"Sec 8. And be it further enacted by the authority aforesaid, that all his Majesty's Canadian subjects, within the Province of Quebec, the religious orders and communities only excepted, may also hold and enjoy their property and possessions, together with all customs and usages relative thereto, and all other civil rights, in as large, ample and beneficial manner as if the said proclamation, commissions, ordinances, and other acts and instruments had not been made, and as may consist with their allegiance to his majesty, and subjection to the Crown and Parliament of Great Britain; and that in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada, as the rule for the decision of the same, and all causes that shall hereafter be instituted in any of the courts of justice, to be appointed within and for the said province by his majesty, his heirs and successors, shall, with respect to such property and rights, be determined agreably to the said laws and customs of Canada, until they shall be varied or altered by any ordinance that shall from time to time be passed in said province," &c.

Fifth. The act of the British Parliament of 1790, 30 Geo. III, chap. 27, entitled, "An Act for encouraging new settlers in his Majesty's plantations in America," (37 British statutes at large 24,) as follows: "Whereas, it is expedient that encouragement should be given to persons who are disposed to come and settle in certain of his Majesty's colonies and plantations in America and the West Indies, be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the first day of August, one thousand seven hundred and ninety, if any person or persons, being a subject or subjects of the territories or countries belonging to the United States of America, shall come from thence, together with his or their family or families, to any of the Bahama or Bermuda or Somers Islands, or to any part of the Province of Quebec, or of Nova Scotia, or any of the territories belonging to his Majesty in North America, for the purpose of residing or settling there, it shall be lawful for any such person or persons, having first obtained a license for that purpose from the Governor, or in his absence the Lieutenant Governor of said Island, colonies or provinces respectively, to import into the same in British ships owned by his Majesty's subjects, and navigated according to law, any negroes, household furniture, utensils of husbandry and clothing free of duty; provided always, that such household furniture, utensils of husbandry and clothing shall not in the whole exceed the value of fifty pounds for every white person that shall belong to such family, and the value of forty shillings for every negro brought by such white person; and if any dispute shall arise as to the value of such household furniture, utensils of husbandry, or clothing, the same shall be heard and determined by the arbitration of three British merchants, at the port where the same shall be imported, one of such British merchants to be appointed by the Governor, or in his absence by the Lieutenant Governor of such Island or Province; or by the Collector of Customs at such port, and one by the person so coming with his family.

II. *And be it further enacted.* That all sales or bargains for the sale of any negro, household furniture, utensils of husbandry, or clothing so imported, which shall be made within twelve calendar months after the importation of the same, (except in cases of the bankruptcy of the owner thereof,) shall be null and void to all intents and purposes whatsoever."

The third and last section relates only to the oath of allegiance required to be taken by the imigrant.

Sixth. The act of the Provincial Parliament of Upper Canada, passed July 9th, 1793, (chap. VIII, 1 Rev. Stats. of Upper Canada 18.)

The first section of this act recites, that it is highly expedient to abolish slavery in the Province, so far as the same may gradually be done without violating private property. It then repeals so much of the act of 1790 as enables the Governor or Lieutenant Governor to grant license for the importation of negroes, and forbids any negro or other person subjected to the condition of a slave from coming or being brought into the Province after the passage of the act, to be subject to the condition of a slave.

The second section provides that nothing in the act should be construed to extend to liberate any negro subject to service, or to discharge him from the possession of his owner, who should have come or been brought into the Province in conformity to the conditions of the act of 1790, or should have otherwise come in possession of any person by gift, bequest or purchase.

The third section declares that, in order to prevent the continuation of slavery within the Province, every child thereafter born of a negro woman who was a slave, should remain with his or her mother or mistress until such child should arrive at the age of twenty-five years, and then be free.

At the request of the defendant the Court gave the following instruction:

1st. "If negro slavery existed by virtue of the laws and ordinances of the French Government in Canada, prior to the acquisition of that country by the English, and if the articles of capitulation, the treaty of cession, the acts of Parliament of 1774 and 1790, and the King's proclamation of 1763 be correct copies of the genuine documents, then negro slavery was sanctioned and permitted by law in the country called the Province of Canada, (which includes Montreal,) at all times from the year 1760 to the year 1790.

And afterwards at the plaintiff's instance gave this: "Whether Rose was lawfully a slave in Canada is a question for the jury to decide from the evidence on the trial."

These two instructions are imcompatible and both cannot stand. The first declared as a matter of law, the legality of the documents named in it, and the Court in giving it assumed, that it was its duty, and not the province of the jury, to pass on their meaning and operation. The second submitted every proposition of law in the case, to be determined by the jury. If it was a conclusion of law from the documents read in evidence, to be decided by the Court, that slavery was sanctioned in Canada, it was not proper to refer the question whether or not it was *lawful* to the jury. But if the last instruction was proper, though inconsistent with the first, the defendant cannot complain, and if the first was correct, the other was wrong, and was calculated to mislead the jury to the defendant's prejudice. The quality of these instructions must be determined by the question, whether it is the duty of the Court or the jury to construe a foreign law.

It is universally admitted that courts do not take judicial notice of the laws of a foreign country, but they must be proved as other facts in a trial. It will not be presumed that a foreign law is in writing, and if it does not appear that it is written, it may be proved by parol. (*Livingston* v. *Maryland Insurance Company*, 6 Cranch, 280.) But like the proof of every other fact, the best evidence of which the same is susceptible, must be produced; and as a witness may speak of the terms and nature of an unwritten contract, so he may testify of the existence of a foreign law, but, as when the contents of a written instrument are sought to be proved, the instrument itself must be produced. So foreign written laws must be proved by the laws themselves. 2 Starkie's Ev. 331; *Consequa* v. *Willing*, Pet. C. C. 229; *Robinson* v. *Clifford*, 2 Wash. C. C. L; *United States* v. *Ortegan*, 4 Wash. C. C. 533; *Doudherty* v. *Snyder*, 15 Lery & R. 87; *Kinney* v. *Clarkson*, 1 John 394; *Camparet* v. *Jernegan*, 5 Black. 375; *Gardiner* v. *Lewis*, 7 Gill 379; *McNeil* v. *Arnold*, 17 Ark. 155. The English cases are contradictory. In *Millar* v. *Hernwick*, (4 Cam. 155.) Gibbs, Ch. J. said: "Foreign laws, not written, are to be proved by the parol examination of witnesses of competent skill. But when they are in writing, a copy properly authenticated must be produced." Whilst Lord Denman, in Baron De Bode's case (8 Adol. and El. N. S. 250) permitted a witness to speak of the effect and state of the law in France, resulting from a decree, but Patterson, J. dissented. In this country the question is well settled; but the cases are not uniform on the point, whether the evidence of the existence of a foreign law is addressed in the first instance to the court or to the jury. In *Consequa* v. *Willing* it is said that whether the law or usage is sufficiently proven or not, is a question of fact for the jury, held that the "existence of a foreign law is a fact. The Court cannot judicially know it, and therefore it must be proved, and the proof, like all other, necessarily goes to the jury." And in *Moore* v. *Gergan*, (5 Ire. 190) where the question did not arise under statute, but under the common law of Virginia, and the testimony was conflicting, it was decided that it ought to be left