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BUSINESS RECORDS AND HOSPITAL RECORDS AS EXCEPTIONS TO THE HEARSAY RULE

By STANLEY DUNN

The purpose of this comment is to review most of the cases in California concerning the admissibility of business records and hospital records and to note changes in those rules caused by the enactment of the Uniform Business Records as Evidence Act, Code of Civil Procedure 1953 e-h in 1941. This is done with the hope of shedding some light on the future interpretation of that act more in accord with acceptance and reliance placed upon such records by modern business.

In California prior to the enactment of the Uniform Business Records as Evidence Act, the courts although recognizing the distinction between the shop book exception* and the general course of business exception* made no distinction in their requirements for admission with the possible exception of a suppletory oath where the party kept his own books. (14 Cal. Law Review 263; *Kerns v. McKean*, 76 Cal. 87, 18 P. 122.) Although the cases are conflicting, the general rule was:

"In order to lay the foundation for the admission of books of account as evidence, it must be shown that the books in question are books of account kept in the regular course of business, that the business is of a character in which it is proper or customary to keep such books, that the entries are either original entries or the first permanent entries in the transaction, that they were made at the time or within reasonable proximity to the time of the respective transactions, and that the person making them had personal knowledge of the transaction or obtained such knowledge from a report regularly made to him by some other person employed in the business whose duty it was to make the same in the regular course of business." (*Chan Kiu Sing v. Gordon*, 171 Cal. 28, 151 P. 657; *Burke v. John E. Marshall Inc.*, 42 Cal. App. 2d 195, 108 P. 2d 738; *Kains v. First Nat'l Bank*, 30 Cal. App. 2d 447, 86 P. 2d 935; *Warren v. Hiltcher*, 111 Cal. App. 318, 295 P. 536; *Montgomery and Mullen Lumber Co. v. Ocean Park Scenic Ry. Co.*, 32 Cal. App. 32, 161 P. 1171.

Prior to the Uniform Act, although the rule was not clearly established, the entrant, if available, must have been present at the trial to lay the foundation for the admission of the records so that the opposing party might have an opportunity to cross-examine the witness as to the validity of the records. (*Butler v. Estrella Raisin Co.*, 124 Cal. 239, 56 P. 1040; *In re Flint's Estate*, 100 Cal. 391, 34 P. 863; *White v. Whitney*, 82 Cal. 163, 22 P. 1138; *Kerns v. McKean*, 76 Cal. 87, 18 P. 122; *Lusardi v. Prukop*, 116 Cal. App. 506,

*The shop book exception allowed books of an individual proprietor to be admitted where he was his own bookkeeper and he testified as to their correctness. The general course of business exception admitted books as evidence where they were kept in the general course of business and the entrant was unavailable.

2 P. 2d 870.) But later cases have allowed their admission where the foundation was laid either by a party under whose direction the entries were made, although actually made by a subordinate, (*Montgomery and Mullen Lumber Co. v. Ocean Park Scenic Railway Co.*, 32 Cal. App. 32, 161 P. 1171) or by the testimony of the bookkeeper which is allowed although the memoranda from which he made the entries were supplied by other employees without their being called or their absence explained. (*Sugar Loaf Assn. v. Skewes*, 47 Cal. App. 470, 190 P. 1076; *Patrick v. Tetzlaff*, 46 Cal. App. 243, 189 P. 115.) The cases have allowed the books to be introduced upon testimony of a third person identifying the handwriting of the entrant where he is unavailable. (*Austin v. Wilcoxson* (death), 149 Cal. 24, 84 P. 417; *Sill v. Reese* (death), 47 Cal. 294; *Warren v. Hiltscher* (death), 111 Cal. App. 318, 295 P. 536; *Cromer v. Strieby* (mental illness), 54 Cal. App. 2d 405, 128 P. 2d 916; *O'Neill v. O'Neill* (death), 45 Cal. App. 772, 188 P. 603.) Even though the entrant may be an incompetent witness such as in a survivorship action (Code Civ. Proc. 1880-3), his testimony was receivable to establish, in part, a foundation for the books. (*City Bank v. Enos*, 135 Cal. 167, 67 P. 52; *Cowdery v. McChesney*, 124 Cal. 363, 57 P. 221; *Roche v. Ware*, 71 Cal. 375, 12 P. 284; *Landis v. Turner*, 14 Cal. 573.) Some cases have prevented testimony as to the correctness of the books by the incompetent witness, but otherwise allowed his testimony to lay the foundation. (*Stuart v. Lord*, 138 Cal. 672, 72 P. 142; *Colburn v. Parrett*, 27 Cal. App. 541, 150 P. 786.) The fact that the books were those of a third party did not prevent their admission. (*Estate of Bell*, 198 Cal. 32, 243 P. 423; *Sill v. Reese*, 47 Cal. 294; *People v. Vacarella*, 61 Cal. App. 119, 214 P. 237; *contra: Watrous v. Cunningham*, 65 Cal. 410, 4 P. 408.)

Prior to the Uniform Act, most of the cases admitted the account books as primary evidence. (*White v. Whitney*, 82 Cal. 163, 22 P. 1138; *Carroll v. Storck*, 57 Cal. 366; *Caulfield v. Sanders*, 17 Cal. 569; *LeFranc v. Hewitt*, 7 Cal. 186; *Patrick v. Tetzlaff*, 46 Cal. App. 243, 189 P. 115; *Egan v. Bishop*, 8 Cal. App. 2d 119, 47 P. 2d 500.) Other cases regarded such books as secondary evidence admissible only as a necessity where no higher evidence was obtainable. (*Butler v. Estrella Raisin Co.*, 124 Cal. 239, 56 P. 1040; *Kerns v. McKean*, 76 Cal. 87, 18 P. 122; *Severance v. Lombardo*, 17 Cal. 57; *Landis v. Turner*, 14 Cal. 573.) In some cases they were inadmissible except to refresh memory where primary evidence was obtainable, (*Treadwell v. Wells*, 4 Cal. 260; *People v. Blackman*, 127 Cal. 248, 59 P. 573; *In re Flint's Estate*, 100 Cal. 391, 34 P. 863) or held admissible as secondary and supplementary evidence only. (*Cowdery v. McChesney*, 124 Cal. 363, 57 P. 221; *Bushnell v. Simpson*, 119 Cal. 658, 51 P. 1080.)

The first permanent entries were admissible even though they were not the original entries whether made from oral reports or written memoranda.

(See *M. Kanter Silk Co. v. Cramer*, 136 Cal. App. 755, 30 P. 2d 53; *Storm and Butts v. Lipscomb*, 117 Cal. App. 6, 3 P. 2d 567; *Sugar Loaf Orange Growers Ass'n v. Skewes*, 47 Cal. App. 470, 190 P. 1076; *Idol v. San Francisco Construction Co.*, 1 Cal. App. 92.) *Patrick v. Tetzlaff*, 46 Cal. App. 243, 189 P. 115, based its decision on Code of Civil Procedure 1947, "When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are equally regarded as originals." However, *San Francisco Teaming Co. v. Gray*, 11 Cal. App. 314, 104 P. 999, is contra in holding.

A few California cases required the party making the entry to have personal knowledge of the transaction (see *Bulter v. Estrella Raisin Co.*, 124 Cal. 239, 56 P. 1040; *Lusardi v. Prukop*, 116 Cal. App. 506, 2 P. 2d 870; *Chandler v. Robinett*, 21 Cal. App. 333, 131 P. 891; *San Francisco Teaming Co. v. Gray*, 11 Cal. App. 314, 104 P. 999), but the greater majority of the cases, recognizing the impossibility of this requirement in modern large business associations, required only that the entrant obtain such knowledge from a report of a person who had personal knowledge of the transaction. (See *Shields v. Rancho Buena Ventura*, 187 Cal. 569, 203 P. 114; *People v. Tagawa*, 39 Cal. App. 2d 548, 103 P. 2d 1024; *Storm and Butts v. Lipscomb*, 117 Cal. App. 6, 3 P. 2d 567; *Patrick v. Tetzlaff*, 46 Cal. App. 243, 189 P. 115.)

Entries to show cash payments or loans were inadmissible (see *Collin v. Card*, 2 Cal. 421, *Yick Wo v. Underhill*, 5 Cal. App. 519, 90 P. 967; *Dicta: LeFranc v. Hewitt*, 7 Cal. 186) with the possible exception of bank's records and passbooks. (*Blinn Lumber Co. v. McArthur*, 150 Cal. 610, 89 P. 436; *City Bank v. Enos*, 135 Cal. 167, 67 P. 52; *Nicholson v. Randall Banking Co.*, 130 Cal. 533, 62 P. 930; *Pauly v. Pauly*, 107 Cal. 8, 40 P. 29; *McLenon v. Bank of Calif.*, 87 Cal. 569, 25 P. 760.)

Furthermore, it was necessary generally to show the correctness of the books by other evidence before a proper foundation for their admission was laid. (*Watrous v. Cunningham*, 71 Cal. 30, 11 P. 811; *Kerns v. McKean*, 76 Cal. 87, 18 P. 122; *Kerns v. Dean*, 77 Cal. 555, 19 P. 817). *Colburn v. Parrett*, 27 Cal. App. 541, 150 P. 786, held: "This may be done by proof of reputation that the party keeps honest books or by the testimony of anyone who is able of his own knowledge to testify as to their correctness." The very liberal (at the time) case of *Patrick v. Tetzlaff*, 46 Cal. App. 243, 189 P. 115, held no additional proof of correctness was necessary.

The Uniform Business Records as Evidence Act

The strictness of the above rules caused no hardship when applied to small businesses and sole traderships, but with the growth of modern business and their accounting practices, it is apparent that such requirements of

personal knowledge on the part of the entrant, and the requirement that if available he must lay the foundation, etc., are impossible to apply to businesses employing thousands and whose accounting departments may number hundreds. Further, under modern business practices, there is less likelihood of falsification of the records due to the difficulty of doing so with a large accounting department and the lack of motive because of the impersonal relation to the books. Rather, the motive is to keep the books as accurate as possible because of the rigors of supervision and the necessity of so complicated a system. Thus, weighing the necessity against the chance of falsification and the right of cross examination, along with the fact that modern businesses rely on such records daily, it became apparent that a profound change in the above rules was needed. To accomplish this the Legislature adopted the Uniform Business Records as Evidence Act, Stats. 1941, chapter 482, section 1, now codified in the Code of Civil Procedure, section 1953 (e) through (h):

(e) "The term business as used in this article shall include every kind of business, profession, occupation, calling, or operation of institutions whether carried on for profit or not.

(f) "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 as 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.

(g) "This article shall be so construed and interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

(h) "This article may be cited as the Uniform Business Records as Evidence Act."

The following types of records have been admitted in California under the Uniform Act: Corporation's books of account, *People v. Jones*, 61 Cal. App. 2d 608, 143 P. 2d 726; oil pumpers daily gauge book, shipping book, bundles of crude oil invoices, *Doyle v. Chief Oil Co.*, 64 Cal. App. 2d 284, 148 P. 2d 915; U. S. Navy official medical discharge, *Gunter v. Claggett*, 65 Cal. App. 2d 636, 151 P. 2d 271; creditor's records in an action by guarantee against debtor, *Barth v. Adelstein*, 66 Cal. App. 2d 406, 152 P. 2d 498; time card, *People v. Richardson*, 74 Cal. App. 2d 528, 169 P. 2d 44; laundry receipt tags, *Oakland, Calif., Towel Co. v. Zanes*, 81 Cal. App. 2d 343, 184 P. 2d 21; business letters, *Holder v. Key System*, 88 Cal. App. 2d 925, 200 P. 2d 98; affidavit of notice of service of process, *DeHart v. Allen*, 26 Cal. 2d 829, 161 P. 2d 453; tomato inspection certificates, 12 A. G. 103.

As to hospital records, the Supreme Court of California has held: "They are as truthful and reliable as those of any commercial firm," and are admissible for all purposes. (*Loper v. Morrison* (leading case), 23 Cal.

2d 600, 145 P. 2d 1; *People v. McGee* (time and manner of operation), 31 Cal. 2d 229, 187 P. 2d 706; *McDowd v. Pig'n Whistle Co.* (diagnosis, extent of injury), 26 Cal. 2d 696, 160 P. 2d 797; *People v. Powell*, 90 A. C. A. 228, 202 P. 2d 837; *In re Powers Estate* (mental confusion and irrationality), 81 Cal. App. 2d 480, 184 P. 2d 319; *People v. Bjornsen*, 79 Cal. App. 2d 519, 180 P. 2d 443; *Carney v. R.K.O. Radio Pictures* (cause of death), 78 Cal. App. 2d 659, 178 P. 2d 482; *Ducat v. Goldner* (hospital charges), 77 Cal. App. 2d 332, 175 P. 2d 914; (see, also, 14 Southern Cal. Law Review 99, 18 Southern Cal. Law Review 60.)

But newspaper clippings, a letter and a telegram giving cause of death were inadmissible as hearsay and not within the business records as evidence exception. (*Bebbington v. Calif. West States Life Ins. Co.*, 30 Cal. 2d 157, 180 P. 2d 673.) Statements as to what the records contain rather than the records themselves have likewise been excluded as hearsay. (*Bebbington v. Calif. West States Life Ins. Co.*, *supra*; *Fuller v. White*, 85 A. C. A. 508, 193 P. 2d 100, 33 Cal. 2d 236, 201 P. 2d 16.) In the *Bebbington* case, above, a death certificate was held admissible to show the cause of death only and not the circumstances surrounding it.

Foundation Under The Uniform Act

"As worded the act renders it unnecessary to call the various employees in the business or account for their absence. The records may be adequately verified by the custodian or other qualified witness. This is a point of departure from precedent. 'Qualified' as used in the act probably was intended to mean only that the witness was sufficiently acquainted with the books to identify them and to testify as to the routine of the business in the matter of making its records." (*Doyle v. Chief Oil Co.*, 64 Cal. App. 2d 284, 148 P. 2d 915; see, also, 12 A. G. 103.)

"The object of the business records statute is to eliminate the necessity of calling each witness and to substitute the record of the transaction." (*Loper v. Morrison*, 23 Cal. 2d 600, 145 P. 2d 1; *McDowd v. Pig'n Whistle Corp.*, 26 Cal. 2d 696, 160 P. 2d 797; *People v. Powell*, 90 A. C. A. 228, 202 P. 2d 837; *Thompson v. Machado*, 78 Cal. App. 2d 870, 178 P. 2d 838; see, also, 12 A. G. 103, 17 Southern Cal. Law Review 409, 18 Southern Cal. Law Review 60.)

"It is unnecessary that the person making the entry have personal knowledge of the transaction." (*Loper v. Morrison*, *supra*; *People v. Powell*, *supra*; *Thompson v. Machado*, *supra*.)

"But the witness must identify the records and testify to the mode of their preparation, his custodianship, and time of preparation." (*Fuller v. White*, 85 A. C. A. 508, 193 P. 2d 100; *Luthringer v. Moore*, 31 Cal. 2d 489, 190 P. 2d 1; *McDowd v. Pig'n Whistle Co.*, *supra*; *Thompson v. Machado*, *supra*; *Carney v. R.K.O. Radio Pictures*, 78 Cal. App. 2d 659, 178 P. 2d 482; *Brown v. Los Angeles Co.*, 77 Cal. App. 2d 814, 176 P. 2d 753; *Ducat v. Goldner*, 77 Cal. App. 2d 332, 175 P. 2d 914; *People v. Richardson*, 74 Cal.

App. 2d 528, 169 P. 2d 44; *Doyle v. Chief Oil Co.*, 64 Cal. App. 2d 248, 148 P. 2d 915; 35 California Law Review 434.)

The records must have been made in the regular course of business at or near the time of the act, condition, or event. (Code Civ. Proc. 1953 F; *McDowd v. Pig'n Whistle Co.*, *supra*; *People v. Powell*, *supra*; *Brown v. Los Angeles Co.*, *supra*; *Ducat v. Goldner*, *supra*; *People v. Richardson*, *supra*; *Doyle v. Chief Oil Co.*, *supra*; *Fuller v. White*, *supra*.)

However, *Robinson v. Puls*, 72 A. C. A. 314, 164 P. 2d 332 (Cal. App.), 28 Cal. 2d 664, 171 P. 2d 430, held (Justice Traynor, dissenting) that "where the person who makes the entry is dead, evidence that the books were in his handwriting and kept correctly is sufficient foundation, the statutory presumption that a 'writing is truly dated', Code of Civil Procedure 1963-23, and that the 'ordinary course of business has been followed', Code of Civil Procedure 1963-20, obviating the necessity for any additional showing as to the contemporaneous nature of the entry." This holding has been criticized. See 35 Cal. Law Review 434, 19 Southern Cal. Law Review 454.

The Uniform Act places the admission of such evidence within the discretion of the trial court, "if in its opinion the sources of information, method, and time of preparation were such as to justify its admission." In an action on a book account individual sheets not bound together in permanent form were excluded since "they were not accorded the presumption of accuracy and reliability of bound books. Such records fail to establish a book account." (*Tabata v. Murane*, 76 Cal. App. 2d 887, 174 P. 2d 684.) But compare *Oakland, Calif. Towel Co. v. Zanes*, 81 Cal. App. 2d 343, 184 P. 2d 21, which allowed individual receipt tags as evidence distinguishing the *Tabata* case on the ground that this was not a suit on a book account; *Thompson v. Machado*, 78 Cal. App. 2d 870, 178 P. 2d 838, which allowed Burroughs Accounting System individual ledger sheets; and *Doyle v. Chief Oil Co.*, 64 Cal. App. 2d 284, 148 P. 2d 915, which allowed individual invoices. The determination that the foundation is sufficient is binding on the appellate court in the absence of abuse of the trial court's discretion. (*Ducat v. Goldner*, 77 Cal. App. 2d 332, 175 P. 2d 914; *Thompson v. Machado*, 78 Cal. App. 2d 870, 178 P. 2d 838; *Tabata v. Murane*, *supra*.) However, "before an account is admissible on an open book account, it must be shown to have been accurately kept and so complete as to show the balance of indebtedness," (*Tabata v. Murane*, *supra*), "but the fact parol evidence is necessary to explain ambiguities will not prevent its admissibility." (*Robinson v. Puls*, 72 A. C. A. 314, 164 P. 2d 332.) Such records are also admissible where relevant to litigation between third parties. (*Doyle v. Chief Oil Co.*, *supra*.) Such books and records are considered to be *prima facie* evidence since it is presumed that the regular course of business has been followed, Code of Civil Procedure 1963, and that the books and records truly reflect the facts set forth in such books, but the degree of credit to be given them is for the jury. (*Ducat v. Goldner*, *supra*; *People v. Caldwell*, 55 Cal.

App. 2d 238, 254 P. 2d 495; *Thompson v. Machado*, *supra*; *Arques v. Nat'l Superior Co.*, 67 Cal. App. 2d 763, 155 P. 2d 643.)

The California Supreme Court in construing the act has stated:

"The purpose of the act is to enlarge the operation of the business records exception to the hearsay rule. The common law exception is based upon the assumption that records kept in the general course of business usually are accurate and may be used in case of necessity as evidence of the matter recorded. The act should be liberally interpreted so as to do away with the anachronistic rules which give rise to its need and at which it was aimed." (*Loper v. Morrison*, 23 Cal. 2d 600, 145 P. 2d 1.)

Other Problems

Although the statute has to some extent altered the previous rules as to original records, personal knowledge, availability of entrant, cash entries, etc., a few of the cases decided prior to the act may still be in point. Thus the requirement of contemporaneousness of the recordation to the transaction in order to insure its trustworthiness is continued under the act, and the case of *Landis v. Turner*, 14 Cal. 573, holding that a lapse of three days in transferring memoranda to the books is not so unreasonable as to make the book inadmissible. Similarly, under the requirement that the records must be made in the regular course of business would make such cases as *Brown v. Ball*, 123 Cal. App. 758, 12 P. 2d 28, excluding corporation's books kept by a committee of creditors and *Yick Wo v. Underhill*, 5 Cal. App. 519, 90 P. 967, excluding restaurant books showing loans not made in the regular course of business but otherwise allowing them for other entries applicable.

Both prior to and under the act, the entries to be admissible must be the proper subject of such a book account; *allowed*—baptismal records to prove contested heirship, *In re Bell's Estate*, 198 Cal. 32, 243 P. 423; *excluded*—corporation's books of account showing trust relationship where such books were not the proper place to record such, *Fletcher v. Kidder*, 163 Cal. 769, 127 P. 73; *allowed*—a sheriff's book showing receipt of writs of attachment, date of return, etc., *Hesser v. Rowley*, 139 Cal. 410, 73 P. 156; *excluded*—"poker book" of gambling debts as not a tradesman's book, *Frank v. Pennie*, 117 Cal. 254, 49 P. 208; *excluded*—pay roll records of an association in the nature of a hiring hall for stevedores as not properly or customarily kept by such associations, *Burke v. John E. Marshall Inc.*, 42 Cal. App. 2d 195, 108 P. 2d 738; *excluded*—entry in attorney's books of a contingent fee agreement as having no proper place in an account book, *Batcheller v. Whittier*, 12 Cal. App. 262, 107 P. 141; *excluded*—restaurant books to establish loans not connected with the business, *Yick Wo v. Underhill*, 5 Cal. App. 519, 90 P. 967; *excluded*—on grounds that the record was a private account book or private memorandum only, *Ensign v. So. Pac. Co.*, 193 Cal. 311, 223 P. 953; *Thompson v. Orena*, 134 Cal. 26, 66 P. 24; *Collin*

v. *Card*, 2 Cal. 421; *Creighton v. Creighton*, 6 Cal. App. 2d 270, 43 P. 2d 1104; (seemingly *contra*, *Mullenary v. Burton*, 3 Cal. App. 263, 84 P. 159).

"The book must specifically connect and refer to the other party in the transaction" (*Roger v. Graves*, 1 Cal. Unrep. Cases 21), and there must be direct dealings between the parties. (*Severance v. Lombardo*, 17 Cal. 57; *Overland v. Davis*, 50 Cal. App. 2d 507, 123 P. 2d 581.)

"The law does not prescribe any standard of bookkeeping practice which all must follow regardless of the nature of the business." An attorney's court docket and journal was allowed as evidence although he kept no ledger. (*Egan v. Bishop*, 8 Cal. App. 2d 119, 47 P. 2d 500.) But the records must be certain as to accounts, parties, and amounts and contain all the dealings between the parties. (*Chandler v. Robinett*, 21 Cal. App. 333, 131 P. 891; *Tipps v. Landers*, 182 Cal. 771, 190 P. 173.) However, they may be allowed although entered in a fictitious name (*Rodehaver v. Mankel*, 16 Cal. App. 2d 597, 61 P. 2d 61) and in a foreign language (*Chan Kiu Sing v. Gordon*, 171 Cal. 28, 151 P. 657.)

Evidence of falsification or alteration of the books will make them inadmissible unless such changes are shown to have been properly made or not to have affected the account. (See *People v. Blackman*, 127 Cal. 248, 59 P. 573; *Webster v. San Pedro Lumber Co.*, 101 Cal. 326, 35 P. 871; *LeFranc v. Hewitt*, 7 Cal. 186; *Schneider v. Oakman Mining Co.*, 38 Cal. App. 338, 176 P. 177.) *Caldwell v. McDermit*, 17 Cal. 464, held it was proper to exclude the books where the only explanation of the alterations was the testimony of the party himself, while *Butler v. Beech*, 55 Cal. 28, admitted the books although altered by the plaintiff where there was expert testimony as to their correctness. However, even though the account in question is not affected by alterations and falsifications, evidence of such alterations and falsifications in other accounts is admissible to assail the general character of the books and discredit the entries admitted. (*People v. Fairfield*, 90 Cal. 186, 27 P. 199.)

Whether books are admissible to show lack of an entry as evidence of the non-occurrence of the act, event, or transaction is in doubt in California. The cases are in hopeless conflict. No cases have been decided since the passage of the Uniform Act and it itself throws no light on the problem. Admitting the books for such a purpose are: *Austin v. Wilcoxson*, 149 Cal. 24, 84 P. 417; *Cowdery v. McChesney*, 124 Cal. 363, 57 P. 221; *People v. Fairfield*, 90 Cal. 186, 27 P. 199; *Ford v. Cunningham*, 87 Cal. 209, 25 P. 403; *Dyer v. Minturn*, 47 Cal. App. 1, 189 P. 1046. Excluding such books: *Kerns v. Dean*, 77 Cal. 555, 19 P. 817; *Kerns v. McKean*, 76 Cal. 87, 18 P. 122; *Lewis v. McNeal*, 58 Cal. App. 70, 207 P. 1021. That Code of Civil Procedure, 1953, e-h, should be construed to admit the books for this purpose, see W. G. Hale in 15 Southern California Law Review 37.