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Comment

EVIDENCE: THE BUSINESS-ENTRY EXCEPTION TO THE HEARSAY RULE.

The present rules governing the business-entry exception to the hearsay rule of evidence to some extent correspond with the hopes expressed by Professor Whittier twenty-one years ago when he reviewed "Account Books in California".¹ California in 1941 adopted the Uniform Business Records As Evidence Act.² This Act has done much to simplify and clarify this phase of the law of evidence; yet some questions remain unanswered. The requisites and historical development of the business-entry exception have received considerable attention from the courts and legal writers.³ The exception has been variously categorized,⁴ but for present purposes may be consid-

¹ Whittier, *Account Books in California* (1926) 14 CALIF. L. REV. 263.

² Cal. Stats. 1941, p. 1788, CAL. CODE CIV. PROC. §§ 1953e-1953h.

³ Radtke v. Taylor (1922) 105 Ore. 559, 210 Pac. 863; MORGAN, THE LAW OF EVIDENCE (1927) 51; Ehrich, *Unnecessary Difficulties of Proof* (1923) 32 YALE L. J. 436; Hinton, *Changes in the Exceptions to the Hearsay Rule* (1934) 29 ILL. L. REV. 422, 440; Whittier, *loc. cit. supra* note 1; Legis. (1934) 47 HARV. L. REV. 1044.

⁴ MCBAIN, CALIFORNIA EVIDENCE MANUAL (1945) 463, 468; MORGAN AND MAGUIRE, CASES AND MATERIALS ON EVIDENCE (2d ed. 1942) 860.

ered from the viewpoint of (1) entries made by a party (shopbook rule), and (2) entries made by a third person in the regular course of business (course-of-business rule).

I. THE COMMON LAW

In 1609 an English statute was passed which made books kept by a party inadmissible.⁵ Moreover, a party could not testify, since because of interest he was not a competent witness. However, if the party employed a clerk, the clerk could testify; but when the clerk was dead, the party was often without competent evidence to prove an account. Consequently, after the statute, the English courts admitted a party's account books if they had been kept by a clerk and certain other requirements were met. *Price v. The Earl of Torrington*⁶ marks the origin of this practice. Entries made in the regular course of business at or about the time of the transaction in a book of original entry by a person having personal knowledge of the transaction were admitted when the clerk who made the entry was dead and his handwriting was proved.⁷ The American courts adopted this view which forms the basis of the course-of-business rule. Insanity and absence from the jurisdiction have been generally considered sufficient grounds to excuse production of the entrant as a witness.⁸

The American courts, however, did not follow the English statute but generally admitted books kept by tradesmen and merchants to prove accounts for services rendered or goods sold and delivered.⁹ Either the New York or the New England rule was generally followed.¹⁰ Under the former, it was necessary to show that the party had no clerk, that some of the articles had been delivered, that the books were account books of the party, and that he kept fair and honest accounts.¹¹ The New England rule required the party to make a suppletory oath that the entries were kept in a book of original entry, made in the regular course of business at or near the time of the transaction, by one having personal knowledge of the transaction.¹²

The need for continuance of the exception applicable to books kept

⁵ 5 WIGMORE, EVIDENCE (3d ed. 1940) § 1517.

⁶ (1703) 1 Salk. 285.

⁷ 5 WIGMORE, *op. cit. supra* note 5, § 1521.

⁸ *Ibid.*; See also *New York & Queens Gas Co. v. Newton*, (S. D. N. Y. 1920) 269 Fed. 277, *aff'd*, (1922) 258 U. S. 178 (impracticability); *Cromer v. Strieby* (1942) 54 Cal. App. (2d) 405, 128 P. (2d) 916 (mental illness).

⁹ 1 GREENLEAF ON EVIDENCE (15th ed. 1892) 179; 5 WIGMORE, *op. cit. supra* note 5, § 1536.

¹⁰ *Radtke v. Taylor*, *supra* note 3, at 571, 210 Pac. at 867.

¹¹ *Vosburgh v. Thayer* (N. Y. 1815) 12 Johns. 461; Note (1941) 11 BROOKLYN L. REV. 78, 80.

¹² *Union Bank v. Knapp* (1825) 20 Mass. (3 Pick.) 96, 15 Am. Dec. 195; 1 GREENLEAF, *op. cit. supra* note 9, at 183, n. 2.

by a party, after removal of the party's disqualification as a witness, has been questioned. The party, it has been said, could testify and use the books to revive present memory or as a memorandum of past recollection recorded.¹³ However, when the party is dead, the necessity factor which is apparent in all these exceptions again becomes important. In order that estates of deceased persons may contest unwarranted suits and pursue legitimate claims, shopbooks kept by the decedent have often been admitted.¹⁴ There is some confusion in these opinions, however, as to whether the courts are relying upon the American exception applicable to books kept by a party (shopbook rule) or the broader rule which admits books kept by deceased persons generally (course-of-business rule).¹⁵ In any event, the requirement that the entries be made in the regular course of business at or about the time of the transaction apparently is regarded as fundamental.¹⁶

Necessity encouraged development of the various phases of the business-entry exception, and as the general character and reliability of business books assured trustworthiness, some courts became more liberal in enlarging the scope of the evidence admitted by relaxing some of the strict foundational requisites.¹⁷ Many scholars, convinced of the soundness of this development and the need for more widespread acceptance of the trend, encouraged legislative reform. The Legal Research Committee of the Commonwealth Fund, through its Committee on the Law of Evidence, in 1927 proposed a Model Act¹⁸ which has been adopted by many states and by the Congress of the United States.¹⁹ The Uniform Act,²⁰ proposed by the Commissioners

¹³ 5 WIGMORE, *op. cit. supra* note 5, § 1561; 3 *Ibid.* § 734. But the rule, at least, had advantages where a dead-man's statute was involved. See *Tipps v. Landers* (1920) 182 Cal. 771, 190 Pac. 173; *Kains v. First Nat. Bank* (1939) 30 Cal. App. (2d) 447, 86 P. (2d) 935.

¹⁴ 1 GREENLEAF, *op. cit. supra* note 9, at 183; 1 SMITH, *LEADING CASES* (8th ed. 1885) 581; 5 WIGMORE, *op. cit. supra* note 5, § 1561; 20 AM. JUR. 930; 32 C. J. S. 557; Notes (1909) 12 Ann. Cas. 77; (1901) 52 L. R. A. 545, 558.

¹⁵ 5 WIGMORE, *op. cit. supra* note 5, § 1561. Deceased third party's books were admitted under the same principle. *Nicholls v. Webb* (1823) 21 U. S. (8 Wheat.) 326; *Sill v. Reese* (1874) 47 Cal. 294; *Austin v. Wilcoxson* (1906) 149 Cal. 24, 84 Pac. 417; *Welsh v. Barrett* (1819) 15 Mass. 380; *Lassone v. Railroad* (1890) 66 N. H. 345, 24 Atl. 902, 17 L. R. A. 525.

¹⁶ Authorities cited in notes 7, 11, and 12, *supra*.

¹⁷ *Massachusetts Bonding & Ins. Co. v. Norwich Pharmacal Co.* (C. C. A. 2d, 1927) 18 F. (2d) 934.

¹⁸ MORGAN, *op. cit. supra* note 3, at 63.

¹⁹ 49 STAT. (1936) 1561, 28 U. S. C. (1940) 695. The Model Act provides in part that, "Any writing or record . . . shall be admissible . . . if the trial judge shall find that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act . . ."

²⁰ 9 U. L. A. (1942) 263.

on Uniform State Laws in 1936, has been adopted by many other states, including California.²¹

II. THE STATUTES

Many cases decided since the statutes were adopted have raised questions as to how far the scope of admissible evidence has been enlarged.²² Both acts are broad and include records kept in a business, profession, occupation or calling of any kind.²³ From the wording of the statutes it is difficult to conceive of any limitation upon the kind or scope of records made admissible. Nevertheless, in *Palmer v. Hoffman*,²⁴ decided under the Model Act, the report of a railroad accident was rejected because, it was said, the declarant had a motive to misstate. In that case the United States Supreme Court distinguished between records kept for the systematic conduct of the railroad enterprise such as payrolls, accounts receivable, accounts payable, and bills of lading, and the statement of a deceased engineer which was regularly reported as required by statute. The decision has been strongly criticized.²⁵ There has been no indication from the California courts of any such limitation.²⁶ Although hospital records are now generally admitted,²⁷ distinctions have been made between certain types

²¹ CAL. CODE CIV. PROC. §§ 1953e-1953h. Section 1953f provides that, "A record of an act, condition or event, shall, in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission."

²² *Hunter v. Derby Foods* (C. C. A. 2d, 1940) 110 F. (2d) 970, 133 A. L. R. 255 (death certificate); *McWilliams v. Lewis* (App. D. C. 1941) 125 F. (2d) 200 (police officer's report); *Pollack v. Metropolitan Life Ins. Co.* (C. C. A. 3d, 1943) 138 F. (2d) 123 (birth certificate); *Freedman v. Mut. Life Ins. Co. of N. Y.* (1941) 342 Pa. 404, 21 A. (2d) 81 (physician's records). But cf. *Johnson v. Lutz* (1930) 253 N. Y. 124, 170 N. E. 517 (police officer's report); *Matter of Roge v. Valentine* (1938) 255 App. Div. 475, 7 N. Y. S. (2d) 958 (entries in lawyer's case record card).

²³ 49 STAT. (1936) 1561, 28 U. S. C. (1940) 695; 9 U. L. A. (1942) 264.

²⁴ (1943) 318 U. S. 109, 144 A. L. R. 719.

²⁵ *Morgan, The Law of Evidence, 1941-1945* (1946) 59 HARV. L. REV. 481, 566; (1944) 18 So. CALIF. L. REV. 60; (1945) 54 YALE L. J. 868; cf. Judge Clark's dissent in *Hoffman v. Palmer* (C. C. A. 2d, 1942) 129 F. (2d) 976, 998.

²⁶ *De Hart v. Allen* (1945) 26 Cal. (2d) 829, 161 P. (2d) 453 (affidavit of process server); *Robinson v. Puls* (1946) 28 Cal. (2d) 664, 171 P. (2d) 430 (business books); *People v. Jones* (1943) 61 Cal. App. (2d) 608, 143 P. (2d) 726 (books of account); *Doyle v. Chief Oil Co.* (1944) 64 Cal. App. (2d) 284, 148 P. (2d) 915 (pumper's daily gauge reports, pumper's blue book, and crude oil invoices); *Gunter v. Claggett* (1944) 65 Cal. App. (2d) 636, 151 P. (2d) 271 (medical discharge from the service); *Barth v. Adelstein* (1944) 66 Cal. App. (2d) 406, 152 P. (2d) 498 (ledger account); *Arques v. National Superior Co.* (1945) 67 Cal. App. (2d) 763, 155 P. (2d) 643 (composition book); *People v. Richardson* (1946) 74 Cal. App. (2d) 528, 169 P. (2d) 44 (time card); *Brown v. County of Los Angeles* (1947) 77 A. C. A. 903, 176 P. (2d) 753 (county relief records); *Thompson v. Machado* (1947) 78 A. C. A. 959, 178 P. (2d) 838.

²⁷ *Ulm v. Moore-McCormick Lines* (C. C. A. 2d, 1940) 115 F. (2d) 492, (1941) 117 F. (2d) 222; *Borucki v. MacKenzie Brothers Co., Inc.* (1938) 125 Conn. 92, 3 A. (2d) 224, (1939) 27 CALIF. L. REV. 466; *Bethlehem Sparrows Point Shipyard v.*

of diagnostic entries and routine recordations.²⁸ However, such distinctions have not appeared in the California cases.²⁹

In addition to broadening the scope of admissible records, all courts seem agreed that another and major purpose of the statutes was to abolish many of the strict foundational requirements of the common law.³⁰ The requirements of the Uniform Act seem plain enough, yet questions remain as to what minimum foundation will satisfy these requirements. The Act in express terms requires testimony regarding the "identity" and "mode of preparation" of the record.³¹ This testimony may come from the "custodian or other qualified witness".³² A more troublesome problem is presented by the requirement that the record be "made in the regular course of business, at or near the time of the act, condition or event". Must there be additional direct testimony or may an inference from the testimony as to identity and mode of preparation, examination of the books themselves, and other surrounding circumstances satisfy this requirement?³³ Strict application

Scherpenisse (1946) Md., 50 A. (2d) 256; *Weis v. Weis* (1947) 147 Ohio St. 416, 72 N. E. (2d) 245.

²⁸ *New York Life Ins. Co. v. Taylor* (App. D. C. 1945) 147 F. (2d) 297, (1945) 31 VA. L. REV. 702; *Lane v. Samuels* (1944) 350 Pa. 446, 39 A. (2d) 626.

²⁹ *Loper v. Morrison* (1944) 23 Cal. (2d) 600, 145 P. (2d) 1 (nurse's record should have been admitted but held not reversible error); *McDowd v. Pig'n Whistle Corp.* (1945) 26 Cal. (2d) 696, 160 P. (2d) 797 (hospital record to show diagnosis of condition and nature of injuries); *Ducat v. Goldner* (1946) 77 A. C. A. 339, 175 P. (2d) 914 (hospital record to show amount of money spent for injuries sustained); *Carney v. RKO Radio Pictures, Inc.* (1947) 78 A. C. A. 740, 178 P. (2d) 482 (hospital record to show alcoholic condition and history). See Hale, *Hospital Records as Evidence* (1941) 14 So. CALIF. L. REV. 99.

³⁰ Cases cited in notes 22, 26, 27, and 29, *supra*. "The objective, as Wigmore so lucidly explains, was to do away with the technical rulings which excluded records ordinarily used in business transactions when not formally identified by the makers." *Ulm v. Moore-McCormick Lines*, (C. C. A. 2d, 1940) 115 F. (2d) 492, 495.

³¹ Cases cited in notes 22, 26, 27, and 29, *supra*. "The present act limits the required foundation to evidence as to the identity of the records and the mode of their preparation." Legis. (1941) 15 So. CALIF. L. REV. 37, 39.

³² See *Barth v. Adelstein* (company's auditor); *Arques v. National Superior Co.* (superintendent); *People v. Richardson* (sub-foreman in charge of crew); *Thompson v. Machado* (manager and a general partner), all *supra* note 26; *H. F. Shepherdson Co. v. Central Fire Insurance Co.* (1945) 220 Minn. 401, 19 N. W. (2d) 772 (president and assistant treasurer); *Fleetham v. Lindgren* (1946) 221 Minn. 544, 22 N. W. (2d) 637 (auditor); *Linnell v. London & Lancashire Indemnity Co.* (1946) N. D., 22 N. W. (2d) 203 (public accountant); *Davidson v. Hancock Mut. Ins. Co.* (1943) 152 Pa. Super. 63, 31 A. (2d) 585 (home-office investigator). Under the Model Act see *United States v. Mortimer* (C. C. A. 2d, 1941) 118 F. (2d) 266, *cert. den.*, (1941) 314 U. S. 616 (public accountant).

³³ See Metz, *An Inquiry Into The Effect of Pennsylvania's Recent Adoption of the Uniform Business Records as Evidence Act* (1939) 6 U. OF PITTSBURGH L. REV. 9, 18; Note (1937) 32 ILL. L. REV. 334, 351 ("However, the elements of (1) time-making and (2) regularity of making should both be matters of probable inference . . ."); (1944) 17 So. CALIF. L. REV. 409 ("The realism of the matter . . . is that the records, authenticated as having been kept according to a regular system, must speak for themselves; actual participants are seldom of enough worth to justify the bother of calling them.").

of the first alternative would to a large extent defeat the purpose of the Act. One of the most onerous requirements under the common law was that the entrant must have had personal knowledge of the transaction and be called to testify if available. This requirement seemingly has been abandoned.³⁴ However, if additional testimony is required to prove that the record was regularly made at or near the time of the transaction, it might again be necessary to call the various clerks who made the entries. The second alternative is analogous to the acceptance of habit evidence and presents a preliminary question for the court not unlike many other situations concerned with the admissibility of evidence.³⁵

The California supreme court was confronted with this problem in the case of *Robinson v. Puls*.³⁶ Business records kept by a decedent were offered in evidence by an administratrix to support a cross-complaint for a money judgment. One set of books was kept in connection with a gasoline service station and another set covered transactions between plaintiff and decedent in a fruit growing and drying business. Sustaining their admissibility over an explicit objection that there was no showing that the entries were made at or near the time of the respective transactions, the court stated that, "Where the person who made the entry is dead, evidence that the books of account were in his handwriting, and that they were kept correctly, is sufficient foundation for their admission."³⁷ Many cases decided under the old shopbook rule were cited as authority for this conclusion. "Moreover", it was stated, "the statutory presumptions that 'a writing is truly dated' (Code Civ. Proc., § 1963 (23)), and that 'the ordinary course of business has been followed' (Code Civ. Proc., § 1963 (20)) obviate the necessity for any additional showing as to the contemporaneous nature of the entry."³⁸ Unfortunately, it is difficult to ascertain

³⁴ Cases cited in notes 22, 26, 27, and 29, *supra*. "It is the object of the business records statutes to eliminate the necessity of calling each witness, and to substitute the record of the transaction or event. It is not necessary that the person making the entry have personal knowledge of the transaction." *Loper v. Morrison*, *supra* note 29, at 608, 145 P. (2d) at 5.

³⁵ Many situations are described in *McBaine, op. cit. supra* note 4, at 713 *et seq.*

³⁶ (1946) 28 Cal. (2d) 664, 171 P. (2d) 430.

³⁷ *Ibid.* at 681, 171 P. (2d) at 433; Justice Traynor concurred specially; *rev'd on other grounds*.

³⁸ *Ibid.* Perhaps this statement is a mere gratuity. It is certainly doubtful if the framers of the Uniform Act ever imagined that the requirement that the record be made in the regular course of business at or near the time of the act, condition or event could be satisfied by a statutory presumption. On the other hand, the statement may lend support to the interpretation that the court did not even require an inference to satisfy this requirement.

Despite the fact that definite requirements must be met before a record is even admissible as evidence, it has been said that, "In the case of the conduct of the business and affairs of an establishment, it is *presumed* . . . that the books and records of an

whether the ruling of the trial court was upheld on the basis of the Act, the common law, or both. It cannot be said that the Act does not apply to a dead man's records. In an earlier case,³⁹ which was not cited, the affidavit of service of a notice by a deceased process server was admitted. The California supreme court there held that, "Since the document was prepared by the process server in the usual course of his occupation or calling and otherwise met the requirements of the Act it was properly admitted in evidence."⁴⁰ In *Robinson v. Puls* there was testimony as required by the Act for identity and mode of preparation,⁴¹ but there was no testimony as to the contemporaneity of the entries. Therefore, if the books were admitted under the Act, it is a clear holding that direct testimony is not necessary to satisfy this requirement. Further, it is quite possible that the court recognized that an inference of contemporaneity was sufficient. It was said that, "The dates of the entries in the books appear to correspond reasonably with the dates of the original events."⁴² Presumably, an examination of the books and other evidence introduced at the trial formed the basis for this statement.

On the other hand, since the court relied only on authorities concerned with the old shopbook rule and cited the Act only to indicate the source of appellant's objection, the decision seems open to the possible interpretation that the court felt that these books were not admissible under the Act. If they were not admitted under the Act, it might have been either because the court feels that there must be direct testimony as to the contemporaneous nature of an entry,⁴³ or that there was no evidence from which an inference was warranted. If the latter interpretation is correct, the decision would seem unsound. Some condition which will safeguard the trustworthiness of records should

establishment truly reflect the facts set forth in such books (Code Civ. Proc. 1953f)." *People v. Caldwell* (1942) 55 Cal. App. (2d) 238, 130 P. (2d) 495.

In view of the repeated use of the word 'inference' herein, the distinction between an inference and a presumption should be kept in mind. See McBaine, *Presumptions, Are They Evidence?* (1938) 26 CALIF. L. REV. 519.

³⁹ *De Hart v. Allen*, *supra* note 26.

⁴⁰ *Ibid.* at 831, 161 P. (2d) at 455.

⁴¹ It was said by the court that, "Both sets of books were identified as those kept by Puls [identity] . . . and they were shown to have been kept in an orderly manner [mode of preparation] . . ." 28 Cal. (2d) at 668, 171 P. (2d) at 433. The report in the district court of appeal shows that there was testimony that the books were kept by decedent in his place of business and that the entries were in his handwriting. An accountant testified that "they were kept in an orderly manner". (1945) 72 A. C. A. 314, 164 P. (2d) 332, (1946) 19 So. CALIF. L. REV. 453.

⁴² 28 Cal. (2d) at 668, 171 P. (2d) at 433.

⁴³ It is uncertain whether this was what Justice Traynor meant by the following statement in his concurring opinion: "I cannot agree . . . that the store books and . . . other books . . . are admissible in evidence *in absence of proof* that the entries on which defendants rely were made at or near the time of the transactions in question." 28 Cal. (2d) at 669, 171 P. (2d) at 433. (Italics added.)

be required in order that the rights of the opposing party may be protected. The requirements of regularity of keeping and prompt entry were essential under the common-law rules and have been retained as a guaranty of trustworthiness under the Act. Although language in some of the decisions upon which the court relied might suggest that these fundamental requirements at times have been ignored, it is more probable that the evidence warranted an inference that the requirements had been satisfied. These cases involved situations where there was evidence of the transaction, and the business record was offered only to prove the amount, purpose, or other details concerning the transaction. The foundation necessary to satisfy the requirements in these circumstances is easily distinguished, as a practical matter, from that in other situations where the record is the only evidence offered to prove the happening of the transaction or event. This may explain the language of the courts wherein they seem to ignore this fundamental requirement. Thus, if the majority opinion means that a deceased person's books may be admitted without evidence from which an inference of contemporaneous entry may be warranted,⁴⁴ such a position would seem unsupported by either the common-law rules or the Act.⁴⁵ Yet it is possible that the court meant that the evidence was sufficient to support an inference under the common-law rule, that this requirement of the Act may be satisfied by inference, and that the books were admissible under both the common law and the statute.

If this requirement may be satisfied by inference, added meaning will be given to the last requirement of the Act that the sources of information, and method and time of preparation must, in the opinion of the court, justify admission. Many cases have recognized the importance of the trial court's final determination. In *Ducat v. Goldner*,⁴⁶ where hospital records were admitted, the court said, "The determination by the trial court that the foundation laid was sufficient is binding upon the appellate court."⁴⁷ In *Thompson v. Machado*⁴⁸ "hard sheets"

⁴⁴ This seems to be the interpretation given the majority opinion by Justice Traynor: "In abandoning the requirement of proof that the record was made at or near the time of the transaction, if the person who made it is dead, the majority opinion opens the door for the admission of records that might be made at a time so remote from their occurrence as to lack trustworthiness." 28 Cal. (2d) at 670, 171 P. (2d) at 434.

⁴⁵ Compare, however, the practice in the few states having statutes which make admissible the oral or written statements of deceased persons if they were made in good faith before the commencement of the action and upon the personal knowledge of the declarant. For a collection of cases interpreting these statutes, see Note (1935) 96 A. L. R. 686. A similar proposal was made by the Legal Research Committee of the Commonwealth Fund. MORGAN, *op. cit. supra* note 3, at 49.

⁴⁶ *Supra* note 29.

⁴⁷ 77 A. C. A. at 344, 175 P. (2d) at 918.

⁴⁸ *Supra* note 26.

comparable to ledger pages, which purportedly covered transactions with the defendant, were admitted. The manager and a general partner gave testimony of the mode of preparation and identity, but there was no additional direct testimony as to the regularity of keeping or the contemporaneous nature of the entries. The sheets contained both debits and credits, a common accounting system was used, and, although the correctness of the amount was disputed, the defendant admitted doing business with plaintiff's assignor. The court stated that, "the records relied upon were properly admitted in evidence, since the trial court was obviously satisfied that the sources of information, method and time of preparation were such as to justify their admission, and it is the duty of the court to so construe the . . . Act as to facilitate and not hamper the effectuation of its purpose."⁴⁹ In *Tabata v. Murane*,⁵⁰ the plaintiff, a commission broker, offered twelve sheets of paper taken from his loan account ledger which purportedly covered transactions with the decedent. The broker gave testimony as to identity and mode of preparation and further testified that the books were made in the regular course of business at or near the time of the transactions. Nevertheless, the trial court excluded the evidence. In contrast to the *Thompson* case, the ledger account contained only debits, it covered transactions with many other customers and decedent's account was identifiable only by initials, and there was no evidence as to the occurrence of the transactions. The ruling was upheld⁵¹ and the appellate court pointed out that, "The trial judge evidently did not believe that plaintiff's financing of his customers consisted solely of putting out money, without charging interest and without ever getting any of it back."⁵²

III. CONCLUSION

Aside from the doubts created by the *Robinson* case, the present status of the business-entry exception in California may be shortly summarized. The scope of admissible evidence is as broad as the wording of the statute and properly includes records kept in "every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not".⁵³ A minimum foundation requires: (1) *testimony* concerning identity and mode of prepara-

⁴⁹ 78 A. C. A. at 963, 178 P. (2d) at 841.

⁵⁰ (1946) 76 Cal. App. (2d) 887, 174 P. (2d) 684.

⁵¹ Moreover, the court in a somewhat confusing opinion relied upon cases decided under the common law to state that a book account cannot consist of loose pages, and concluded, "It is unnecessary to decide whether the memoranda constituted a record kept by plaintiff in the regular course of his business which would have been admissible under the section if offered for some purpose other than to prove a book account." 76 Cal. App. (2d) at 891, 174 P. (2d) at 687. Cf. Note (1933) 83 A. L. R. 806.

⁵² *Ibid.* at 890, 174 P. (2d) at 686.

⁵³ CAL. CODE CIV. PROC. § 1953e.