign jurisdictions; to take acknowledgments of deeds and other conveyances, and certify the same, and to perform certain official acts, chiefly in commercial matters, such as the protesting of notes and bills, the noting of foreign drafts, and marine protests in cases of loss or damage.[1]

2. The office of notary public has long been known to the civil and common law. In the absence of a statute a notary public is unknown to the criminal law.[2]

3. The principal function of a notary public is the authentication of documents. This power is used in specified cases for the perpetuation of facts as evidence. Notaries may also have the power to take affidavits, depositions, and acknowledgments, and to administer oaths.[3]

4. The powers and duties of a notary public are derived in a large measure from general usage, public law, and the custom of merchants. To some degree they are regulated by statute in most of the States, but not usually in such a manner as to restrict the exercise of the functions which otherwise appertain to the office.

As a general rule, a notary public may take acknowledgments of deeds, powers of attorney, agreements, leases, releases, assignments, bonds, mortgages, bills and contracts of sale, and protests, certify copies, and may take all forms of oaths, affidavits, and depositions.[4]

5. Under the statutes of the United States, as well as under the laws of most of the States of the United States, the American consular officer becomes ex officio a notary public within the consular district to which he is assigned.

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[1] 29 Cyc., 1068.
[2] Id., 1068, 1071.
[3] Id., 1076.
[4] Cons. Regs., 1896, par. 483.

AUTHORITY UNDER FEDERAL LAW.

6. The notarial authority of a consular officer under Federal law is found in section 1750, Revised Statutes of the United States, which reads in part as follows:

Every secretary of legation and consular officer is hereby authorized, whenever he is required or deems it necessary or proper so to do, at the post, port, place, or within the limits of his legation, consulate, or commercial agency, to administer or take from any person any oath, affirmation, affidavit or deposition, and to perform any notarial act which any notary public is required or authorized by law to do within the United States. Every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had or done, by or before any such officer, when certified under his hand and seal of office, shall be as valid and of like force and effect within the United States, to all intents and purposes, as if administered, sworn, affirmed, taken, had or done, by or before any other person within the United States duly authorized and competent thereto.[5]

7. This statute, however, confers notarial powers on diplomatic and consular officers only in respect to matters within Federal jurisdiction.

Section 1750 does not intend to authorize the consul to perform notarial acts in regard to matters of State practice and State law only and which are governed by State law; and, in saying what shall be the force and effect of a consul's notarial act in London, it can not mean its force in regard to business and subject matter which belong to the States exclusively to regulate, since that would be usurpation. The construction given to such acts, drawn in general language, is that they relate to subjects that are within the province of the United States Government, i. e., to subjects only that are within its jurisdiction. (U. S. *v.* Badeau, 1886, 33 Fed. Rep., 572, affirmed 1887, 31 Fed. Rep., 697.)[6]

AUTHORITY UNDER STATE LAWS.

8. The laws of some of the States and Territories authorize consular officers to take acknowledgments of deeds, to take depositions and affidavits, and to perform other notarial acts for use in such States and Territories. When called upon for any such service not within the usual functions and competency of a notary public, according to the general law and usage of commercial nations, the consul will be guided by the State or Territorial statute which empowers him to act in the premises.[7]

9. As a matter of precaution in cases where specific authority is not found in a State or Territorial statute for the performance by a consular officer of the particular notarial act which he is requested or required to perform, the person requesting or requiring such service should be informed, preferably in writing, of the apparent absence

[5] See also sec. 7, act of Apr. 5, 1906, quoted post.
[6] Fed. Stats. Annotated, II, 813.
[7] C. R., 1896, par. 483.

of such specific authority, so that he may have due notice and the consular officer be relieved of responsibility should the notarial act subsequently be rejected or refused recognition under the State or Territorial jurisdiction.

In such cases it is well to note in the record of fees the fact that the person for whom the service was performed was duly informed of the apparent absence of specific authority under the State or Territorial statutes.

10. While many of the States make no express provision, for example, as to affidavits taken abroad, for use in the State jurisdiction, such affidavits are often admitted if made before a consular officer under the "general usage, public law and custom of merchants," so that it would not seem wise to refuse a notarial act because it is not expressly authorized by State statute, if such act is one common to the general usage in commercial practice, and provided the person requiring the service is informed, as suggested, of the absence of express authority in the State statute and makes his request or demand for the service with full knowledge of that fact.

PERFORMANCE OF NOTARIAL SERVICES OBLIGATORY.

11. While the performance of notarial services by consular officers was for many years optional, section 7 of the act of Congress of April 5, 1906, makes such service obligatory, providing:

> That every consular officer of the United States is hereby required, whenever application is made to him therefor, within the limits of his consulate, to administer to or take from any person any oath, affirmation, affidavit, or deposition, and to perform any other notarial act which any notary public is required or authorized to do within the United States; and for every such notarial act performed he shall charge in each instance the appropriate fee prescribed by the President under section seventeen hundred and forty-five, Revised Statutes.
>
> (See also, Cons. Regs., 1896, par. 484, as amended by Exec. order, Aug. 13, 1906.)

This provision of law apparently applies only to consular officers and not to secretaries of legation.

"CONSULAR OFFICER" DEFINED.

12. The term "consular officer," as used in section 1750, Revised Statutes, was defined by section 1674, Revised Statutes, to include consuls general, consuls, commercial agents, deputy consuls, vice consuls, vice commercial agents, and consular agents, "and none others."

The act of February 5, 1915 (sec. 6), however, amends section 1674, Revised Statutes, to define consular officers as—

> Consuls general, consuls, vice consuls, interpreters in consular offices, student interpreters, consular agents, and none others.

LIMITS WITHIN WHICH NOTARIAL SERVICES MAY BE PERFORMED.

13. Following the rule that a notarial officer can act as such only within the political division for which he is appointed,[8] and in conformity with the restriction by section 1750, Revised Statutes, and section 7 of the act of April 5, 1906, confining the notarial authority of a consular officer to the "limits of his consulate," consular officers are forbidden[9] to perform notarial services outside of their consular districts.

The term "within the limits of his consulate" has been construed to mean "within the limits of his consular district."[10] When not otherwise specifically defined by instructions from the Department of State, the limits of the consular district are determined by paragraph 30, Consular Regulations, 1896, as including "all places nearer the official residence of a consul than to the residence of any other consul within the same allegiance."

A list of consular districts definitely determined is published in the Register of the Department of State.

DISABLING INTEREST.

14. The general rule is that a notary can not certify to or act in a manner in which he has a personal interest.[11]

There are of course occasional exceptions to this general rule, but in the absence of reliable legal advice the consular officer would do well to follow the rule as absolute and not act when he is in any way personally interested.

THE NOTARY'S DUTY.

15. A notary owes his clients the general duty of integrity, diligence, and skill, and it is his duty to inform himself of the facts to which he intends to certify and not rely on hearsay.[12] He should also fairly protect the interests of illiterate and ignorant persons.

LIABILITY OF NOTARY.

16. For breach of an official duty, a notary and his sureties are liable on his bond.[13]

A notary by assuming to perform any official duty on request of a party concerned impliedly undertakes to discharge it faithfully, and is liable to the extent of any resulting injury if he fails to do so.[14]

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[8] 29 Cyc., 1090.
[9] Cir. Instrn., May 29, 1903.
[10] Cons. Regs., 1896, par. 482.
[11] 29 Cyc., 1092.
[12] Id., 1101.
[13] Id., 1195.
[14] John's American Notaries, 10.

The measure of damages is the loss sustained by the notary's wrongful act or omission.[15]

The Department of State has found it necessary to caution consular officers on the subject by a circular instruction[16] saying:

You are reminded that as ex officio notaries public you hold yourselves out to the world as fully capable of discharging the duties of your office and therefore you may render yourselves liable for damages resulting from misconduct or negligence in the performance of your duty.

NOTARIAL RECORD.

17. A notary's official record is a public record and a certified copy is evidence of the facts officially recorded.[17]

With this statement of the general rule, the following provisions of paragraph 486, Consular Regulations, 1896, will commend themselves to consular officers:

Each consul shall keep a permanent record of all notarial * * * services * * * and transmit at the close of each quarter one sworn copy of the same to the Department of State. * * * This record and transcript should include all notarial * * * acts for which a fee has been charged, and also gratuitous services of like character, such as the authentication of pension vouchers, bond transfers, etc.; describe the service so fully and clearly that its nature may be ascertained by inspection. Entry of the services as "affidavit," "oath," "certification," "authentication," etc., is insufficient. Many of these acts are concerned with the transfer of property and the execution of papers and documents of importance. Questions are likely to arise at any time which it is desirable that the Department of State should have the means of answering, either from the information on its files or in the records of the several consulates. The form which has been prepared for this purpose shows the particulars which the record shall contain and also the form of oath to accompany it. If in the execution of papers witnesses are required, their names should be entered in the column of remarks.

The following is the text of an instruction on this subject which is used by one of the consuls general at large and which is particularly commended to the careful attention of consular officers:

To comply with the requirements of paragraph 486 of the Consular Regulations, the Department expects the records of notarial services (now kept in the Fee Book) to show descriptions complete enough, in each case, to identify the document concerned, stating the parties thereto; if identification was necessary, the way in which this was established; if a deed, the location, in brief general terms, of the land; if a patent application, the nature, in brief general language, of the patent applied for; if a pension voucher, the number of the certificate and the period covered by the voucher; if an affidavit, a statement in brief general language of its nature, etc. In the case of certificates to the official character of notaries public and other local officials, the record should show information as complete as though the oath had been administered or

[15] 29 Cyc., 1104.
[16] Circular Instruction, Mar. 13, 1908.
[17] 29 Cyc., 1100.

the acknowledgment taken by the consular officer, whenever such information is available at the time when the service is rendered. The sample entries which accompanied General Instruction Circular No. 367 are called to your attention.

SIGNATURE AND OFFICIAL SEAL.

18. Under the law merchant and law of nations, notaries must attest their official certificate and other writing by their seal of office. And this is the almost universal rule under the statutes of the several States. An official seal is an impression on the paper directly, or on wax or wafer attached thereto, made by the official as and for his seal.[18]

The prudent notarial officer will always seal whatever he officially signs. Section 1750, Revised Statutes, which confers notarial authority on consular officers under Federal law, provides that the notarial act of such officer shall be valid "when certified under his hand and seal of office."

Where the officer is required by statute to authenticate his certificate with his official seal, a failure to affix such seal will render the acknowledgment, or other notarial act, fatally defective.[19]

19. The official seal of an American consular officer for notarial purposes, as well as for all consular acts, is the impression press seal furnished by the Department of State. The seal furnished to consular officers for use on wax is not to be used in place of the impression press seal for notarial purposes.

It is desirable that the official seal be impressed on the certificate in such a position that it marks the close of the certificate on the lower left-hand side, while the signature and official title mark it on the right-hand side.

20. The signature of the consular officer should always be affixed to the notarial certificate issued by him. A certificate not so subscribed is of no force.[20]

A substantial compliance with the statute is all that is required of the certificate, and it will not be invalidated by such a discrepancy as the use by the officer of the initials of his Christian name instead of writing such name in full.[21] It is considered the better practice, however, to write out the Christian name in full.

OFFICIAL TITLE FOR NOTARIAL ACTS.

21. The signature should be followed by the official title of the consular officer. This is considered the best practice even where the official character of the officer is shown in the body of the certificate, and it is the practice uniformly followed by consular officers.

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[18] Giaque's Manual, 8.
[19] 1 Cyc., 578.
[20] 1 Cyc., 577.
[21] Id., 578.

When acting in a notarial capacity, consular officers are advised, in view of the requirements of the laws of several States on the subject, to sign as officers "of the United States of America."[22]

This practice should be followed uniformly by the consular officer, whether performing notarial services under a Federal, State, or Territorial statute, except in those cases where on forms already prepared and printed by the Department of State the title reads otherwise.

FORGERY OF SIGNATURE AND SEAL OF CONSULAR OFFICER.

22. Section 1750, Revised Statutes provides, in respect to the signature and seal of an American consular officer in his notarial capacity, that—

If any person shall forge any such seal or signature or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be deemed and taken to be guilty of a misdemeanor, and on conviction shall be imprisoned not exceeding three years nor less than one year, and fined in a sum not to exceed three thousand dollars, and may be charged, proceeded against, tried, convicted, and dealt with therefor in the district where he may be arrested or in custody.

FALSE SWEARING, ETC.

23. Section 1750, Revised Statutes, also provides in part that—

If any person shall willfully and corruptly commit perjury, or by any means procure any person to commit perjury in any such oath, affirmation, affidavit, or deposition, within the intent and meaning of any act of Congress now or hereafter made, such offender may be charged, proceeded against, tried, convicted, and dealt with in any district of the United States in the same manner, in all respects, as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, affirmation, affidavit or deposition, and shall be subject to the same punishment and disability therefor as are or shall be prescribed by any such act for such offense.

24. Congress has power to punish offenses committed abroad by American citizens (U. S. *v.* Craig, 1886, 28 Fed. Rep.) and has exercised it in the foregoing legislation.

FEE STAMPS NECESSARY TO VALIDITY OF DOCUMENT.

25. Section 10, act of April 5, 1906, provides in part:

Whenever a consular officer is required or finds it necessary to perform any consular or notarial act, he shall prepare and deliver to the party or parties at whose instance such act is performed a suitable and appropriate document as prescribed by the consular regulations and affix thereto and duly cancel an adhesive stamp or stamps of the denomination or denominations equivalent to the fee prescribed for such consular or notarial act, and no such act shall be legally

[22] Cir. Instrcn., Dept. of State, Nov. 28, 1904.

valid within the jurisdiction of the Government of the United States unless such stamp or stamps is or are affixed and canceled.

26. Where the tariff of consular fees provides that no fee shall be charged for certain specified notarial services, the consular officer should stamp or write on the document in the space where the fee stamp would otherwise appear, the words "No fee prescribed." [23]

27. The consular fee stamp is to be affixed close to the consular signature, or, if this is impracticable, at the upper left-hand corner of the document, and canceled by writing thereon the date and the initials of the officer or by impressing the consular seal.[24]

FEES FOR NOTARIAL SERVICES.

28. The fees for notarial services as prescribed by the President under authority of section 1745, Revised Statutes, are included in the tariff of consular fees as published from time to time by the Department of State.

The following tariff is now in force:

Item 31. Administering an oath and certificate thereof	$2.00
Item 32. Administering oath and preparing passport application	1.00
Item 33. Acknowledgment of a deed or power of attorney, or similar service, including one or more signatures, with certificate thereof, for each copy	2.00
Item 34. Administering any and all oaths required to be made by pensioners and their witnesses in the execution of their pension vouchers, or by persons presenting claims for pensions or increase of pensions and their witnesses, or certifying to the competency of a local official before whom the same were executed	No fee.
Item 35. Acknowledgments connected with the transfer of United States bonds	No fee.
Item 36. Administering oaths to or taking acknowledgments of officials or employees of the United States Government, in connection with their official business or accounts	No fee.
Item 37. For rendering notarial services to officials of foreign Governments who render gratuitously reciprocal courtesies to American diplomatic and consular officers	No fee.
Item 38. Certifying to official character of a foreign notary or other official	2.00
Item 39. For taking depositions, executing commissions or letters rogatory, where the record of testimony, including caption and certificate, does not exceed 500 words	10.00
For each additional 100 words or fraction thereof	.50

The foregoing fee shall cover the administration of the oath and all services of the consul as commissioner, but shall not include services of clerk, stenographer, or typewriter, which shall be additional at the rate prescribed herein for copying.

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[23] Dept. of State Circular, Aug. 27, 1906.
[24] Id., June 1, 1906.

Item 40. Copies (carbon copies to be charged for at the same rate as originals):

For the first 100 words or fraction	$0.50
For every additional 100 words or less	.25
Item 41. Translations; for every 100 words or less	1.00
Item 42. Additional fee for all services contemplated by fees numbered 31, 32, 33, 38, 39, when rendered elsewhere than at the consular offices at the request of the interested parties, for each hour or fraction thereof	1.00

In connection with any service rendered outside of the consular office at the request of private individuals, the exact amount of the expenses actually and necessarily incurred by the person rendering the service shall be collected from the persons for whom the service is performed in addition to the fee or fees prescribed therefor; and a note of the amount shall be made on the margin of the fee book and fee return opposite the entry of the service and fee; but no amount in excess of the fee or fees prescribed and such actual and necessary expenses shall be charged or accepted.

Item 43. Recording unofficial documents in consulate upon request:	
For the first 100 words or fraction	.50
For every additional 100 words or less	.25
Item 44. Any and all services indicated in the above tariff and performed upon written orders of the Department of State for the official use of the Government of the United States	No fee.
Item 45. Any and all services in connection with the execution of income-tax returns	No fee

All consular charges must be in strict accordance with the tariff and be collected in gold or its equivalent.

No fee or compensation will be collected for any service not covered by the tariff.

The following suggestions may serve to make the tariff of fees for notarial purposes entirely clear to officers who may be in doubt on particular points:

Item 31: Where an oath and certificate thereof is requested in more than one copy, the fee is collected for every copy.

Item 33: The clause "or similar service" is variously interpreted by consular offices. A reasonable interpretation would seem to be to charge the fee for all notarial certificates issued by the consular officer not otherwise specified in the tariff of consular fees.

Item 39: Where the stenographer is an employee of the consular office, or is a consular officer, his or her fees, at the rate prescribed for copying, are to be remitted to the Treasury and are not to be retained as personal compensation.

There is nothing to prevent the parties from providing their own stenographer, provided he is capable and is duly sworn.

Where the office supplies the stenographer or clerk, the following fees are applicable in executing a commission:

Commission fee	Item No. 39
Shorthand copy fee	Item No. 40
Transcribing fee	Item No. 40

Item 42. In respect to services outside the consular office, the following opinion of the Solicitor of the Department of State is of interest:

It is not believed that the law requiring consular officers to perform notarial acts contemplates that the consul shall perform such services at a distance from the consulate, if it is practicable for the parties to appear before him at the consulate. The consulate is the usual and appropriate place for the performance of such services and the cases in which the consul might be required to go to the parties rather than requiring the parties to come to him are exceptional and such, for instance, as attending a man at his deathbed.[25]

He is not obliged to abandon his public duties and go about the country obtaining * * * evidence.[26]

PAYMENT OF FEES.

29. Consular officers must require all fees to be paid in advance and before the stamps are canceled, except in case of attendance out of office or of commissions, when the amount can not be determined until the service is performed. Advance deposits to cover fees in such latter cases may be accepted, but in no other cases.[27]

NUMBERING NOTARIAL ACTS.

30. The consular officer is required by paragraph 604, Consular Regulations, 1896, to number all consular services, in the order of their dates, beginning with number 1 at the commencement of the period of his service and on the 1st day of January in every year thereafter. He is also required to number each consular act with the number appearing in his record or register.

Notarial services are numbered by the consular officer under the series of miscellaneous fees, and each notarial act, whether one for which a fee has been received or one which has, under the tariff of fees, been performed without the collection of a fee, should bear, near the fee stamp, the words "Miscellaneous Fee No.," giving the serial number.

31. The consular acts of a subordinate officer, other than a consular agent or a vice consul detailed for duty at a place other than the seat of the consulate general or consulate, are included in the regular number series of the office to which he is attached.

32. Receipts for consular services may be issued, and should bear the fee number corresponding to the service as noted in the fee record. The affixing and canceling of a fee stamp itself constitutes the giving of a receipt, but there is no objection to the issuance of separate receipts where desired.

NOTARIAL SERVICES FOR OTHERS THAN AMERICANS.

33. It will be found that in many cases the Federal and State laws are mandatory as to the officers before whom documents may be exe-

[25] Dept. of State, Ms. papers (Jan. 21, 1911, to K. & K.).
[26] Moore's Digest of International Law, vol. 5, par. 720.
[27] Consular Fee Tariff.

cuted, acknowledged, or sworn, abroad, for use in the United States, and in consequence persons other than Americans may require notarial services of the American consular officers, which can not be refused, unless objection is made by the foreign Government, in which case the matter resolves itself into a question of consular rights and privileges which, if necessary, should be reported to the diplomatic representative of the United States in the country or to the Department of State.

Ordinarily no objection is made to the full exercise of notarial powers by American consular officers in respect to matters within the jurisdiction of the United States.

34. For treaty provisions on the subject of notarial privileges of consular officers see Treaties, etc., Between the United States and Other Powers, Malloy, and Charles. The subject of notarial privileges of American consular officers appears in the following treaties between the United States and other powers:

Austria-Hungary: Consular Convention, 1870, Article IX.
Belgium: Consular Convention, 1880, Article X.
Colombia: Consular Convention, 1850, Article III.
Congo: Treaty with Belgium, 1891, Article V, paragraph 6.
France: Consular Convention, 1853, Article VI.
Germany: Consular Convention, 1871, Article IX.
Greece: Consular Convention, 1902, Article X.
Italy: Consular Convention, 1878, Article X.
Netherlands: Consular Convention, 1878, Article X.
Roumania: Consular Convention, 1881, Article X.
Servia: Consular Convention, 1881, Article X.
Spain: Treaty of 1902, Article XXII.
Sweden: Consular Convention, 1910, Article X.

NOTARIAL SERVICES ON SUNDAYS AND HOLIDAYS.

35. As a general rule, notarial acts performed on Sundays are not acceptable under Federal or State jurisdictions in the United States.

As to American national holidays, while as a general rule acknowledgments and depositions taken on days declared by Federal law or by State statute as Federal or State holidays, are accepted,[28] whether taken within or without the State or the United States, unless the law enumerates such acts as not valid if taken on holidays, conflicting decisions on the subject by State courts are found.

As to holidays of the country in which the consular office is located, if the laws of the country forbid the execution of documents on those days, the consular officer should not perform notarial services in connection with them.

Where there is any reasonable doubt on the question, it is advisable to suggest the postponement of the service.

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[28] Bouvier Law. Dic., 953.

FASTENING PAPERS.

36. When the instrument or document to which the notarial act relates consists of more than one sheet, or the consular certificate is to be attached, and not written on the document itself, care should be taken to bring all the sheets comprising the document together under the consular seal.

The most satisfactory method is that prescribed by the circular instructions of May 11, 1897, and April 11 and August 11, 1899, on the subject of patent applications—that is, by passing a ribbon one or more times through all the sheets, usually in the upper left-hand corner (using a punch and metal eyelet to protect the papers against the ribbon tearing out), and bringing the two ends of the ribbon together under a paper wafer seal, securely fastened to the document opposite the official signature at the foot of the consular certificate, the seal then being impressed on the wafer with the consular press seal.

The paper wafer should be firmly affixed to the document by mucilage before the seal is impressed. (Carelessness in this particular has often been noted.)

The consular certificate should always be inscribed or attached at the close of the document, and not be attached to its face.

37. The practice as to attaching, pasting, or inscribing the consular certificates on the document is governed largely by the particular State law applicable. The subject is discussed in the chapter on "Acknowledgments."

Chapter II.

AFFIDAVITS.

38. An affidavit is a written declaration under oath made before some person who has authority to administer oaths. It is made without notice to the adverse party.

An affidavit differs from a deposition in that it is taken ex parte and without notice, while a deposition is taken on notice to the opposite party, who is given an opportunity to cross-examine the witness.

WHO MAY ATTEST.

39. The authority of the consular officer to administer oaths and take affidavits under Federal law has already been quoted,[1] so that, so far as concerns matters coming within the jurisdiction of the Federal Government, it is well defined.

He may be called upon for numerous services under this authority, as, for example, the oaths to passport and registration applications, oaths of allegiance and office, oaths to accounts of Government officers, oaths in connection with American shipping, income-tax returns, pension vouchers, and claims, etc., all of which will be dictated by the particular statutes, regulations, or instructions applying.

UNDER STATE LAW.

40. When there appears to be no statutory authority under which an affidavit made before a consular officer is acceptable in a particular State of the United States it would be well for the consular officer so to inform the person applying for the service, before it is performed, following the procedure suggested in paragraph 9 ante.

FORM.

41. For the most part, affidavits made before a consular officer will already have been drawn by competent attorneys or be in established forms, but as the consular officer not infrequently, in the discharge of his consular duties or in making special investigations under instructions from the Department of State, is under the necessity of preparing affidavits, it is advisable to include in this chapter a few notes on the form and contents of affidavits.

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[1] See par. 6 ante.

The formal and substantial requisites of an affidavit are matters depending for the most part upon the purposes for which such affidavit is to be used and the statutes under which it is drawn, and, therefore, the statutes governing the particular affidavit should always be consulted where possible.[2]

TITLE.

42. It is the general rule that an affidavit taken for use in a pending cause must be entitled in that cause, so that it may show to what proceedings it is intended to apply, and support an assignment of perjury in case it prove to be false.[3]

The strict rule of the common law is that it must show the exact title of the cause. The courts of the several States differ as to the strictness with which they apply this rule.

If there be no suit pending at the time the affidavit is taken, it should not be entitled.[4]

Likewise, in affidavits not to be used in any cause in court, no title need be given.

COMPONENT PARTS.

43. The following is given as an example of a general form of affidavit, which includes title, venue, body, signature, jurat, date, and official seal, which are the component parts of an affidavit:

IN THE UNITED STATES COURT FOR CHINA.

(Title.) In re estate of John Smith, deceased. {Special proceeding No. / Affidavit of publication.

(Venue.) Republic of China,
Province of Fukien,
Port of Amoy,
Consulate of the United States of America. } *ss:*

(Body.) Before me, A. B., consul of the United States of America in and for and the consular district of Amoy, China, duly commissioned and qualified, personally came C. D., who, being duly sworn, deposes and says that (state what); and further deponent saith not.

(Signature.) C. D.

(Jurat.) Subscribed and sworn to before me this _____ day of _____

(Date.) _____, A. D. 192__.

(Notary's signature and seal.) [SEAL.] A. B.,
Consul of the United States of America.

VENUE.

44. The venue should precede the body of the affidavit and should never be omitted. An examination of the authorities shows that

[2] 2 Cyc., 17.
[3] Id., 18.
[4] 2 Cyc., 18.

such omission has at times been decided to be fatal to the affidavit; and it is observed that when the courts have held otherwise, as is probably more frequently the case, the language has sought rather to excuse the error of omission than to sanction the practice.

The full and proper venue in the consular districts in China, for example, would be:

Republic of China, Province of Fukien, Port of Amoy, Consulate of the United States of America, *ss:*

When acting in a judicial capacity under the extraterritorial jurisdiction enjoyed by the United States in China, the following form of venue, established by the United States Court for China, may be employed:

United States of America, extraterritorial jurisdiction in China, the consular district of ———— *ss:*

The letters "ss," usually added after the venue, are probably not absolutely essential, although usual. They signify "to wit" and fix the place more definitely where the affidavit is made, to show it is within the jurisdiction of the officer. Unless authorized by statute, an officer can perform no official act outside of and beyond the territorial limits in which he is authorized or required to act.

THE BODY, OR INTRODUCTORY STATEMENT.

45. The following example of a formal and complete opening will be generally acceptable to meet all possible requirements:

Before me, A. B., consul of the United States of America at Amoy, China, duly commissioned and qualified, personally appeared C. D., who, being duly sworn according to law, deposes and says that—

AFFIDAVIT BY AGENT, PARTNER, OR CORPORATION.

46. Where an agent or attorney, as such, makes an affidavit, it must expressly state that the affiant is such "agent" or "attorney" and not name him as agent by way of mere description, without oath to the fact of such agency. The proper form would be, for example:

Agent:

A. B., being duly sworn, deposes and says that he is the agent of C. D., etc.

Partnership:

A. B., being duly sworn, deposes and says that he is a member of the firm of A. B. and Co., that, etc.

Corporation: Since a corporation must, of necessity, act through its agents, it follows that an affidavit on behalf of a corporation may be made by an agent or officer authorized by the general provisions of law to make oaths in behalf of the corporation. The following is an example:

A. B. C., being duly sworn, deposes and says that he is the general manager of the D. E. F. Company in north China, that—

AFFIANT'S ALLEGATIONS.

47. The chief test of the sufficiency of an affidavit is whether it is so clear and certain that an indictment for perjury may be sustained on it if false.[5]

(*a*) *Positive allegations.*—Material facts within the personal knowledge of the affiant must be alleged directly and positively, and not on information and belief, and facts will not be inferred where affiant has it in his power to state them positively. Sometimes, moreover, a statute providing for the making of an affidavit requires the facts to be positively stated, and where this is the case an affidavit on information and belief can not be received. Where the facts are positively affirmed it is not necessary for affiant to state the source of his knowledge, and the affidavit will be presumed to have been made on his personal knowledge if the facts are of such a character that he may have known them and it does not appear that he did not; but where it appears that affiant could have had no personal knowledge as to material allegations the affidavit is defective.[6]

(*b*) *Information and belief.*—Oftentimes affiant's knowledge of matters stated in his affidavit must, of necessity, rest upon information derived from others, and where this is the case it is generally sufficient if he aver that such matters are true to the best of his knowledge and belief. * * * Where material allegations are made on information and belief, the sources of information and grounds of belief should be set out and a good reason given why a positive statement could not be procured. Thus, if the conclusions of affiant are drawn from the contents of documents, such contents should be set out or exhibited, so that the court may judge whether affiant's deductions are well founded.[7]

It is customary in some jurisdictions to close the allegations with the words "and further deponent saith not."

AFFIANT'S SIGNATURE.

48. The signature of the affiant is an essential and should not be omitted. Signature is expressly required by the statutes of some of the States and the courts have also held affiant's signature to be necessary.

JURAT.

49. The usual form of jurat is:

Subscribed and sworn to before me this ——— day of ———, A. D. 192—.

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[5] 2 Cyc., 22.
[6] Id., 24.
[7] Id., 25.

Where the title of the officer and the fact that he is duly commissioned and qualified does not appear in the opening paragraph of the affidavit, the following form is recommended:

Subscribed and sworn to before me, A. B., consul of the United States of America in and for the consular district of Amoy, China, duly commissioned and qualified, this ——— day of ————, 192—.

OFFICER'S SIGNATURE AND SEAL.

50. The signature of the officer, with his official title, in full, and the official seal of the consular office are absolutely essential and must not be omitted.

CONSULAR FEE STAMPS.

51. Consular fee stamps must be affixed and canceled, or if no fee is prescribed the indorsement "No fee prescribed" must appear.

The "Miscellaneous fee number" should also appear.

INTERLINEATIONS AND ERASURES.

52. An affidavit should be free from all interlineations and erasures.

THE OATH OR AFFIRMATION.

53. The oath or affirmation administered in the case of an affidavit is of considerable importance and interest.

An oath is an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God. An affidavit is a solemn religious asservation in the nature of an oath.

Generally, the word "oath" includes "affirmation," and when an oath is required or authorized by law, an affirmation in lieu thereof may be taken by any person having conscientious scruples against taking an oath; and an affirmation has the same force and effect as an oath, the same penalties applying for a false affirmation as for a false oath. Oaths are to be administered to all persons according to their own opinions and as it most affects their consciences.

There are various forms of administering oaths, the one more commonly in use amongst consular officers and notaries public being (the person taking the oath or affirmation holding up his right hand while the officer repeats to him the words):

You do solemnly swear that [for example] the various matters and things set forth in this paper which you have here signed before me are true.

In the case of an affirmation the formula usually employed is:

You do solemnly, sincerely, and truly affirm and declare that * * *, and this you do under the pains, and penalties of perjury.

If the affiant be blind or a marksman the jurat may be in substance as follows:

Subscribed and sworn to before me this ——— day of ————, A. D. 192—. The whole of the above affidavit having been first read over and explained to the said A. B., who appeared perfectly to understand the same, he made his mark in my presence.[8]

[8] Foster's Federal Practice, 4th ed., vol. 1, 893.

Chapter III.

DEPOSITIONS.[1]

54. A deposition is the testimony of a witness put or taken down in writing under oath or affirmation, before a commissioner, examiner, or other judicial officer, in answer to interrogatories, oral or written.[2] It must be in due form of law, by virtue of a commission or other authority of a competent tribunal, or according to the provisions of some statute law.

Generally, depositions may be taken and used in all civil actions or suits whether at law or in equity. In criminal cases in the United States, depositions can not be used except that in some jurisdictions statutes have been enacted which permit a defendant in a criminal case to have a deposition taken in his own behalf. The State might also in some cases take depositions for use in the prosecution, with the consent of the defendant, but not otherwise.

While provisions will be found in the various State laws for the taking of depositions upon notice and agreement without the formality of the issuance of a commission by the court, as a general rule it may be said that depositions taken before consular officers are almost invariably taken under commissions issued by a Federal or State court, a military or naval court-martial, or a department of the Federal Government, such, for instance, as the Patent Office, the Land Office, or the Pension Bureau, and for the most part these commissions will be accompanied by full instructions, which the consular officer must follow carefully.

In executing such commissions, the consular officer acts both in his official consular capacity and as an officer of the court which issues the commission.[3]

WHO MAY EXECUTE COMMISSION.

55. A deposition can not be taken before any one but the commissioner named; hence, where a commission directed to a person by

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[1] The subject of depositions is an extensive branch of law and the duty of the consular officer in the execution of a deposition can not be examined fully in the space here given, but it is the aim in this discussion to give such general information and suggestions on the subject as will prove of assistance to the officer, who should, however, be carefully guided by the instructions usually accompanying the commission or, in the case of depositions for use under State jurisdictions, by the provisions of the State law as set out in the commission or found in the volume, Synopsis of the Laws, supplied annually to each consular office by the Department of State.

[2] 13 Cyc., 832.

[3] Cons. Regs. 1896, par. 488.

name or by his official title is executed by a person of different name or having a different title, the deposition can not be read, unless it appears or is proven that the party who executed the commission was the person intended.[4]

DISQUALIFICATION OF COMMISSIONER.

56. In general, a commission can not be executed by a commissioner incompetent to act or disqualified.[5]

The commissioner must stand indifferent between the parties. If he directly or indirectly bear to either party such a relation as would authorize a presumption of bias or prejudice in favor of or against either party he is not competent.[5]

The relationship by blood, or, with some exceptions, the affinity of the commissioner or other like officer, to a party to the cause operates as a disqualification.[6]

INSTRUCTIONS FOR EXECUTION.

57. It is well to state that the statutes which permit the use of depositions and prescribe the manner in which they are to be taken are generally strictly construed and must be closely followed. The officer before whom they are taken must be governed accordingly.

Depositions are usually taken abroad in reply to written interrogatories, but may be taken in reply to oral interrogatories or questions by the parties to the suit or their attorneys.

CAPTION.

58. A suitable caption, often prescribed in exact terms under the commission, is required. The following is an example:

Depositions of sundry witnesses, taken before me, A. B. C., Consul of the United States of America, at Amoy, China, under and by virtue of a commission issued out of the _____ Court for the _____, in a certain cause pending therein and at issue between _____, plaintiff, and _____, defendant.

D. E. F., of (insert place of residence, and occupation), of lawful age, being by me first duly sworn, deposes and says—

INTERPRETING.

59. If the witness does not understand English or can not intelligently testify in that language, an interpreter may be employed, to whom an oath, in substance as given below, should be administered

[4] 13 Cyc., 849.
[5] 13 Cyc., 851.
[6] Id., 853.

(unless some other particular form is prescribed by the instructions accompanying the commission):

You do solemnly swear that you know the English and _____ languages and that you will truly and impartially interpret the oath and interrogatories to be administered to _____, a witness now to be examined, out of the English language into the _____ language, and that you will truly and impartially interpret the answers of the said _____ thereto, out of the _____ language into the English language.

If the officer taking the deposition understands the witness's language he may usually interpret.

When an interpreter acts, he must usually sign the deposition with the witness whose testimony he interprets.

When an interpreter intervenes, it is usual to say just preceding the interpreted deposition:

It appearing that the witness, E. F. G., could not understand the English language (or could not intelligently testify in the English language) and did well understand the _____ language—

(*a*) I (the officer executing the commission), who also well understands said language, administered the oath and put the questions to him in said language, or

(*b*) One H. I. J. (if an interpreter is employed) who also well understands said _____ language, was employed as interpreter and was sworn as follows (give oath as quoted ante), and said H. I. J. interpreted accordingly.

And the said E. F. G., of lawful age, being so duly sworn, deposes and says:

SWEARING THE WITNESSES.

60. The witness must in all cases be sworn or affirmed, and this should be done before he gives his testimony. A common form of oath to the witness, if the instructions do not specifically prescribe the form, is:

You do solemnly swear that you will testify the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories in the case now pending in the _____ Court, in which A. B. is plaintiff and C. D. is defendant, and this you do as you shall answer unto God (or, "So help you God," or "in the presence of the everliving God").

In case of affirmation:

You do solemnly, sincerely, and truly declare and affirm, under the pains and penalties for perjury that you will testify the truth, etc.

As a general rule it may be stated that when the law requires evidence to be given on oath, the intention of the law is looked to, and the witness is required to go through that ceremony of his native country which binds him to speak truly.

There is no form of oath prescribed under Chinese law, and in Chinese courts witnesses are never sworn or affirmed, but may be cautioned by the presiding magistrate when he suspects that they are testifying falsely.

In the American extraterritorial courts in China, however, it is usually the practice to swear Chinese witnesses, and, for convenience of reference the following form, employed in the United States Court for China and some of the consular courts, is quoted in Chinese, with an English translation:

(Chinese text omitted.)

[Translation.]

What I say is true. I will not bear false witness. If I fail to tell the truth I may deceive man but I can not deceive heaven, and I am willing that heaven should punish me severely.

THE INTERROGATORIES AND THEIR REDUCTION TO WRITING.

61. The interrogatories, under commissions to consular officers are, as previously stated, usually written, but they may be oral, the parties to the action appearing in person or by attorney.

The interrogatories are usually in 3 parts: (1) The direct examination or examination in chief; (2) the cross-examination; and (3) the redirect examination. The questions under each part are taken in order.

If the interrogatories are oral, the opposing party should not ask the witness questions during either the examination in chief or the redirect examination; nor can the other party ask questions during the cross-examination.

As a general rule only the officer taking the deposition or the witness himself may write the answers to the questions.

Depositions are, however, often permitted to be taken stenographically, under the direction of the officer, the stenographer being sworn to take and transcribe them correctly, and after being written out by hand or on the typewriter the answers must be read to the witness for his approval or correction, and must be signed and sworn to in the usual way.

When the interrogatories are not written, but made orally, both the questions and answers should be read to the witness for his information.

When taken stenographically, and the instructions should be carefully consulted before they are so taken, an indorsement to the following effect usually appears in the caption:

The said interrogatories and the answers of the witness thereto (or, where the interrogatories are written, "the answers of the witness to the said interrogatories") were taken down stenographically by me (or by K. L. M.) and were then forthwith transcribed by me (or "by him under my direction"), and the said transcript being then read over correctly to the said witness by me was then signed by the said witness in my presence, etc.

Where a stenographer or clerk takes down the answers, an oath about as follows should be administered to him:

You do solemnly swear that you will truly, faithfully, and impartially reduce to writing (or take and transcribe) the testimony of E. W. A., a witness in the case of A. B. *vs.* C. D., now pending in the ———— Court. So help you God.

Section 864, Revised Statutes, provides that in the case of commissions issuing out of a United States court, meaning Federal court, of course, the testimony must be reduced to writing by the magistrate taking the deposition, or by the witness in the magistrate's presence, "and by no other person."

In the case of oral questions, both questions and answers must be reduced to writing.

In the case of written interrogatories, it is not usual, and unless the instructions specifically so stipulate, the officer should not write down again the interrogatory, but only the answer, in one of the following forms, or as may be prescribed in the instructions:

To the first interrogatory, he says:
To the second interrogatory, he says (and so on):
To the first cross-interrogatory, he says:
To the first interrogatory, deponent saith:
To the second interrogatory, deponent saith (and so on):
To the first cross-interrogatory, deponent saith:

In some cases, under oral examination, the witness's testimony may be written down in narrative form, where this is prescribed by the instructions or permitted under the law governing, usually with the consent of the parties. This is not, however, the usual procedure, and it does not apply to the case of written interrogatories where the separate reply to each interrogatory should be given.

EXPLANATIONS, REFRESHING MEMORY, ETC.

62. The following suggestions on the question of testimony are here given in order that the consular officer may have before him information which he may find useful in case of doubt.

Explaining to witness; shaping answer.—If the witness does not understand what the interrogatory means, the officer should explain it to him, but only so as to get an answer strictly responsive to the interrogatory.

Refreshing memory, source of knowledge, etc.—A witness may be permitted to refresh his memory by examining any written memorandum, instrument, or entry in a book, if made by the witness and if produced, if, after examining it, he can then speak from his own recollection, but the officer should never copy down answers previously written by the witness or by some one else for him. The

witness must testify orally from his recollection and knowledge and must not give his belief or opinion as evidence.

(NOTE.—It is suggested that when witness consults written memoranda, the consular officer taking the deposition should note that fact in the testimony, at the point where the memoranda was consulted.)

Changes.—The officer may correct his own mistakes by interlining and erasing during the examination, but explanations or corrections of mistakes made by witness should be added to his testimony before he closes and signs it, without erasing or altering what precedes. After the witness has signed and left the office, no further changes should be made.

PERSONAL PRIVILEGE.

63. In an examination under oral interrogatories there are certain classes of questions which trench upon the witness's personal privilege and which he can not be compelled to answer. Such interrogatories will usually have been eliminated when the deposition is taken under written and not oral interrogatories.

A discussion of this question of privilege is outside the general purpose and scope of this manual, but for the information of the consular officer the following paragraphs are quoted largely from Giauque's Manual for Notaries:

64. *Criminating answers.*—No answer need be given which would have a tendency to expose the witness to a penal liability, or to any kind of punishment, or which may serve as a link in a chain of testimony to convict him of a crime. The officer should inform the witness of his rights, without compelling him to explain how he may be criminated by his answer, for such answer would itself criminate, and the rule is intended fully to protect him against this. The witness, so informed, may answer if he chooses, and must judge for himself; and if he begin to tell, he may be compelled to finish. If the witness's refusal to testify be wilful and his excuse false, he is liable to an action by the parties.

This rule is in many States qualified by the statutes, more or less, but it is not practicable to give these statutory provisions.

65. *Attorneys* may refuse to testify concerning communications made to them by their clients as such, and their advice given thereon, unless the client consents to such testimony being given. But this does not protect him from testifying as to communications in furtherance of a criminal purpose, or as to facts observed by him showing that any crime has been committed; or as to any fact he has learned otherwise than as legal adviser; nor as to who employed him in a case, nor in what capacity the employing person acted; nor that he drew up a legal document, and that it was duly executed; nor that deeds, etc., about which he has been consulted, are in existence, and their whereabouts, but not their contents. No one against whom he is employed when communications are made is a client, though he may formerly have been.

66. *Ministers, priests, physicians, and surgeons.*—Confidential communications made to these were not protected at common law, but are now by statute in many of the States. This is so in Kansas and Missouri.

67. *Husband and wife* could not be compelled at common law to testify concerning confidential communications between them during marriage; but this

did not apply to facts learned by means equally accessible to third persons. This rule is very general by statute, and in many States has been made even broader. For instance, in Missouri, a wife can not be made to testify to any admissions or conversations of her husband whether made to her or third parties; and in Kansas all communications between them are privileged, whether confidential or not.

68. *Jurors* can not, at common law, be compelled to testify as to what passed between them in discharge of their duty.

69. *Answers which would needlessly degrade the character of witnesses* need not be answered, unless the question calls for evidence relevant to the facts at issue; or unless, on cross-examination, they tend to test his accuracy, veracity, or credibility, or to shake his credibility by injuring his character.

70. *Presence of parties or counsel.*—When not prohibited by statute, the presence of a party or counsel at the examination is not objectionable; and if he has a right to be present, it is error to exclude him. However, the mere fact that a party was not present when a deposition was taken is no reason for excluding it, if he was duly notified and might have attended, and no prejudice resulted from his absence. On the other hand, in some jurisdictions in view of possible prejudice to the opposite party, when he has had no notice of the examination, or by statute, the parties, their attorneys, or agents are not permitted to be present at the taking of a deposition on interrogatories. In others, and in the absence of statute or rule on the subject, the fact that the party of his representative was present will not require the rejection of the deposition, where it does not appear that the witness was prompted or influenced.[7]

A witness may consult with counsel openly and in the presence of the officer, but not privately so as to procure aid in framing his answers.[8]

Where the deposition is to be taken on written interrogatories the examination of the witness must be restricted to them and can not be general unless the parties otherwise agree.[9]

NOTING OBJECTIONS.

71. In the case of oral examinations, the adverse party or his attorney may object to a question as leading and have the objection noted down by the officer. In such case the question, the objection, and the answer are all written down.

EXHIBITS.

72. If letters, telegrams, or other papers are introduced in evidence, they should be marked to identify them, as "Exhibit A," etc., and described as such in the testimony, or marked, signed, and indorsed as the instructions require. In some States they must be annexed to the deposition, subscribed by the witness, and indorsed by the officer over his signature, as:

This exhibit, number (or marked) ——— and hereto annexed, was produced and shown to (witness's name) and by him deposed unto and subscribed by him at the time of his examination before (officer).

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[7] 13 Cyc., 921–2.
[8] Id., 930.
[9] 13 Cyc., 929.

Where the original is not surrendered a copy must be annexed and certified, proved, or indorsed, as the instruction may require.

In lieu of the originals, copies or transcripts of books or papers testified or referred to may be annexed to or accompany the deposition, especially where the original is in the custody of the law and can not be procured.[10]

SIGNING.

73. Each witness must sign his deposition, just at the end thereof. In a number of States the witness must sign each page, and in others both the officer and witness must sign. In cases where an interpreter is used, he also must sign.

Where the witness, from ignorance, sickness, or otherwise, is unable to sign the following form is usually followed:

his
WILLIAM × BROWN.
mark

the mark being made by the witness or by the officer while the witness is touching the pen.

In some States the officer must, after the signature of each witness, certify "Sworn to and subscribed before me by the said W. B., this ——— day of ————, 192—."

FINAL CERTIFICATE.

74. There is usually a final certificate required, the contents thereof being carefully prescribed by the instructions, and a form for which will usually be found in the Synopsis of the Laws. This certificate is sometimes called a "return."

In order to indicate the character of such certificate or return, the following form is given, incorporating the requirements of several States, but the consular officer is recommended to follow exactly any instructions given in the commission directed to him, or found in the Synopsis of the Laws.

I, A. B. C., Consul of the United States of America, in and for the consular district of Amoy, China, the commissioner named in the annexed commission, do hereby certify that in pursuance of said commission, I examined (names of witnesses) at my office in the port of Amoy, China, on the ——— day of ————, 192 , and that the said witnesses being to me personally known and known to me to be the same persons named and described in the interrogatories and commission annexed, being by me first severally sworn to testify the truth, the whole truth, and nothing but the truth in answer to the interrogatories and cross-interrogatories in the cause in which the annexed commission is issued, their evidence was taken down by me, and after being read over and corrected by them respectively, was subscribed by them respectively in

[10] 13 Cyc., 939.

my presence; and I further certify that I am not counsel or kin to any of the parties to this cause or in any manner interested in the result thereof.

In witness whereof, I have hereunto set my hand and seal of office at Amoy, China, this ——— day of ————, 192 .

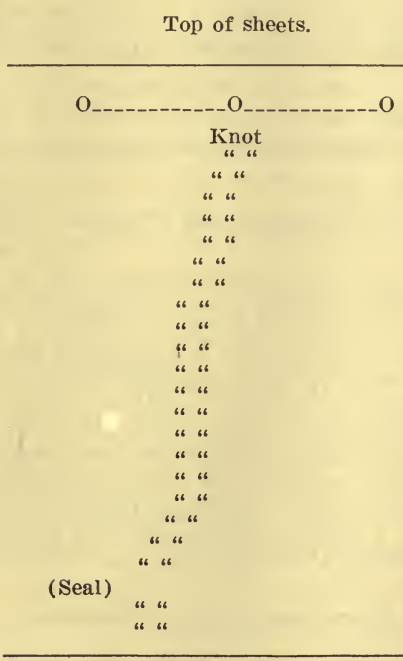
———— ————,

Consul of the United States of America acting as Commissioner.

FASTENING AND SEALING.

75. The commission, interrogatories, answers, exhibits, and all other documents and papers, certificates and costs bills, should be fastened together in one package, as directed by the instructions attached to the commission.

When no instructions are given, the most satisfactory manner of fastening is to punch three holes at the top of the sheets as gathered together, clamping metal eyelets into these holes if possible; draw silk ribbon through the three holes, the two ends meeting and passing through to the front of the center hole, where the ribbon should be tied in a hard knot; then draw the ends of the ribbon down and fasten them under a paper wafer seal, impressing thereon the consular impression seal. For example:



ENVELOPING THE PAPERS.

76. After the papers are completed and properly fastened, they should be inclosed in a large manila or cloth-lined envelope, the flap

being securely fastened with mucilage, and the package thus made being tied with red tape, the ends of which are brought together under wax and the consular wax impression seal impressed thereon.

ADDRESSING AND INDORSING.

The package so prepared and sealed must as a general rule be addressed to the clerk of the court in which the case is pending, or as directed in the commission, the face of the envelope being marked substantially as follows:

To the Clerk of the ——— Court,

(City.)

(County and State.)

United States of America.

In one corner, in small type, on the face of the envelope, an indorsement similar to the following is usually made:

John Doe, plaintiff } No.
vs. } Pending before
R. Roe, defendant. } ——— Court.

Depositions of ——————— taken on behalf of the plaintiff, before ———————.

There is also usually an indorsement on the back to the following effect:

Depositions taken before me and sealed up, addressed, and transmitted by me, being deposited in the Chinese post office at Amoy, China, this ——— day of ————, 1917.

X. Y. Z.,
Consul of the United States of America at Amoy, China,
Acting as Commissioner.

When foreign postal regulations prevent such elaborate indorsements on the envelope and they are nevertheless required by the instructions in the commission, it is suggested that these indorsements be made in full on an inner envelope, bearing the address and other notations as indicated in the foregoing, and duly sealed and taped, with the further indorsement that such course was required in order to permit their transmission through the mails. This package may then be placed in an outer envelope addressed to the clerk of the court and bearing the return card of the consular office in the corner.

THE ATTENDANCE OF WITNESSES.

77. In many cases arrangement will already have been made with witnesses to have them attend and testify before the consular officer who acts as commissioner.

While in the United States provision is made to compel the attendance of witnesses, no such power is ordinarily vested in the consular officer.

It has been observed that attorneys in the United States have sometimes caused commissions to be issued which practically impose upon the consular officer the duty to find the witnesses, even in remote parts of his district, induce them to attend and testify, etc.

On this point the following opinion of the Department of State is of interest:

> While the taking of depositions is a duty imposed upon the consular officers by statute, it is the opinion of the solicitor of this Department that the consular officer is not required to "find the witnesses," "to induce them to present themselves and testify," or "to make comparison of church records." These duties are neither notarial duties nor consular duties, but are rather duties of an attorney or agent of the parties in interest, and their performance is not imposed upon the consular officer by law or regulations. * * * It is not believed that the law requiring consular officers to perform notarial acts contemplates that the consul shall perform such services at a distance from the consulate if it is practicable for the parties to appear before him at the consulate. The consulate is the usual and appropriate place for the performance of such services, and the cases in which the consul might be required to go to the parties rather than requiring the parties to come to him are exceptional and such, for instance, as attending a man at his death bed.[11]

The consular officer is not "obliged to abandon his public duties and go about the country obtaining evidence."[12]

It is believed, however, that the consular officer should show a reasonable disposition to assist persons in the United States in litigation by extending any possible courtesy in connection with these matters, provided this involves no responsibility on his part or on the part of his office and does not interfere with his other duties.

For example, in the extraterritorial countries it not infrequently happens that while persons of other than American nationality will fail to appear to give testimony when notified by the consular officer, an explanation of the difficulty to his consular colleague of the nationality concerned will result in means being found to require the attendance of the witness, with possible resulting service to American interests concerned who might otherwise have had to resort to the expensive and generally unsatisfactory procedure of seeking the testimony through letters rogatory.

In connection with the attendance of American witnesses in an extraterritorial jurisdiction of the United States attention is directed to sections 868 and 869, Revised Statutes, having to do with subpœnas for the attendance of witnesses before commissioners ap-

[11] Dept. State MSS. files, Jan. 21, 1911.
[12] Moore, Int. Law Digest, Chap. XVI, 720, footnote.

pointed by "any court of the United States," wherein it is provided that upon application of either party to the suit, or his agent, subpœnas may be issued by the "clerk of any court of the United States for such district or territory" to compel the attendance of the witness.

OBJECTIONS TO EXECUTION OF COMMISSIONS.

78. Where the local government objects to the taking of testimony by a consular officer, acting as commissioner for a court in the United States, the consul should return the papers with an explanation of the reasons why he is unable to execute the commission, and with any suggestions he may be able to make as to the proper method of obtaining the testimony—whether by letters rogatory or otherwise.[13]

It should be observed, however, that the right of American consular officers to take depositions abroad, more particularly those of their own nationals, is guaranteed by treaty in a number of cases.[14]

LETTERS ROGATORY.

79. These are letters or formal communications containing a request by a court in which an action is pending to a foreign court or tribunal that the testimony of a witness residing within its jurisdiction may be formally taken under its direction and transmitted to the court making the request. This mode of obtaining testimony is usually resorted to only where a commission can not be executed or would be inadequate.[15]

A full discussion of letters rogatory as affecting both American and foreign courts will be found in Moore's Digest of International Law, Vol. II, pages 104, et seq. As the matter is one upon which a consular officer may from time to time be consulted, it is well for him to be familiar with the subject.

TRANSMISSION OF LETTERS ROGATORY THROUGH CONSUL.

80. Section 875, Revised Statutes, provides in part:

When any commission or letter rogatory issued to take the testimony of any witness in a foreign country in any suit in which the United States are parties or have an interest, is executed by the court or the commissioner to whom it is directed, it shall be returned by such court or commissioner to the minister or consul of the United States nearest the place where it is executed. On receiving the same the said minister or consul shall indorse thereon a certificate stating when and where the same was received and that the said deposition is in the same condition as when he received it; and he shall thereupon transmit

[13] Cons. Regs., 1896, 490.

[14] See Cons. Regs., 1896, par. 87, and Treaties of the United States, etc., Malloy and Charles.

[15] 13 Cyc., 892.

the said letter or commission, so executed and certified, by mail, to the clerk of the court from which the same issued, in the manner in which his official dispatches are transmitted to the Government.

FEES FOR DEPOSITIONS.

81. The consular officer acts both in his official consular capacity and as an officer of the court which issues to him a commission to take testimony. His charges are official and must be in strict accordance with the tariff of fees prescribed by the President.

When it is necessary to insure payment of such fees, the consular officer is authorized to retain the papers committed to him in connection with such service until the prescribed fees, for which he is responsible to the Government, have been paid.[16]

A careful observance of the foregoing instructions is recommended to consular officers. It has been found in experience that commissions are often issued from courts in the United States to consular officers for the taking of testimony which would never have been requested had the parties been fully informed of the expense of their execution.

It is the best practice in all cases to require a deposit to cover the approximate costs, and while it is difficult to estimate those costs under the fees applicable, some idea can be formed by the consular officer sufficient to justify him in naming an amount for deposit. Deposits to cover fees in the case of commissions to take testimony are authorized in such cases.

In cases where an emergency exists as to the time of return of a commission or depositions, and the consular officer has received satisfactory assurance that all fees and expenses would be paid, the practice has sometimes been followed of transmitting the papers through some reputable banking institution accompanied by a draft on the persons who are to pay the fees. Upon payment of the draft, the bank will transmit the papers to the clerk of court to whom addressed.

Such arrangements, however, should be made carefully so that the bank fully understands its instructions in the matter.

For the table of fees for executing commissions, etc., see paragraph 23 ante.

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[16] Cons. Regs., 1896, par. 488.

Chapter IV.

ACKNOWLEDGMENTS.

82. Acknowledgment is a proceeding provided by statute whereby a person who has executed an instrument may, by going before a competent officer or court and declaring it to be his act and deed, entitle it to be recorded or to be received in evidence without further proof of execution or both.[1]

Every State and Territory of the United States requires that deeds and similar instruments relating to land within their respective borders must, in order to be accepted for record or to be fully effective, be acknowledged or proven in the manner and before the officers more or less specifically described by the respective State or Territorial statutes.

Instruments usually acknowledged when executed abroad include deeds, mortgages, leases, releases, powers of attorneys, contracts for the sale of land, etc.

The system of acknowledgments is not confined, however, to instruments relating to land, but by the law merchant is employed in proving and authenticating other instruments for the purpose of entitling them to recording or to be received in evidence without further proof of execution, or both.

ACKNOWLEDGMENT AND ATTESTATION DISTINGUISHED.

83. The consular officer should have clearly in mind the distinction between an acknowledgment and an attestation.

An attestation is the act of witnessing an instrument in writing at the request of the party making the same and subscribing it as a witness.[2]

A document attested and not acknowledged must usually be "proved" before being admitted of record or accepted in evidence. Such proof may, and usually is by the testimony of the witness or witnesses; in the absence of the witness or witnesses or in the case of their death, proof can usually be made by persons identifying the handwriting of the maker and the handwriting or signatures of the witnesses.

On the other hand, an acknowledgment represents a personal appearance of the maker of the instrument before a properly quali-

[1] 1 Cyc., 512.
[2] Bouvier Law Dictionary.

fied officer to whom he acknowledges the execution of the instrument, and the certificate, signature, and seal of the officer are thereupon affixed in attestation of that fact.

THE LAW OF ACKNOWLEDGMENTS.

84. This chapter will be devoted more particularly to the requirements in respect to instruments relating to land, inasmuch as these are the more peculiarly exacting and detailed.

The procedure in respect to other acknowledgments under the law merchant, however, is not substantially different from that in the case of instruments relating to land, and for the most part the following comment will be equally applicable.

It is not proposed in this chapter to discuss the question of the necessity for acknowledgment, except to suggest that in foreign jurisdictions the system of acknowledgment of instruments for use in the United States would seem to be preferable to that of attesting.

In South Carolina, alone of all the States of the Union, it is believed, does the statute require a deed to be "proved" and not acknowledged. The proof, however, may be made by the subscribing witness before a consular officer, and the relinquishment of dower rights by a married woman must be under acknowledgment.

While it is probably the better practice for the person executing an instrument abroad to acknowledge it forthwith before a consular or other properly authorized officer, it should be pointed out that under some State jurisdictions instruments executed abroad, attested, and proved before consular officers, are equally acceptable, and this procedure is sometimes followed when the party executing the instrument is prevented by illness or other cause from journeying to the city where an American consular office is situated, while the attesting witness or witnesses find it convenient so to do.

The consular officer should, however, consult the State statute applicable in the case before suggesting such procedure.

WHO MAY TAKE ACKNOWLEDGMENTS ABROAD.

85. It will be found upon examination of the various State laws that some States require or permit an instrument to be acknowledged abroad before a local notary public, or perhaps a mayor or other local official, but all of them accept acknowledgments before an American consul, except South Carolina, which, as previously stated, requires the deed to be "proved;" in that case proof may be made before an American consul.

Sometimes when the State law permits an acknowledgment to be made before some local officer, requirement is made for the authentication of his signature, seal, and authority by an American diplo-

matic or consular officer. This question will be discussed, post, under the chapter on "Authentications."

As to acknowledgments before consular officers, it is particularly to be observed that all the States do not accept acknowledgments from other consular officers than a consul, and for this reason it is important that a vice consul or consular agent called upon to perform a notarial service in the nature of an acknowledgment should first consult the State law applicable and ascertain whether his certificate of acknowledgment would be acceptable under the law of the State in which the document is to be used.

If the State law does not provide for an acknowledgment before a vice consul or a consular agent, or other consular officer of subordinate grade, the person applying should be so informed, and if a consul be not present at his post or available to the person applying, and the applicant insists that the acknowledgment be taken, notwithstanding, the subordinate or substitute consular officer should, in order fully to protect himself, make written communication to the persons demanding the service of the apparent absence of statutory authority and note in his official record of fees the fact that the service was performed after the applicant had been informed that no specific provision appeared in the State law in question authorizing the acknowledgment to be made before an officer of his rank or grade.

It does not necessarily follow that the acknowledgment would not be acceptable to the State in question, some, but not all, holding in actual practice that the certificate of a subordinate or substitute officer will be sufficient. The consular officer will, however, avoid ground for legitimate complaint if he exercises care in this matter and follows the course indicated above.

A DIGEST OF STATE LAWS.

86. A brief statement of the provisions of the various State laws governing acknowledgments of instruments affecting title to land, digested from the latest authoritative sources available, is appended at the close of this chapter for ready reference.

This digest, however, is not intended to replace the volume entitled Synopsis of the Laws, being part of Hubbell's Legal Directory, which for some years has been sent annually to the consular officers by the Department of State. The volume indicated contains a synopsis of the laws of the several States of the Union, on various subjects, as compiled by reputable law firms practicing in those States. In this publication, under the headings of "Deeds," or "Acknowledgments," will be found for each State a synopsis of the requirements of its laws, and, usually, forms of certificates used

in the State practice. In originally placing this volume in the consular offices, the Department of State, in a circular instruction dated December 29, 1908, said:

> In view of the responsibility resting upon you for the correct performance of your notarial duties and of the fact that the form in which acknowledgments shall be taken is prescribed by statute in most instances, and in many cases technical adherence to the requirements is of vital importance to the full effectiveness of the conveyance, it is deemed advisable to impress upon you the importance of always consulting this volume, if you are not familiar with the statutes, in order to ascertain the requirements of the statutes of the State in which each document about to be executed will be used, as to the form of certificate, official before whom the acknowledgment or declaration may be made, number of witnesses, and all the other details connected with the execution or verification of the document. The necessity of consulting this volume is especially urged in cases where the certificates to be signed by you are not prepared by competent or well-informed attorneys or have been left for you to prepare.

DISQUALIFICATION BY INTEREST.

87. In general, because of the probate force accorded to certificates of acknowledgment, as well as the usually important consequence of the instrument itself, public policy forbids that the act of taking and certifying the acknowledgment should be exercised by a person financially or beneficially interested in the transaction.

This point should be borne in mind by consular officers, especially in reference to acknowledgments by members of their personal families.

THE CERTIFICATE OF ACKNOWLEDGMENT.

88. The principal parts of an officer's certificate of acknowledgment, which will be discussed in this chapter, are:

1. The venue or statement of locality.
2. The body of the certificate, including—
   - A. Name and title of officer.
   - B. Fact of his being duly commissioned and qualified.
   - C. Date when acknowledged.
   - D. Grantors' names.
   - E. Fact of their personal appearance.
   - F. Acquaintance of officer with, or identification of, grantors.
   - G. Explanation of, or acquaintance of, grantor with the purport of the instrument acknowledged; and
   - H. When grantor is a married woman—
     - I. Necessity for examination separate and apart from her husband.
     - II. Necessity for explanation of instrument.
     - III. Separate acknowledgment and continued satisfaction therewith.
3. Officer's testimonium.
4. Officer's official signature.
5. Officer's official seal.

The discussion will also take up the questions of the necessity for witnesses, requirements as to private seals, and the position of the certificate of acknowledgment on the instrument.

FORM OF CERTIFICATE.

89. Only a few of the States prescribe a form of certificate of acknowledgment, but the essentials are generally stated.

In a circular instruction issued March 13, 1908, the Department of State sought to impress upon consular officers the necessity for the greatest accuracy in the preparation of certificates of acknowledgment and prescribed a form for general use and adaptation (Form No. 88), a copy of which is here given. This form seeks to cover the essential requirements of all States, but the consular officer is cautioned to exercise scrupulous care to satisfy himself that the certificate used by him conforms, as far as possible, to the requirements of the particular State where the document will be put into effect or recorded.

(Form No. 88—Consular.)

(Corrected March, 1914.)

CERTIFICATE OF ACKNOWLEDGMENT OF EXECUTION OF DOCUMENT.

_____
(Country.)
_____
(County or other political division.) } ss:
_____
(Name of consular office.)

I, _____, _____ of the United States of America at _____, duly commissioned and qualified, do hereby certify that on this _____ day of _____, before me personally
(Date.)
appeared _____, to me personally known, and known to me to be the individual__ described in, whose name _____ subscribed to, and who executed the annexed instrument, and being informed by me of the contents of said instrument _____ duly acknowledged to me that _____ executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal the day and year last above written.

[SEAL.] _____,
_____ *of the United States of America.*

Fee No. 33, $2.

NOTE.—Wherever practicable all signatures to a document should be included in one certificate.

THE VENUE.

90. This is an important detail, since it has been held that as the consular officer is a local official it must be shown that the acknowledgment was taken within his territorial jurisdiction.

A proper venue would be:

Republic of China,
Province of Fukien,
Port of Amoy,
Consulate of the United
States of America, } *ss:*

INTRODUCTORY CLAUSE.

91. The form, No. 88, prescribed by the Department of State, carries the following introductory clause, which meets all requirements:

I, A. B. C., consul of the United States of America at Amoy, China, duly commissioned and qualified, do hereby certify * * *.

The clause "duly commissioned and qualified" has been inserted in the form particularly to meet the requirements of certain States; its inclusion for general purposes is not only not objectionable, but it is distinctly desirable and is usually employed by careful officers in all notarial certificates.

Some of the States, in order to have it appear that the notarial officer was actually in office and functioning at the time of his certification, require that there shall be indorsed on the certificate a statement in a form similar to the following:

My commission expires _____, 192__.

The commission of a consul general or consul expires at the pleasure of the President; that of a subordinate or substitute consular officer at the pleasure of the Secretary of State.

The inclusion of the clause "duly commissioned and qualified" serves to meet the requirement in most of the States where the indorsement concerning date of expiration of commission is prescribed.

DATE.

92. The date when the acknowledgment was made must always clearly appear, whatever may be the date of execution of the instrument. There is no reason why an instrument might not be acknowledged even many years after the date of its execution, or at different times and places by various grantors. The necessity for the date of acknowledgment is therefore apparent.

"PERSONALLY APPEARED."

93. Personal appearance of the party acknowledging execution is absolutely essential. By circular No. 390 of March 15, 1915, the Department of State instructed consular officers as follows:

The Department's attention has been called to the fact that certain consular officers from time to time have authenticated various documents which

have been sent to them, by attaching thereto duly signed and sealed Certificates of Acknowledgment of Execution of Document (Form No. 88, Consular).

A consular officer who affixes the above-mentioned certificate to a deed, acknowledgment, deposition, etc., without requiring the personal attendance of the signer or signers, certifies an incorrect statement of fact, and, should the question be raised, the document doubtless would be invalidated, and the consular officer and the service would be subject at least to severe criticism.

Inasmuch as consular officers are responsible for the proper performance of the duties imposed on them by law and regulation, you are cautioned to adhere to the requirements enumerated in the phraseology of the above-mentioned certificate, or one of a similar nature.

The officer has no right to certify anything that he does not know. Certifying when the party has not appeared before him or when he has not read the instrument is a misfeasance and renders him liable.[4]

NAMES OF PARTIES.

94. The name or names of the person or persons making the acknowledgment before the consular officer at the one and same time should appear in the certificate of acknowledgment in the same form as they are set out in the document itself, which should also be the form of their signatures on the instrument.

IDENTITY OF PARTIES.

95. "To me personally known, and known to me to be the individuals described in, whose names are subscribed to, and who executed the annexed instrument" reads the form prescribed by the Department of State. A careful reading of this clause will impress upon the consular officer the necessity for proper identification of the parties before he makes any certificate of fact.

It is a primary essential that "as the certificate states that the person or persons executing the document is or are personally known to the officer signing the certificate, there should be absolute certainty as to identity. This can undoubtedly be accomplished either by introduction by a mutual friend or by the production of some evidence." [5]

It will be found upon examination of the State laws that legal proof of identity is usually sworn evidence. It is not usually enough for the officer to certify that he is "satisfied" as to identity.

The State laws frequently require that when the signers are not personally known to the officer, the fact that they have been made known, and how so made known, should appear in the certificate, in a form about as follows:

[4] John's Manual, 76.
[5] Circular, Dept. of State, Mar. 13, 1908.

Proved to me on the oath of _____ and _____, to be the individual described in, etc.,

or

satisfactorily proved to me on the oath of _____ and _____, competent and credible witnesses for that purpose by me duly sworn, to be the individual described in, etc.

In New Mexico and Tennessee, and perhaps in other States, at least two identifying witnesses are required, and in at least one authority consulted it was held that none of the other parties to the instrument was competent as an identifying witness, although this rule is probably not general in its application.

EXPLANATION OF DOCUMENT.

96. The prescribed form reads: "And being informed by me of the contents of said instrument." This clause was included by the Department of State for the reason that frequently signers of documents at consular offices have a limited knowledge of the language in which the document is written and the legal or moral obligation of explaining the nature of the document rests upon the consular officer.

It is the duty of the officer to ascertain that the grantor understands the nature of the instrument he is executing, and where the grantor is ignorant or illiterate the officer must read or make known its contents to him, or use other means to enable him to comprehend the character and effect of the act.[6]

In the case of married women, the statutes in reference to acknowledgments usually provide, where an examination separate and apart from the husband is required, that the instrument shall be explained to her by the officer who takes the acknowledgment, and usually it is required that the certificate of acknowledgment must recite the fact that such explanation was made.

ACKNOWLEDGMENT OF EXECUTION.

97. "Duly acknowledged to me that he (or 'they') executed the same freely and voluntarily for the uses and purposes therein mentioned." This statement is included in the prescribed form in order to meet the requirements in a number of States.

MARRIED WOMEN.

98. In many of the States, married women can not convey their own lands, nor any interest in their husbands' lands, such as dower,

[6] 1 Cyc., 563.

or any interest in the homestead, without husband and wife joining in the deed, and frequently it is required that the married woman must be examined privately—that is, separately and apart from her husband (out of his sight and hearing)—when the instrument must be explained to her, she must acknowledge her voluntary execution thereof and indicate her continued satisfaction therewith.

The requirements of the State law should in each case be carefully ascertained from the Synopsis of the Laws.

Where separate examination is had of the wife, the certificate of acknowledgment must show the fact in specific terms. Where a form is not given in the Synopsis of the Laws, the following may be adopted, including, as it does, the requirements of the various States:

And ————, known to me (or, "proven to me to be, on the oath of ————") to be the wife of the within named ————, upon being privately examined separate and apart from her husband and the contents and effect of the instrument being explained to her, did acknowledge that she executed the same freely and voluntarily for the purposes, uses, and consideration therein mentioned, without compulsion, constraint, threats, apprehension, or fear of or from her husband, and that she still voluntarily assents thereto and is satisfied therewith.

The State laws vary considerably on the necessity for wife and husband to be joined in a deed or instrument affecting land, and as to separate examination, the provision sometimes varying in respect to rights of dower, curtesy, homestead property, and community property.

In many States married women can convey freely without their husbands joining in the deeds.

The following explanations of dower, curtesy, homestead, and community property are included for ready reference:

Dower by common law is the widow's right to have during her life, a third part of all the lands and tenements her husband owned absolutely at any time while she was his wife. This right, or its substitute, exists in many of the States, while in others it has been abolished. It is for the purpose of conveying or barring this right, or the right of homestead or both, that in many of the States the wife is required to join her husband in conveyances of his land.

Curtesy, by common law, is the widower's right to have during his life all of the lands and tenements his wife owned absolutely at any time while he was her husband, provided that they had lawful issue born alive which might have been capable of inheriting the estate. The right, modified more or less, exists in many of the States, and for the purpose of conveying or barring this or similar rights the husband must often be joined in conveyances of his wife's land, where this right exists in any form. In some States the right of curtesy has been abolished or materially modified.

Homestead.—The home place—the place where the home is. It is the house—the house and adjoining land—where the head of the family dwells. In some States restraints are placed upon the alienation by the owner of this property, as, for instance, the necessity for the wife consenting to such alienation by joining in the deed.

Community property.—The civil law, which had its origin in the Roman Empire, was transmitted to France and Spain, whence it came into those parts of the United States colonized by the French and Spanish where civil law rather than the common law has been the basis of legislation. In these sections dower and curtesy do not exist unless established by statute, and we there find in the law, and shaping its policy, the idea of "community," consisting of husband and wife. Its principal provisions may be stated as follows: Husband and wife by their marriage form a community or partnership, each retaining as his or her separate property that which he or she owned before marriage, but the profits of this property and all acquisitions by either or both during marriage, by donation, purchase, or as the product of the reciprocal industry of both, belongs to the community or partnership. It will be found that in States where this system prevails there are provisions of law concerning the necessity for the wife participating in any alienation by joining in the deed, etc.

The consular officer is recommended to examine the Synopsis of the Laws under such headings as Deeds, Dower, Curtesy, Homestead, Married Women, Community Property, etc.

EXECUTION BY ATTORNEY.

99. In the absence of statutory authority a married woman can not authorize an attorney to make for her the acknowledgment required by statute; she must acknowledge in person.[7]

TESTIMONIUM, SIGNATURE, AND SEAL.

100. The testimonium clause used in Form No. 88, which is acceptable for all purposes, is:

In witness whereof I have hereunto set my hand and official seal the day and year last above written.

It is the best practice to commence this testimonium clause with such a left-hand margin as to permit the seal to mark the close of the certificate on the left-hand side, and the testimonium clause, signature, and official title on the right.

The consular officer must, of course, always affix his signature to the certificate, but never by rubber stamp.

The consular impression seal is impressed to the left of the testimonium clause.

The official title should follow the official signature, and should be in full: "Consul of the United States of America," and not "American Consul," "United States Consul," or "Consul of the United States."

WITNESSES.

101. The laws of the several States differ as to the requirement for attesting witnesses to the execution of deeds and other documents

[7] 1 Cyc., 542.

when acknowledged, and whenever the consular officer is unable to ascertain the statutory requirements he is recommended to have one or more competent witnesses of mature age.[8]

PERSONAL SEALS.

102. The necessity for each person whose signature is attached to the instrument to affix a private seal after his or her signature varies in the different States; while many have abolished all distinction between sealed and unsealed instruments, in some it is necessary that there should be a scroll seal, and in a few others a paper or wafer seal is absolutely necessary.[8]

When a scroll seal is sufficient, it is usually made by writing the words "Seal" or the letters "L. S." in a parenthesis or scroll, scrawl, or pen flourish.

Where the State requirement on the subject is not clear, many consular officers, as a matter of precaution, require the signers of the document to affix small paper or wafer seals after their signatures.

It is further suggested that where the word "seal" is printed after the place for signature of the person executing the instrument, that person after signing should draw a scroll or flourish around the word, or affix a small paper seal, in order to indicate definitely his recognition of the fact that he is issuing a sealed instrument and recognizes the printed word or letters "L. S." as his seal.

POSITION OF CERTIFICATE OF ACKNOWLEDGMENT.

103. The laws of certain States require the notarial certificate of acknowledgment to be written or printed, and not pasted, on the document; in other States, although it is acceptable to have the certificate pasted on or attached to the document, it is required that it be so attached as to be inseparable therefrom.

In the absence of express statutory regulations, the position of the certificate in relation to the instrument acknowledged is not generally material, and it may be written on a separate piece of paper and appended to the instrument, unless it be expressly required to be written on the same sheet with the instrument.[9]

The method adopted for fastening, Form No. 88, when used, to the instrument, is to attach it at the end of all the sheets of the document, in the upper left-hand corner, by means of a punch and eyelet, and then to pass a silk ribbon through this eyelet, tie it in front of the eyelet, and then bring the ends down to the lower left-hand corner of the certificate, where a wafer seal is securely pasted over

[8] Dept. of State circular, Mar. 13, 1908.
[9] 1 Cyc., 571.

the ribbon an inch or two from the ends, and the seal of the consulate impressed on this paper wafer.

Some consular officers have been more or less careless in the matter of the proper place for the certificate of acknowledgment and attach it to the front, instead of at the end, of the instrument.

The proper place for the certificate is after the signatures acknowledged.

ERASURES, CHANGES, AND INTERLINEATIONS.

104. All erasures, changes, interlineations, and corrections are undesirable and should be avoided, but where made the person executing the instrument and the officer taking the acknowledgment should place their initials beside such changes, erasures, and interlineations, and it will be found the best practice to note such erasures, changes, and interlineations in the consular certificate of acknowledgment in a form similar to the following:

I certify that the word "his" in line 17, page 2, of the attached instrument was changed to "her" before acknowledgment thereof.

An officer having taken an acknowledgment of a deed, and made a certificate thereof, can not afterwards amend or change his certificate for the purpose of correcting a mistake. This can only be done by the parties reacknowledging the deed.[10]

ACKNOWLEDGMENTS BY CORPORATIONS AND ATTORNEYS IN FACT.

105. Attention is directed to the necessity for care in the form of certificate of acknowledgment when the instrument is executed by a corporation, joint-stock association, or by an attorney in fact or other person not acting in his own behalf.

The following forms for acknowledgments by corporations and attorneys in fact are based on those proposed by the Commissioners on Uniform State Legislation and the American Bar Association, as published in Jones' Legal Forms, Sixth edition, 1909:

(Natural person acting by attorney.)

On this ——— day of ————, 192 , before me, ————————, Consul of the United States of America at ————, duly commissioned and qualified, personally came ———————— to me well known, and known to me to be the person who executed the foregoing instrument in behalf of ————————, and acknowledged that he executed the same, as the free act and deed of ————————, etc.

[10] John's American Notaries, 77.

(Corporation or Joint Association.)

On this _____ day of _____, 192__, before me, A. B. C., Consul of the United States of America at _____, _____, appeared _____ _____, to me personally known, who being by me duly sworn, did say that he is the president (or other officer or agent of) of the _____ (here describe the corporation or association by its exact title) and that the seal affixed to the said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees) and said _____ acknowledged said instrument to be the free act and deed of said corporation (or association).

It will be found, however, that in the Synopsis of the Laws, forms are prescribed by State statutes, and it is recommended that they should be followed where so prescribed, the foregoing forms being included in this manual only for use when a form for a particular State is not available.

FORMS DRAWN BY ATTORNEYS.

106. In circular instruction dated March 13, 1908, the Department of State instructed consular officers:

> Whenever the certificate of acknowledgment to a document has been prepared by attorneys for the signers thereto, consular officers are advised to use such form of certificate, *unless it be manifestly incorrect*, so as to avoid any possible objection or complaint.

This is the general rule, but it has been the observation of a number of consular officers that such documents prepared by attorneys for execution abroad are often carelessly drawn, and in such cases the consular officer should be careful to correct defects of the venue, the official title, the omission of the clause "duly commissioned and qualified" and statements contrary to exact fact or beyond the power of a consular officer to make.

PROOF OF DEED BY SUBSCRIBING WITNESS.

107. As previously pointed out, in some States a deed may be proved by the subscribing witness or witnesses, in lieu of, or in the absence of an acknowledgment before a notarial officer. It should be mentioned, however, that sometimes this provision of State law applies only to deeds executed within the United States and not to those executed abroad.

When proof may be made of an instrument executed abroad, in lieu of acknowledgment, the State law usually defines the officers before whom such proof may be made, frequently, but not as a general rule by any means, permitting such proof to be made before a consul, or perhaps a diplomatic or consular officer.

The quite general rule is that proof by a subscribing witness can not be accepted in order to show the execution of a document by a married woman in those States where the married woman is required to act separately and apart from her husband. In these cases the State law usually requires an acknowledgment by the wife, and her failure to act in the manner prescribed by statute can not be corrected by the tender of secondary evidence.

In cases where the consular officer is authorized to take proof of the execution of a deed, or similar document, he should be governed carefully by the State law as set out in the Synopsis of the Laws. Forms for proof of a subscribing witness will in many cases be found in that volume; the following form covers most of the requirements and is submitted for guidance in the event that no form is prescribed:

I, _____, Consul of the United States of America at _____, _____, duly commissioned and qualified, do hereby certify that on this_____ day of _____, 192__, before me personally appeared_____, to me personally known and known to me to be the person whose name is subscribed as a witness to the annexed instrument of writing, and being by me first duly sworn, on his oath stated that he saw _____, grantor in the said deed, subscribe the said deed on the date of its date (*or* "that the said _____, grantor in said deed, acknowledged in his presence on the _____ day of _____, 192__, that he had subscribed and executed the said deed for the uses, purposes, and consideration therein expressed"), and that he (and _____, the other subscribing witness) subscribed the same as attesting witness (es) at the request of the said grantor, in his presence (and in the presence of each other).

_____.

It witness whereof I have hereunto set my hand and official seal this _____ day of _____, 192__.

_____,
Consul of the United States of America.

DIGEST OF THE PRINCIPAL REQUIREMENTS OF THE STATE LAWS IN REGARD TO ACKNOWLEDGMENTS.

While this digest is intended for ready reference, and is believed to be accurate, consular officers are recommended to refer to the latest edition of the Synopsis of the Laws for further information.

ALABAMA:

1. May be acknowledged before any diplomatic or consular agent of the United States.
2. Witnesses not necessary.
3. Scroll seal is sufficient.
4. Form of acknowledgment is prescribed by statute.
5. Separate examination of wife is required to alienate homestead property.
6. Certificate of acknowledgment may be written, printed, or pasted on the document.

ALASKA:

1. May be acknowledged before minister, chargé d'affaires, or "any consular officer of the United States."
2. No information as to witnesses. Two suggested.
3. Seal; no information. Seal suggested.

ARIZONA:

1. May be acknowledged before minister, chargé d'affaires, consul general, consul, vice consul, or consular agent.
2. No witnesses required.
3. Personal seals not necessary.
4. Separate examination of married woman not required.

ARKANSAS:

1. May be executed before consul.
2. Witnesses not required.
3. Private seals abolished.
4. Separate examination of married woman required.
5. Certificate may be pasted on the instrument.

CALIFORNIA:

1. May be acknowledged before minister, chargé d'affaires, consul, vice consul, or consular agent.
2. Witnesses not necessary.
3. Private seals not necessary.
4. Separate examination of married woman apparently not necessary.
5. Certificate may be written or printed and may be attached to or pasted on the instrument.

COLORADO:

1. May be acknowledged before ambassador, minister, chargé d'affaires, consul, vice consul, consular agent, or any diplomatic or consular representative of the United States.
2. One witness suggested.
3. Private seal not necessary.
4. Separate examination of married woman required.

CONNECTICUT:

1. May be acknowledged before ambassador, minister, chargé d'affaires, consul general, consul, vice consul, or consular agent.
2. Two witnesses required.
3. The word (seal) and the scroll (L. S.) are either of them equivalent to a seal.
4. Separate examination of married woman apparently not necessary.
5. Certificate of acknowledgment may be written on original instrument or on paper securely attached thereto.

DELAWARE:

1. May be acknowledged before a consul general, consul, vice consul, or consular agent.
2. One witness necessary.
3. Scroll seal is sufficient.
4. Separate examination of married woman is required.

DISTRICT OF COLUMBIA:

1. May be acknowledged before secretary of legation or consular officer, or acting consular officer of the United States, as such consular officer is described in section 1674, Revised Statutes of the United States.
2. One witness is customary.

DISTRICT OF COLUMBIA—Continued.

3. Scroll seal may be used.
4. Form No. 88 apparently sufficient.
5. Separate examination of married woman apparently not necessary.

FLORIDA:

1. May be acknowledged before minister, chargé d'affaires, consul general, consul, or vice consul.
2. Two witnesses required.
3. A scroll or scrawl answers for a seal.
4. Form No. 88 is apparently sufficient.
5. Separate examination of married woman is necessary.
6. Certificate of acknowledgment may be in writing or printed, or may be pasted on the document.

GEORGIA:

1. May be acknowledged before consul or vice consul although attestation before two witnesses, one of whom is a consul or vice consul, is sufficient.
2. Two witnesses necessary.
3. Scrawl, paper or wax seal is required.
4. Separate examination of married woman is necessary.
5. The certificate of acknowledgment may be written, printed, or pasted on the document.

HAWAII:

1. May be acknowledged before minister, chargé d'affaires, consul, vice consul, or consular agent.
2. Two witnesses suggested.
3. Scroll seal suggested.
4. Separate examination of married woman apparently not required.
5. Certificate of acknowledgment may be indorsed, subjoined, or attached to the document.

IDAHO:

1. May be acknowledged before a minister, chargé d'affaires, consul, or vice consul.
2. Separate examination of married woman apparently not required.
3. Certificate of acknowledgment may be written or printed and may be pasted on the document.

ILLINOIS:

1. May be acknowledged before ambassador, minister, secretary of legation, consul, vice consul, or consular agent.
2. No witness required.
3. Scrawl seal is sufficient.
4. Separate examination of married woman not required.
5. Certificate of acknowledgment may be written or printed or pasted on the document.

INDIANA:

1. May be acknowledged before minister, chargé d'affaires, or consul.
2. No witness required.
3. No seal necessary.
4. Separate examination of married woman not required.
5. Certificate may be written on or attached to the instrument.

IOWA:

1. May be acknowledged before ambassador, minister, secretary of legation, chargé d'affaires, consul, vice consul, consular agent "or any other officer of the United States in a foreign country who is authorized to issue certificates under the seal of the United States."
2. No witness required.
3. Private seal not required.
4. Separate examination of married woman not necessary.
5. Certificate of acknowledgment may be written or printed, or pasted on the document.

KANSAS:

1. May be acknowledged before a consul.
2. No witnesses required.
3. Private seal not required.
4. Separate examination of married woman not necessary.
5. Certificate of acknowledgment may be written or printed, or pasted on the document.

KENTUCKY:

1. May be acknowledged before minister, consul, or secretary of legation.
2. No witnesses required.
3. Individual seals not required.
4. Separate examination of married woman now apparently abolished.
5. Certificate of acknowledgment may be written on or attached to the document.

LOUISIANA:

1. May be acknowledged before an ambassador, minister, chargé d'affaires, secretary of legation, consul general, consul, or vice consul.
2. Two witnesses required, and if grantor is blind, three. Officer taking acknowledgment can not be one of the witnesses. It is considered the better practice for the witnesses to sign both the instrument itself and the acknowledgment.
3. Seal not required.
4. Certificate of acknowledgment must contain the following clause (see Synopsis of the Laws): "and signed the said instrument in my presence, and in the presence of the two witnesses whose names are thereunto subscribed as such, and acknowledged in the presence of said witnesses and before me that he signed the same as his voluntary act and deed," etc.
5. Separate examination of married woman suggested.
6. It is acceptable to have the acknowledgment pasted on the document if arranged so as to be inseparable therefrom, but such practice is deprecated.

MAINE:

1. May be acknowledged before minister or consul.
2. One witness required.
3. Seal required. Scroll not sufficient.
4. No separate examination required when wife joins in deed.
5. Certificate of acknowledgment is usually written or printed on the deed.

MARYLAND:

1. May be acknowledged before minister, consul general, consul, vice consul, or consular agent.
2. One witness required.

MARYLAND—Continued.

3. Scroll seal is sufficient.
4. Separate examination of married woman not required.
5. Certificate of acknowledgment should be written or printed, *not* pasted on the document.

MASSACHUSETTS:

1. May be acknowledged before minister, consul, vice consul, chargé d'affaires, or consular agent.
2. One witness is usual.
3. Seal required. Scroll is not sufficient.
4. Separate examination of married woman not required.
5. Certificate of acknowledgment may be on a separate sheet annexed to the document.

MICHIGAN:

1. May be acknowledged before minister, minister resident, chargé d'affaires, commissioner, or consul.
2. Two witnesses required.
3. Scroll is sufficient seal.
4. Separate examination of married woman not required.
5. Certificate of acknowledgment may be written or printed and may be pasted on the document.

MINNESOTA:

1. May be acknowledged before minister, chargé d'affaires, commissioner, consul, "or other consular or diplomatic officer of the United States."
2. Two witnesses required.
3. No private seal required.
4. No separate examination of married woman required.
5. Certificate of acknowledgment may be written or printed, or pasted on the document.

MISSISSIPPI:

1. May be acknowledged before ambassador, minister, secretary of legation, or consul.
2. No witness required.
3. No private seal required.
4. No separate examination of married woman required.
5. Certificate of acknowledgment may be written or printed and may be pasted on the document.

MISSOURI:

1. May be acknowledged before minister or consul.
2. No witnesses required.
3. No seal required.
4. No separate examination of married woman required.
5. Certificate of acknowledgment may be written or printed and may be pasted on the document.

MONTANA:

1. May be acknowledged before minister, chargé d'affaires, consul, vice consul, or consular agent.
2. Witness not necessary.
3. Private seal not required.
4. No separate examination of married woman required.
5. Certificate of acknowledgment may be written or printed, or pasted on the document.

NEBRASKA:

1. May be acknowledged before "ministerial officer, commercial agent, or consul of the United States."
2. One witness required.
3. No seal required.
4. No separate examination of married woman required.
5. Certificate of acknowledgment may be written or printed, or pasted on the document.

NEVADA:

1. May be acknowledged before a minister or consul.
2. No witness required.
3. Scroll seal sufficient.
4. No separate examination of married woman required.
5. Certificate of acknowledgment may be written, printed, or pasted on the document.

NEW HAMPSHIRE:

1. May be acknowledged before minister or consul.
2. One witness required.
3. Seal required. Scroll not sufficient.
4. No requirement for separate examination of married woman.
5. Certificate of acknowledgment may be written, printed, typewritten upon the instrument, or upon a separate paper annexed thereto.

NEW JERSEY:

1. May be acknowledged before minister, consul, vice consul, consular agent, chargé d'affaires, or other representative of the United States.
2. One witness usual but not necessary.
3. Scroll seal is sufficient.
4. Separate examination of married women required.
5. Certificate of acknowledgment may be written or printed on the document, or on a paper securely attached thereto.

NEW MEXICO:

1. May be acknowledged before minister, commissioner, or chargé d'affaires, or consul general, consul, vice consul, or consular agent.
2. No witness required.
3. No seal necessary.
4. Separate examination of married woman not required.
5. Certificate of acknowledgment may be written or printed and may be on separate paper attached to the document.

NEW YORK:

1. May be acknowledged before ambassador, minister, minister resident, chargé d'affaires, consul general, consul, vice consul, or consular agent.
2. No witness necessary.
3. Seal required.
4. Separate examination of married woman not required.
5. Certificate of acknowledgment may be written, printed, or pasted on the document.

NORTH CAROLINA:

1. May be acknowledged before ambassador, minister, or consul.
2. No witness required, but usual.
3. Scroll seal is sufficient.
4. Separate examination of married woman required.
5. Certificate of acknowledgment may apparently be "annexed" to or written on the document.

NORTH DAKOTA:

1. May be acknowledged before minister, chargé d'affaires, consul, vice consul, or consular agent.
2. No witness required.
3. No seal necessary.
4. Separate examination of married woman not required.
5. Certificate of acknowledgment may be written or printed and may be on separate paper securely attached to the document.

OHIO:

1. May be acknowledged before any consular officer of the United States.
2. Two witnesses required.
3. Private seal not required.
4. No separate examination of married woman required.
5. The certificate of acknowledgment must be written or printed on the same sheet on which the instrument is written *and not on* a separate piece of paper to be pasted or attached.

OKLAHOMA:

1. May be acknowledged before consul.
2. No witnesses necessary.
3. No seal required.
4. Separate examinat on of married woman apparently not required.

OREGON:

1. May be acknowledged before minister, minister resident, chargé d'affaires, consul general. consul, or vice consul.
2. Two witnesses required.
3. Scroll seal is sufficient.
4. Separate examination of married woman not requ red.
5. Cert ficate of acknowledgment may be pasted on the document.

PENNSYLVANIA:

1. May be acknowledged before ambassador, minister, consul, vice consul, or consular agent.
2. One witness is usual.
3. Scroll seal is sufficient.
4. Separate examination of married woman apparently not required.

PHILIPPINE ISLANDS:

1. May be acknowledged before ambassador, minister, consul, vice consul, or consular agent.

PORTO RICO:

1. May be acknowledged before minister, chargé d'affaires, consul general, consul, vice consul, or consular agent.
2. Two witnesses required.

RHODE ISLAND:

1. May be acknowledged before ambassador, minister, chargé d'affaires, consul general, consul, vice consul, or consular agent.
2. One witness usual.
3. No seal required.
4. Separate examination of wife not required.
5. It is considered safer to write the certificate of acknowledgment on the document.

SOUTH CAROLINA:

1. Deed must be proved by the affidavit in writing of a subscribing witness to such instrument before a consul, vice consul, or consular agent of the United States. Wife, however, relinquishes dower by an acknowledgment separate and apart from her husband.

SOUTH CAROLINA—Continued.

2. Two witnesses required to a deed.
3. Seal desirable.
4. Form of certificate of a subscribing witness and of acknowledgment by married woman is given in the Synopsis of the Laws.
5. Separate acknowledgment and examination of wife is required.

SOUTH DAKOTA:

1. May be acknowledged before ambassador, minister, chargé d'affaires, consul, vice consul, or consular agent.
2. Witness not necessary.
3. Seal not necessary.
4. Separate examination of married woman not necessary.
5. Certificate of acknowledgment may be written, printed, or pasted on the document.

TENNESSEE:

1. May be acknowledged before ambassador, minister, or consul.
2. No witness required.
3. Private seals not required.
4. Separate examination of married woman required.
5. Certificate of acknowledgment may be written or printed or pasted on the document.

TEXAS:

1. May be acknowledged before minister, chargé d'affaires, consul general, consul, vice consul, or consular agent.
2. No witness required.
3. No private seal required.
4. Separate examination of married woman required.
5. Statutory forms prescribed for acknowledgments.
6. Certificate of acknowledgment may be written or printed and may be pasted on document.

UTAH:

1. May be acknowledged before ambassador, minister, or consul.
2. One witness required.
3. No private seal required.
4. Separate examination of married woman apparently not required.
5. Certificate of acknowledgment may be indorsed on or annexed to the document.

VERMONT:

1. May be acknowledged before minister, consul, or vice consul.
2. Two witnesses required.
3. Seal required.
4. Separate examination of married woman not required.
5. Certificate of acknowledgment may be written or printed.

VIRGINIA:

1. May be acknowledged before minister, consul general, consul, or vice consul.
2. No witnesses required.
3. Scroll seal sufficient.
4. No separate examination of married woman required.
5. Certificate of acknowledgment may be annexed to instrument.

WASHINGTON:

1. May be acknowledged before minister, secretary of legation, chargé d'affaires, consul general, consul, or vice consul.
2. Witnesses not required.

WASHINGTON—Continued.

3. Private seal not required.
4. Separate examination of married woman not ordinarily required.
5. Certificate of acknowledgment may be written on or annexed to the document.

WEST VIRGINIA:

1. May be acknowledged before minister, chargé d'affaires, consul general, consul, vice consul, or consular agent.
2. Witnesses not required.
3. Scroll seal sufficient.
4. Separate examination of married woman not required.
5. Certificate of acknowledgment may be annexed to the instrument.

WISCONSIN:

1. May be acknowledged before ambassador, minister, chargé d'affaires, or "any consular officer of the United States."
2. Two witnesses required.
3. Scroll seal sufficient.
4. Separate examination of married woman not required.
5. The certificate of acknowledgment may be on a separate sheet attached to the instrument.

WYOMING:

1. May be acknowledged before consul general, consul, or vice consul.
2. One witness required.
3. Private seal not required.
4. Separate examination of married woman required in case of alienation of homestead property.
5. Certificate of acknowledgment may be written or printed or attached to the document.

Chapter V.

AUTHENTICATIONS.

108. The laws of some of the States permit acknowledgments to be taken abroad and oaths to be administered on affidavits and other documents, by officers other than officers of the United States, and in some cases it is required that the signature, seal, official character, authority, et cetera, of such foreign officer be authenticated by the certificate of an American diplomatic or consular officer.

When application is made to an American consular officer for such an authentication it is suggested that he should carefully consult the Synopsis of the Laws in order to ascertain definitely the exact requirements of the particular State concerned.

Some States do not require such authentications, and others do not accept an authentication by an American diplomatic or consular officer but require instead the authentication of the high public officer of the foreign State.

The requirements as to what shall be included in a consular certificate of authentication of a foreign certificate differ under the several State and Federal jurisdictions.

For instance, in some States it is required that the official character of the foreign official shall be certified; in others, the certificate must show that the foreign official was duly elected, appointed, or qualified and acting at the time he performed the notarial service, in others, it is sufficient merely to certify that full faith and credit are due to the foreign notarial certificate; in still others, it must be shown that the foreign official was authorized under the laws of his country to certify acknowledgments, administer oaths, or take affi davits, as the case might be.

Under section 4892, Revised Statutes, when patent applications are acknowledged or sworn before foreign officials, an American diplomatic or consular officer must attest the authority of such foreign officer.

FORMS.

109. Specimen forms of authentications are here quoted for the guidance of consular officers.

Commonwealth of Australia, State of Queensland, City of Townsville, Consular Agency of the United States of America, } *ss:*

I, _____, Consular Agent of the United States of America at Townsville, in the State of Queensland, Commonwealth of Australia, duly

commissioned and qualified, do hereby certify that _____, before whom the annexed instrument has been acknowledged, was at the time of signing his, the annexed certificate, a notary public at Townsville in the State of Queensland, Commonwealth of Australia.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consular Agency at Townsville, aforesaid, this _____ day of _____, 192__.

_____,
Consular Agent of the United States of America.

Republic of China, Province of Fukien,
Port of Amoy, Consulate of the United States of America, } ss:

I, Clarence E. Gauss, Consul of the United States of America at the port of Amoy, in the Province of Fukien, Republic of China, duly commissioned and qualified, do hereby certify that _____, whose true signature and official seal are, respectively, subscribed and affixed to the foregoing certificate, was, on the _____ day of _____, 1916, the day of the date thereof, His Britannic Majesty's Consul at Amoy, duly commissioned and qualified, to whose official acts faith and credit are due.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the consulate at Amoy, this _____ day of _____, 1916.

_____,
Consul of the United States of America.

110. The consular officer is cautioned against making statements in authentications which are not within his power or knowledge to make. He can not properly authenticate the signatures or seals of officers whose signatures and seals are not well known to him or which he may not verify in the public records of a public office; or, generally, of officers not in his consular district. The consular officer may properly require that in such cases the signature and seal first be authenticated by the proper official of the foreign Government, whose signature and seal are well known to the consular officer.

Where the State law requires the consul's certificate of authentication to show that the foreign officer whose certificate is authenticated was empowered to administer oaths, caution should be exercised to verify the fact of his being so empowered. The mere fact that a person is a notary public does not in itself always give him power to administer oaths for general or special purposes. Furthermore, the power to administer oaths does not in all jurisdictions include the power to administer an affirmation, though it does in some.

In the same way the consular officer is cautioned against the indiscriminate authentication of documents purporting to originate in the United States.

United States consuls are not competent to authenticate the seals of local officials of the States of the Union. The Department of State authenticates only the State seals, and can not authorize consuls to certify documents which it can not itself attest.[1]

[1] Moore's Rights and Duties of Consuls, p. 115.

Adequate means are available in the United States for the authentication of certificates of American notaries public through the source of their appointment, the custodian of the State seal, and the Department of State of the United States.

AUTHENTICATION NOT A NOTARIAL ACT.

111. Consular authentication of the official character of a foreign notary or other official is not, strictly speaking, a notarial act, and can not, therefore, be required of the consular officer if he has good reason for declining to perform the service.

No law or regulation *requires* an American consular officer to certify to the official character of a foreign notary public, since the certificate as to the official character of a foreign notary is not a notarial act.[2]

The service, however, is one contemplated both by Government regulations and by State statutes, and should not be refused except for cause.

AUTHENTICATION OF TRANSLATIONS.

112. Interpreters are always sworn, and the translation by a consul, not on oath, can have no greater validity than that of any other respectable man.[2]

Where a certified translation is necessary, the consular officer would do well to have the translator make oath to the correctness of the translation; this oath to be in writing and subscribed and sworn to before the consular officer.

AUTHENTICATION OF LAWS OF FOREIGN STATES.

113. Consuls are not intrusted with the power of authenticating the laws of foreign nations.[2] Where authenticated copies of foreign laws are required they may usually be had through the official foreign custodian thereof (XII, 1).

AUTHENTICATION OF EXTRADITION PAPERS.

For instructions under this heading the consular officer is referred to the United States Consular Regulations, 1896, paragraphs 423 to 425 and to Form No. 36—Consular.

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[2] Church *vs.* Hubbard, 1804 U. S.

Chapter VI.

RECORDING DOCUMENTS.

114. Consular officers are permitted to accept for recording in the miscellaneous record books at the consulates documents in the nature of deeds, powers of attorney, leases, mortgages, releases, agreements, partnership agreements, articles of incorporation of American companies and institutions, and similar papers. The object of this service is simply to afford to Americans and American interests the means of preserving, in official custody, records of their business and other transactions.

As a general rule, before accepting a document for recording, the consular officer will require satisfactory proof, by acknowledgment, authentication, or otherwise, of the genuineness of the document.

It is recommended that the consular officer note in the margin of the miscellaneous record book the following data, in reference to each such document recorded, opposite the first sheet where recorded:

1. By whom presented for recording.
2. On whose behalf the service is requested.
3. Date and hour of presentation for recording.
4. How the authenticity of the document has been proved.
5. The name of the person by whom recorded (in his proper signature) and the name of the consular officer with whom compared (in his proper signature).

At the close of the record should be indorsed, and signed by the consular officer who copies or compares the record, a statement that it is a true copy of the original.

Ordinarily, no indorsement is made on the original document to show recording, other than the miscellaneous fee number and the official fee stamps for recording, canceled with a rubber stamp showing the name of the office and date of cancellation.

Should a certificate of recording be desired, and the consul see fit to issue it, it might be in the following form, written on or securely attached to the document, the fee of $2 being charged therefor in addition to the recording fee:

American Consulate.

Amoy, China, _____, *192__.*

The within document was filed for recording at this office by _____, on behalf of _____, on the _____ day of _____, 192__, at ____ o'clock in the _____noon, and duly recorded on pages _____, miscellaneous record book, volume ____.

Witness my hand and the seal of the Consulate this _____ day of _____, 192__.

_____,
Consul of the United States of America.

In connection with requests for the issuance of such certificates, however, it should be said that the practice sometimes attempted, especially in extraterritorial countries, of recording documents at consular offices for the purpose of obtaining a consular certificate of recording, bearing the consular seal, the purpose and effect of which might be misunderstood by or misrepresented by unscrupulous persons to those unfamiliar with foreign law or consular procedure, is strongly to be discountenanced.

115. The recording of private documents is not a notarial act nor a service which can be required without question from the consul, and it is suggested that he should exercise his official discretion to prevent an abuse or improper use of the privilege of recording.

116. For instructions concerning the inspection of private papers filed as of record in consular offices, the consul is referred to United States Consular Regulations, 1896, paragraph 479.

At common law no person is entitled to inspect public records, either personally or by agent, or to make copies, abstracts, or memoranda therefrom, unless he has such an interest therein as would enable him to defend or maintain an action for which the record sought can be furnished as evidence or necessary information, and the interest of the person demanding the inspection must be direct and tangible.

Extreme care should be exercised by the consular officer in respect to requests for inspection, and it should be the invariable rule that application for inspection be made in writing with a full statement of the reasons for requesting inspection.

Chapter VII.

CERTIFIED COPIES.

117. For the assistance of consular officers when they are required, or find it necessary, in either a consular or notarial capacity, to issue certified copies of documents filed in the consular office, recorded in the consular records, or duly exhibited for inspection and the making of certified copies, the following forms, all of them in use in consular offices are submitted as a guide in the preparation of a form adequate to the occasion:

Republic of China, Province of Fukien, Port of Amoy, }
Consulate of the United States of America, } *ss:*

I, _____, Consul of the United States of America in and for the consular district of Amoy, China, duly commissioned and qualified, do hereby certify that I have carefully compared with the original record in Vol. _____ of the miscellaneous record books of this office, the copy hereto annexed under the seal of the Consulate, namely (here describe briefly), and find the same to be a true and faithful copy of the whole of the said record.

In witness whereof I have hereunto set my hand and official seal this _____ day of _____, A. D. 192__.

_____,
Consul of the United States of America.

_____ }
_____ }
_____, } *ss:*
Consulate of the United States of America, }

I, _____, _____ of the United States of America at _____, _____, duly commissioned and qualified, do hereby certify that the annexed copy of _____ is a true and faithful copy of the original filed in this consulate (or "this day exhibited to me"), the same having been carefully examined by me and compared with the said original and found to agree therewith word for word and figure for figure.

In witness whereof I have hereunto set my hand and official seal this _____ day of _____, 192__.

_____,
_____ *of the United States of America.*

The form first cited is believed to be preferable. The greatest care should be exercised in making copies for certification to see that they agree with the originals in every particular.

Chapter VIII.

PROTESTING NEGOTIABLE INSTRUMENTS.

118. In extraterritorial countries, American consular officers are sometimes called upon to perform notarial services in connection with the protesting of negotiable instruments in which an American interest is involved, and as this is an important and exacting duty it is essential that they should have some familiarity with the proper procedure.

A notarial officer's duties in regard to negotiable instruments are exceedingly important, and his responsibility is great; he must be familiar with at least the generally applicable principles of the law governing the presentment, demand, protest, and notice of dishonor of such instruments.

Numerous treatises on this subject have been prepared by authorities, and it is impossible in the space of these few pages to deal more than briefly with the subject. The following notes, however, may serve as a general guide.

NEGOTIABLE INSTRUMENT.

119. An instrument is called negotiable when the legal title to it, and to the whole amount of money expressed upon its face, may be transferred from one to another by endorsement and delivery by the holder, or by delivery only.[1]

120. A promissory note is an unconditional, written, and delivered promise, signed by the maker, to pay absolutely and unconditionally to another person named therein, or to his order, or to bearer, a certain sum of money, at a specified time or on demand, or at sight.

121. A bill of exchange is an unconditional written order upon one person by another for the payment of a certain sum of money, absolutely and at all events.

A bill of exchange is often known in commercial usage as a draft.

A foreign bill is one payable out of, and an inland bill is one payable within, the State in which it is drawn.

Bills of exchange, especially foreign bills, are often drawn in sets of two or three, all being just alike, except that they are marked, respectively, first, second, and third of exchange, so that if one is lost or delayed another may be used. The entire set constitutes but one bill. If one part be accepted it only should be paid, and the whole bill would then be accepted and paid.

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[1] Dan. Neg. Inst., 1.

122. A check is a draft or order upon a bank or banking house purporting to be drawn upon a deposit of funds, for the payment, at all events, of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable instantly on demand.

123. A notarial protest is a declaration in writing made by a notarial officer on behalf of the holder of a bill or note that acceptance or payment has been refused. This written declaration itself is also properly called the certificate of protest, which, of itself, is only the evidence of the fact of protest.

In its popular sense, protest means all the steps or acts accompanying the dishonor of a bill or note necessary to charge the indorser.

Generally speaking, commercial paper may be said to be dishonored when, upon due presentation to the proper party either for acceptance or payment, such acceptance or payment is refused, or without the consent of the drawer acceptance is offered conditionally or qualifiedly.[2]

NECESSITY FOR PROTEST.

124. When a foreign bill of exchange is presented for acceptance or payment and is dishonored, protest for nonacceptance or nonpayment is necessary, in order to charge the drawer and indorsers. No other evidence will supply the place of such protest.

In the absence of statute or usage, a formal protest for the purpose of holding parties secondarily liable on a promissory note is not necessary, but when payment on an indorsed foreign promissory note is refused and application is made to the consular officer for notarial protest, such service should not be refused, although the certificate of protest may not be everywhere received as evidence.

DISTINCTION BETWEEN FOREIGN AND INLAND BILLS.

125. A foreign bill of exchange is one of which the drawer and drawee are residents of countries foreign to each other. An inland bill is one of which the drawer and drawee are residents of the same State or country. The States of the United States are in this respect considered foreign to each other. This distinction is important, because, according to the law merchant, foreign bills *must* be protested in order to charge the drawer, while inland bills need not be.

PROTEST; BY WHOM MADE.

126. If a bill or note is to be protested in case of dishonor, it *must* be presented for acceptance or payment, as the case may be,

[2] 7 Cyc., 1051.

and demand made by the notarial officer himself, in behalf of the holder.

If no notarial officer can be conveniently obtained, protest may usually be made by any other substantial person in the presence of two witnesses.[3]

It is not sufficient that the notarial officer be told of presentment and demand by another; to protest on such statement would be acting on mere hearsay. He must go in person and again make presentment and demand, so that he can certify of his own personal knowledge.

A clerk or other person acting for the notarial officer is not generally competent to make the presentment and demand, and the consular officer is therefore cautioned that he should make the presentment and demand in person.

TIME OF MAKING PROTEST.

127. The protest of a bill ordinarily begins with the noting of it. In the case of a foreign bill of exchange this should be done on the day it is dishonored, and it has been held that neglect to note a bill of exchange for protest on that day will only be excused by inevitable accident.[4]

Where grace is allowed.—Where days of grace are allowed, it has been held that in order to hold the indorser the note must be protested on the last day of grace.

Where due on a holiday or Sunday.—A bill of exchange should not be protested on Sunday or a legal holiday, unless expressly authorized by statute, and the general rule is that a bill maturing on Sunday or a legal holiday should be protested on the day following; but in the absence of statute the doctrine seems to be well settled that where days of grace are allowed, and the last day of grace falls on Sunday, then the bill is payable, and in case of dishonor should be protested on the preceding Saturday.

Premature protest.—Where a bill of exchange or note is protested prior to the date of its maturity and dishonor, such protest can not be regarded as valid to fix the liability of the indorser, and is nugatory.

It has been the experience of the writer in China that the banks do not allow days of grace in respect to bills of exchange presented for notarial protest.

Under the District of Columbia Code days of grace have been abolished; under the Federal Code which was enacted for Alaska, grace was allowed except on sight or demand bills.

TIME OF PRESENTMENT BY NOTARY.

128. The presentment must be made during the usual hours of business, which usually means till the hours of rest in the evening,

[3] 7 Cyc., 1055.
[4] 7 Cyc., 1056.

except when presentment be made at a bank, when it must be made during banking hours. If a known custom or usage fixes the business hours in a place, it there governs the time of presentment.

When the paper is not payable at a bank, the rule that it must be presented at a reasonable hour requires that it shall be presented during the usual hours of business established by custom or usage in the particular place and renders it sufficient if the presentment is at any time within those hours. If the paper is presented at the residence of the maker or acceptor, it must be presented at or within those hours when he may be presumed to be in a condition to attend to business and not after the usual time for retiring to rest.

When the bill or note is payable at a bank, the holder or notarial officer must present it during banking hours, unless he can obtain admission thereafter and find a person authorized to answer or in some other way get an answer from an authorized officer or agent, in which case a presentment after banking hours will be sufficient.

THE PLACE OF PRESENTMENT.

129. If a particular place for payment is specified in a bill or note, it is sufficient as against all parties to the instrument to make presentment there, although the place so designated is neither the residence or place of business of the acceptor or maker, and although he may be known to be elsewhere at the time of presentment. Such presentment will be sufficient, although there is no one at all at the place named and it is not the maker's or acceptor's residence.

The rule established by the weight of authority is that where no particular place of payment is designated, it is necessary, in order to charge the drawer or indorser, to present the same at his residence or usual place of business, if he has one, and it is known or can be ascertained by the exercise of reasonable diligence, and that either is sufficient.

When the present place of residence or business can not be found, presentment at the last known place of business or residence is, it seems, sufficient.

MANNER OF PRESENTMENT.

130. The notarial officer must call upon the drawee or his agent, exhibit the bill to him, and ask whether he will accept or pay, as the case may be.

TO WHOM PRESENTMENT IS MADE.

131. Presentment is sufficiently made, either to the drawee or acceptor of a bill or to the maker of a note, or to his agent in his absence, at the legally required place, and it must be so made in order to

charge the drawer and indorsers. Presentment may, in the absence of the acceptor or maker, be made to anyone on the premises, in charge thereof, the paper being payable there.

If several persons who are not partners have joined as makers or acceptors of a note or bill, presentment must be made to all.

If a note is made by a firm, or if a bill is drawn upon or accepted by a firm, presentment may be made to any partner and need not be made to all.

If the acceptor or maker dies before maturity of the paper, presentment should be made to his personal representative, if appointed, and if he can be found or his address is known, even though the indorser himself be an executor or administrator. If no personal representative has been appointed, payment of a note should be demanded at the last residence of the deceased maker.

It has been found in practice that bills of exchange are usually sent by the banks to the consular officer very near the close of banking or business hours in the afternoon. The best advice that can be given to the consular officer is that he take immediate action as soon as the bill reaches him so that he may make the presentment during the business hours of the day.

It has also been noticed that there is at times slackness in the presentation of bills to consular officers for protest. It would be well for the consular officer to note immediately upon receipt by him of a bill of exchange for protest the hour of the receipt of the bill, and where the bill is presented for protest after the date of its maturity he should not fail to make note of that fact, and would do well to call the bank's attention thereto.

Every effort should be made to see that no complaint of neglect or lack of due diligence can be lodged against the consular officer on account of his duty in reference to the protesting of negotiable instruments.

NOTING THE DISHONOR.

132. It is the custom for the notarial officer, after presentment of a bill or note for acceptance or payment, as the case may be (and the consular officer should have it clear in making presentment and protest whether it be for acceptance or for payment), to note on the bill or note a minute to the effect that it was presented for payment or acceptance and refused, in something of the following form:

SHANGHAI, CHINA,
_____ *1917.*

Acceptance (or "payment," as the case might be) demanded and refused.

_____,
Vice Consul of the United States of America.

This note or minute of protest may later be extended into the certificate of protest. This is sometimes called the "initial protest," and it may then be extended into the regular protest, or, in other words, the protest may be written out in full at any convenient time afterward.

The following is a form of certificate of protest which it is believed is sufficient for all requirements:

1. First make a correct copy of the protested instrument and of its indorsements; and then below make this certificate of protest:

Republic of China, Province of Kiangsu, City of Shanghai, } *ss:*
Consulate General of the United States of America. }

Be it known that on this _____ day of _____, in the year one thousand nine hundred and ____, I, _____, Vice Consul of the United States of America at Shanghai, China, duly commissioned and qualified, at the request of _____, went with the original _____, which is hereunto attached, to the office of _____, and demanded _____ thereon, which was refused for the following assigned reasons: _____

Whereupon I, the said Vice Consul, at the request aforesaid, have protested, and do hereby solemnly protest, as well against the drawer of the said _____ _____, as against all persons whom it doth or may concern, for exchange, reexchange, and all costs, charges, damages, and interest suffered or to be suffered, for the want of payment (or "acceptance") thereof; and I certify that I have no interest in the above-protested instrument.

And I, the said Vice Consul, do hereby further certify that on the _____ day of _____, due notice of the foregoing protest was put in the _____ post office at _____, as follows:

Notice for: _____

_____

Notice for: _____

_____

Notice for: _____

_____

In testimony whereof I have hereunto set my hand and official seal at Shanghai, China, the day and date first above written.

_____,
Vice Consul of the United States of America.

NOTICE OF DISHONOR AND PROTEST.

133. When acceptance or payment of a bill or note duly presented therefor is refused, notice of such dishonor and protest must be given at once to the drawer and to the indorsers.

It is not, strictly speaking, a part of the duty of the notarial officer, as such, to give this notice, even if he presented and protested the instrument; but he may do so, and it is, indeed, generally the custom to have him do so; and the custom in the extraterritorial jurisdiction in China seems to follow this rule. When the notarial officer gives the notice of dishonor, it is considered that he is employed for that purpose by the holder.

TIME OF GIVING NOTICE.

134. Notice may be given at any time after dishonor, without waiting for the close of business hours. When sent by mail, it is the general rule that the notice of dishonor and protest must be sent not later than by the first mail which leaves on the day after dishonor, provided the mail does not close before the early and convenient business hours of that day.

TO WHOM NOTICE MUST BE GIVEN.

135. The drawer of a bill payable to a third party, and each indorser on a bill or note, is entitled to notice, including indorsers for value, for accommodation, and banks and other agents who indorse merely for purposes of collection.

The drawee or acceptor of a bill and the maker of a note, being the parties primarily liable, are not entitled to notice.

The notice should be directed to the party at his place of business or place of residence, if either is known or upon diligent inquiry can be ascertained.

FORM OF NOTICE OF DISHONOR AND PROTEST.

136. The following form is generally acceptable for the purpose:

AMERICAN CONSULATE GENERAL,

Shanghai, China, _____, *19—.*

To _____

_____

Please take notice that a bill of exchange (or "promissory note") for $_____, dated at _____, on the _____ day of _____, 192__, drawn by _____, of _____, _____, _____, in favor of _____, on _____, _____, _____, accepted by _____, of _____, indorsed by _____, of _____, and _____, of _____, was this day presented for payment (or "acceptance") and payment (or "acceptance") was refused, and therefore was this day protested by the undersigned for nonpayment (or "non-acceptance").

The holder thereof looks to you for payment thereof, together with interest, damages, costs, etc., you being _____ (indorser, drawer, etc.), thereof.

_____,

Vice Consul of the United States of America.

It should be noted that the addresses as well as the names of the parties are, where possible, given.

CONSULAR RECORDS.

137. Careful record of the protest should be made in the official record of fees; the data given being such as to fully identify the instrument protested, etc.

CONSULAR FEES.

138. The fee of $2 prescribed by item 33 of the tariff of consular fees is charged for the certificate of protest; fee 42 for a service outside of the office is also applicable; and the consular charges for expenses in making the protest—the actual outlay for street car, ricksha, boat, or other necessary conveyance—should be noted in the margin of the fee book opposite the entry of protest and, of course, collected from the person for whom the service is performed.

REFERENCES.

139. For more detailed information on the subject of protesting negotiable instruments, consular officers are referred to such of the following as may be available in their law libraries, most consulates in extraterritorial countries being equipped with such libraries:

Cyclopedia of Law and Procedure.
Norton on Bills and Notes (Hornbook series).
John's American Notaries.
Giauque's Manual for Notaries.

Chapter IX.

MARINE PROTESTS AND SERVICES TO VESSELS AND SEAMEN.

140. In a discussion of the notarial duties of consular officers, reference should also be made to the services, many largely of a purely notarial character, rendered by American consular officers to vessels and seamen of the merchant marine of the United States.

Amongst the services largely of a notarial character may be mentioned the attesting of marine protests, acknowledgments on bottomry bonds, oaths of new masters, attesting agreements for increased wages, authenticating calls, warrants and reports of survey, and authenticating copies of inventories and letters.

Services to vessels and seamen of the merchant marine are not performed under State statutes, but under the Federal Statutes, and the authority for these services will be found principally in the Consular Regulations and the navigation laws of the United States.

141. Under section 1707, Revised Statutes, and paragraph 186, Consular Regulations, 1896, consular officers have the right, in the ports or places to which they are severally appointed, of receiving protests or declarations which captains, masters, crews, passengers, or merchants, who are citizens of the United States, may respectively choose to make; and also such as any foreigner may choose to make before them relative to the personal interest of any citizen of the United States. Copies of such acts, duly authenticated by consuls or vice consuls, under the seals of their consulates, respectively, shall be received in evidence equally with their originals in the courts of the United States.

The nature of these documents will depend in each case upon the particular facts to be protested against.

A variety of forms to aid the consular officer in his business intercourse with masters and seamen is given in the appendix to the Consular Regulations, 1896. These regulations (par. 335), however, note that many of these forms are given to the consular officer for his general information and not as absolute guides in all cases, and the Department of State assumes no responsibility for their correctness in any particular case in which they may be used.

MARINE PROTESTS.

142. A marine protest, also called a maritime protest, or ship protest, is a writing, attested by a notarial officer or consul, made and

verified by the master of a vessel, and, at times, by one or more of the mates and members of the crew, stating the severity of a voyage or some extraordinary accident or injury by which a ship has suffered, and showing that it was not owing to the neglect or misconduct of the master.

This formality is known as entering a note of protest, or simply noting a protest, and is observed either at a port of discharge or at a port of refuge or distress when, owing to exceptionally bad weather or some accident at sea, damage has been caused to ship or cargo.

Some masters make it a rule to enter a note of protest, although no damage is at the time known to exist. By noting a protest they may afterwards relieve their employers of liability should the cargo be found damaged on delivery, for unless there be a note of protest, there can not be a regular, or as it is generally termed, extended protest.

The extended protest, or protest in full, may be made in the first instance, or simply a note or entry of protest which may, when and if occasion demands, be extended before the same or some other notarial officer.

The primary object of a ship protest is to found a claim against the underwriters and relieve the owners or employers of responsibility. Protests, however, serve other purposes. The protest is nearly always given credence by underwriters, merchants, and others in adjusting claims, because it is a declaration or narrative of the particulars of the voyage, of the storms or bad weather or accident met with by the ship, and of the course of conduct which the master took in the emergency, made immediately after the happening of the events detailed in it, when the facts are fresh in mind.

TIME FOR MAKING PROTEST.

143. To serve its purpose the original note of protest should be made as soon as possible after the arrival of the ship in port, and if made later than 24 hours after the arrival, it is recommended that a brief statement of the cause of the delay in making it should be noted. This is, of course, also true of a full or extended protest itself, when made in the first instance without the formality of first noting a protest and later extending it.

NOTING THE PROTEST.

144. The entry or note of protest is in substance only a notice of the master's intention to protest, should the extended protest afterwards become necessary, although, as previously stated, the full protest may be entered in the first instance.

A form for an original note of protest is given in the appendix to the Consular Regulations (Form No. 37), and record books for such protests are supplied by the Department of State to all seaport consular offices. The original of the note of protest is made in the record book, certified by the master and attested by the consul. Copies are usually issued to the master on his request.

THE EXTENDED PROTEST.

145. A form for this more full or extended protest will also be found in the appendix to the Consular Regulations (Form No. 38) and record books for such extended protests are also supplied to all seaport consular offices.

While the original note of protest is usually made by the master alone, the extended protest is signed not only by the master but usually by one or more of the officers and crew of the ship.

The protest consists of two main parts:

First. A detailed statement in chronological order of the remarkable events of the voyage, including an account of all the maritime perils on which the master intends to rely. If an accident has happened and loss or damage has been sustained, particulars of the means employed by the crew to avoid the accident and minimize such damage or loss are usually given. As a protest may be used in evidence against a master, the statement of fact should agree in all material particulars with the entries in the ship's log, which is almost invariably submitted at the time of preparing the protest.

Second. The second part is the part in which the appearers, as they are called, or the notarial officer, or both, protest against the accidents and causes of the injury and against all loss or damage occasioned thereby.

Sometimes the note of protest may be made before one consular or notarial officer and extended before another. In such case it is usual to add in the extended protest words to the following effect:

> And the said A. B., master, further declares that on the _____ day of _____, the day of the arrival of the ship at the port of _____, he appeared at the office of _____, Consul of the United States of America at said port, and duly entered his protest, and now extends the same.

Besides ship protests, strictly so called, there are occasionally protests made before consular officers relating to other matters, such as protests by a master against the charterers of a ship, against the consignee of goods for nonpayment of demurrage, for not loading according to contract, or for neglect or delay in providing a cargo, and protests by a charterer, shipper, or consignee of goods against the master for refusal to sign bills of lading in the customary form, for not proceeding to sea with despatch, for the insufficiency

or unseaworthiness of the vessel, and for the misconduct, drunkenness, or other irregularities on the part of the master or crew.

The forms in such cases must be dictated by the peculiar circumstances of each case.

FEES.

146. By law no fees named in the tariff of consular fees prescribed by the President can be collected by consular officers from regularly documented American vessels and seamen for official services to them. Consular agents, however, who are compensated by fees, must furnish the master of such vessel with an itemized statement of such services performed on account of the vessel, with the fee prescribed for each service, as designated in the tariff of consular fees. This statement is made in duplicate, one copy being retained by the master and the other, upon being certified by the master, returned to the consular agent and attached by him to his account claiming compensation from the Treasury for his services to vessels and seamen.

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