

Cattle brands have received similar acceptance in the western states. Rev.Code Mont.1947, §46-606; *State v. Wolfley*, 75 Kan. 406, 89 P. 1046 (1907); Annot., 11 L.R.A. (N.S.) 87. Inscriptions on trains and vehicles are held to be prima facie evidence of ownership or control. *Pittsburgh, Ft. W. & C. Ry. v. Callaghan*, 157 Ill. 406, 41 N.E. 909 (1895); 9 Wigmore §2510a. See also the provision of 19 U.S.C. §1615(2) that marks, labels, brands, or stamps indicating foreign origin are prima facie evidence of foreign origin of merchandise.

Paragraph (8). In virtually every state, acknowledged title documents are receivable in evidence without further proof. Statutes are collected in 5 Wigmore §1676. If this authentication suffices for documents of the importance of those affecting titles, logic scarcely permits denying this method when other kinds of documents are involved. Instances of broadly inclusive statutes are California Evidence Code §1451 and N.Y.CPLR 4538, McKinney's Consol. Laws 1963.

Paragraph (9). Issues of the authenticity of commercial paper in federal courts will usually arise in diversity cases, will involve an element of a cause of action or defense, and with respect to presumptions and burden of proof will be controlled by *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). Rule 302, *supra*. There may, however, be questions of authenticity involving lesser segments of a case or the case may be one governed by federal common law. *Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S.Ct. 573, 87 L.Ed. 838 (1943). Cf. *United States v. Yazell*, 382 U.S. 341, 86 S.Ct. 500, 15 L.Ed.2d 404 (1966). In these situations, resort to the useful authentication provisions of the Uniform Commercial Code is provided for. While the phrasing is in terms of "general commercial law," in order to avoid the potential complication inherent in borrowing local statutes, today one would have difficulty in determining the general commercial law without referring to the Code. See *Williams v. Walker-Thomas-Furniture Co.*, 121 U.S.App.D.C. 315, 350 F.2d 445 (1965). Pertinent Code provisions are sections 1-202, 3-307, and 3-510, dealing with third-party documents, signatures on negotiable instruments, protests, and statements of dishonor.

Paragraph (10). The paragraph continues in effect dispensations with preliminary proof of genuineness provided in various Acts of Congress. See, for example, 10 U.S.C. §936, signature, without seal, together with title, prima facie evidence of authenticity of acts of certain military personnel who are given notarial power; 15 U.S.C. §77f(a), signature on SEC registration presumed genuine; 26 U.S.C. §6064, signature to tax return prima facie genuine.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE
REPORT NO. 93-650

Rule 902(8) as submitted by the Court referred to certificates of acknowledgment "under the hand and seal of" a notary public or other officer authorized by law to take acknowledgments. The Committee amended the Rule to eliminate the requirement, believed to be inconsistent with the law in some States, that a notary public must affix a seal to a document acknowledged before him. As amended the Rule merely requires that the document be executed in the manner prescribed by State law.

The Committee approved Rule 902(9) as submitted by the Court. With respect to the meaning of the phrase "general commercial law", the Committee intends that the Uniform Commercial Code, which has been adopted in virtually every State, will be followed generally, but that federal commercial law will apply where federal commercial paper is involved. See *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943). Further, in those instances in which the issues are governed by *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), State law will apply irrespective of whether it is the Uniform Commercial Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1988
AMENDMENT

These two sentences were inadvertently eliminated from the 1987 amendments. The amendment is technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2000 AMENDMENT

The amendment adds two new paragraphs to the rule on self-authentication. It sets forth a procedure by which parties can authenticate certain records of regularly conducted activity, other than through the testimony of a foundation witness. See the amendment to Rule 803(6). 18 U.S.C. §3505 currently provides a means for certifying foreign records of regularly conducted activity in criminal cases, and this amendment is intended to establish a similar procedure for domestic records, and for foreign records offered in civil cases.

A declaration that satisfies 28 U.S.C. §1746 would satisfy the declaration requirement of Rule 902(11), as would any comparable certification under oath.

The notice requirement in Rules 902(11) and (12) is intended to give the opponent of the evidence a full opportunity to test the adequacy of the foundation set forth in the declaration.

GAP Report—Proposed Amendment to Rule 902. The Committee made the following changes to the published draft of the proposed amendment to Evidence Rule 902:

1. Minor stylistic changes were made in the text, in accordance with suggestions of the Style Subcommittee of the Standing Committee on Rules of Practice and Procedure.
2. The phrase "in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority" was added to proposed Rule 902(11), to provide consistency with Evidence Rule 902(4). The Committee Note was amended to accord with this textual change.
3. Minor stylistic changes were made in the text to provide a uniform construction of the terms "declaration" and "certifying."
4. The notice provisions in the text were revised to clarify that the proponent must make both the declaration and the underlying record available for inspection.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC
ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

Rule 903. Subscribing Witness' Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

(Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1945.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

The common law required that attesting witnesses be produced or accounted for. Today the requirement has generally been abolished except with respect to documents which must be attested to be valid, e.g. wills in some states. McCormick §188. Uniform Rule 71; California Evidence Code §1411; Kansas Code of Civil Procedure §60-468; New Jersey Evidence Rule 71; New York CPLR Rule 4537.

ARTICLE X. CONTENTS OF WRITINGS,
RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions

For purposes of this article the following definitions are applicable:

- (1) *Writings and Recordings*. "Writings" and "recordings" consist of letters, words, or num-