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In this age of almost universal use of credit in commerce it often becomes necessary to offer accounting records in court as evidence of business transactions. The status of this class of evidence in the eyes of the law is significant to the accountant because he is responsible for the contruction and interpretation of the accounts and he may be called upon to give expert testimony in regard to them. A familiarity with the attitude of the courts toward this type of evidence will help to make the accountant more efficient and will enable him to testify to better advantage should he be summoned as a witness.

The custom of receiving shop-books as evidence to show goods delivered or services performed arose in England several centuries ago, at the time when, at common law, a party was incompetent to testify in his own behalf and when most shopmen had no clerk to take the stand for them. Parliament was well aware of the inherent danger in this class of evidence and passed an act in 1609 which curtailed its use to some extent. Later, when the statutes permitted a litigant to testify for himself and clerks were more numerous, there was not so much need of shop-book evidence as there had been before. Although the necessity upon which the rule was based passed, the rule persisted in some of the lower courts of England and, with statutory modifications, became well intrenched in the early law of many of our states. The attitude of the higher English courts has been that the admission of accounts as evidence is inconsistent with the common-law rule that a person should not be permitted to make evidence for himself and this stand has been maintained until recently. However, this strictly exclusionistic policy was slightly modified by the relaxation of the chancery procedure act of 1852, and in 1894 a supreme-court order gave the court power to command that evidence in the form of book entries be admitted. Nevertheless, up to the present the English jurists have been much more conservative than the courts of the United States in the admission of evidence of this character.

Beginning in the early part of the 18th century, both in England and in America, regular entries made in the course of busi-

ness by a person since deceased were admitted as evidence on the ground of impossibility of obtaining the testimony. Although this principle is closely related to the shop-book rule, it is a much later development of law and is distinct from that rule. Later, the principle was extended to cases in which the maker of the entries was insane or out of the jurisdiction. Since the hearsay rule of evidence excludes written assertions of all sorts, some jurists consider the admission of this class of evidence as an exception to it. They reason that entries made in the regular course of business by a party in the execution of a duty are more trustworthy than other types of hearsay. On the other hand, many judges believe that the entries are the statements of the person who has made them and consequently they do not come within the hearsay rule because they are direct evidence.

Whether the accounting records are such as can legally be presented to the jury or are properly kept is a question of law to be decided in each case after inspection by the court. The judge bases his decision upon all circumstances of the case, among which the education of the party, the appearance and character of the records and the indications of honesty and accuracy are the most important and consequently have the most weight. Although no objection is made when the books are submitted, the court may later instruct the jury that the evidence is not competent (*Henshaw* v. *Davis*, 5 Cush. [Mass.] 145). Furthermore, although the records have been admitted by the court as evidence, the jury may or may not find from them that the charges contained are true (*Hunter* v. *Kittredge*, 41 Vt. 359). In several jurisdictions the rule has been laid down that the best evidence of the transactions which the party can produce must be exhausted before the book accounts of the transactions are admissible in evidence (*Severance* v. *Lombardo*, 17 Cal. 57).

The law prescribes the facts that must be established before admission of accounts as evidence. Usually it is necessary that the book of entries be identified. However, if the book itself sufficiently shows the purpose for which it has been kept, the court may excuse identification. The mere fact that account books have been admitted at a previous trial does not necessarily indicate that they will be admitted by another court or by the same court at a later trial (*Linberger* v. *Lalourette*, 5 N. J. L. 809).

The courts have been extremely liberal in admitting records of various types of businesses. Books of parties following any trade

or occupation which necessitates that records of transactions be kept are admissible in evidence to prove the usual dealings of such trade or occupation. This may be considered the general rule. The court decides whether or not a given business involves the regular keeping of books (*Granahl* v. *Share*, 24 Ga. 17). The law has given specific recognition to books of merchants, tradesmen or mechanics, physicians, attorneys, printers and several other classes of business.

The law recognizes as evidence those books which are kept solely for business purposes. Loose memoranda or entries in diaries or memorandum books used for recording anything that the owner may wish to note, which, although generally admitted to refresh the memory of a witness, are not admissible as independent evidence (*Cairns* v. *Hunt*, 78 Ill. App. 420). However, in *Gleason* v. *Kinney* (65 Vt. 560), the court maintained that an entry made upon a diary was admissible as independent evidence if the entry was in proper form and had reference to a proper matter of book account. This may be considered an exception to the general rule. A small book, four different pages of which were covered with entries of cash received and paid out in reference to goods in which the parties were interested, was held to be a book of accounts and consequently was admissible as independent evidence (*In re Diggins' Estate*, 68 Vt. 198). In *Cullinan* v. *Moncrief* (85 N. Y. S. 745), it was decided that the records of a cash register are not admissible as books of account. The courts of Ohio and Alabama have ruled that cheque-book stubs are not account books. They would not be admissible to prove cash transactions even if they were given the status of books of account (*Simmons* v. *Steele*, 82 N. Y. App. Div. 202). A note register or book of bills receivable kept by a bank is not a book of accounts according to the court in *Martin* v. *Scott* (12 Nebr. 42). The Nebraska courts have also refused admission to collection and loan registers because they do not come within the definition of books of account as given by the code of that state. In South Dakota, a card index used in the warehouse of a wholesaler was admitted to prove the state of an account with a customer. The court, in *Wisconsin Steel Company* v. *Maryland Steel Company* (203 Fed. 403), admitted time cards turned in by workmen as evidence on the ground that they tended to verify the correctness of the entries made from them. In *Patrick* v. *Tetzlaff* (31 Cal. App. Dec. 559 [1920]), the court did not require even a book, but

admitted detached time cards made out by workmen when the signatures were identified by the bookkeeper. In an action to recover pay for labor, the plaintiff's time book was admitted in evidence by the court in *Mathes* v. *Robinson* (8 Met. [Mass.] 269). But a time book kept by the employer was inadmissible, although supported by suppletory oath, to show that an employee did not work certain days (*Morse* v. *Potter*, 4 Gray [Mass.] 292). The court, in *Feuchtwanger* v. *Manotowoc Malting Company* (187 Fed. 713), admitted ledger cards, as these were the original, permanent and only record of the party's accounts with customers. That a sheet from a loose-leaf ledger was proper evidence was ruled in *Presley Company* v. *Illinois Central Railroad Company* (120 Minn. 295).

The law has not taken upon itself the responsibility of prescribing the form in which accounts must be kept nor the material which must be used for the record. Books which were lacking in many respects have been admitted when the party seeking to introduce them has been able to fill in the gaps with satisfactory testimony and has been able to explain the irregularities to the satisfaction of the court. Marks on shingles (*Kendall* v. *Field*, 14 Me. 30) and notched sticks (*Rowland* v. *Burton*, 2 Harr. [Del.] 288) have been considered admissible in evidence as accounts when other circumstances were regular.

In some jurisdictions, the correctness of entries made in the regular course of business by a clerk or a third person may be proved by witnesses who have made settlements by the books. Proof by one witness is usually held to be sufficient. The fact that the witness is a bookkeeper does not disqualify him from testifying that his employer kept honest and correct books if the bookkeeper has had a private account with the employer and has found it to be correct. However, if an adverse party has made a payment on an account without questioning it and afterward accepted a statement of it without objection, proof by a witness is unnecessary.

Although the law says that the entries must be contemporaneous with the facts recorded it has fixed no definite time within which entries must be made (*Penn* v. *Watson*, 20 Mo. 13). The entry need not be recorded at the instant of the transaction but it should be made within a reasonable length of time, and what is considered a reasonable length of time will depend upon the circumstances of the case. Entries made on the day after the transaction or after two or three days have been held admissible. In

the case of an employee, a Pennsylvania court admitted entries of work done, which were made once a week, on the ground that the party worked until late at night and had no opportunity to make a daily record. The courts of the same state admitted an entry which was made at the end of a continuous transaction requiring several days to finish but held that an entry made before the completion of a transaction was inadmissible. The latter ruling is followed in several other states. Entries made when ordered articles are deliverable and after work is finished are admissible. If goods are to be delivered at a distance the vendor may charge the goods to the vendee when they are delivered to the carrier and such entries will be admitted by the courts as evidence. In an exceptional case (*Redlich* v. *Bauerlee*, 98 Ill. 134), entries were held to be admissible although a month had elapsed between the time of making the memorandum and transcribing it to the books. Delays of five days, six days and two weeks have caused entries to be rejected. Most jurists have held that entries made more than three days after the transaction are inadmissible as evidence unless the circumstances are such that the delay can reasonably be justified.

As a prerequisite for admissibility in evidence, the courts require that the entry must appear to be original, or the first permanent record of the transaction. Temporary memoranda for the purposes of convenience and of aiding the memory so that a book entry can be made later do not take the status of originality from the subsequent entry. This is especially true if the memoranda are incomplete. When the making of memoranda is a part of the method of carrying on the business, they are competent evidence when submitted with the account books of the business (*Diament* v. *Colloty*, 66 N. J. L. 295). It is considered to be no objection to the admission of the original entries in a book if the record contains a few entries that are not original. If the correctness of entries is admitted by the adverse party they are admissible although not original (*Snodgrass* v. *Caldwell*, 90 Ala. 319).

In *Fitzgerald* v. *McCarty* (55 Iowa 702), the court decided that a ledger to which accounts from other books are transferred is not a book of original entry. This is the ruling followed in most of the states. Since it is not a book of original entry it generally is not admissible as independent evidence. However, the court, in *Faxon* v. *Hollis* (13 Mass. 42), held that the fact that a book offered in evidence was kept in ledger form and that the entries

were posted from memoranda made during the day did not bar it from admission. Where it appears from marks upon a book of original entry that entries therein have been posted to a ledger, the latter book should be produced with the other records (*Prince* v. *Swett*, 2 Mass. 569), but where the accounts have not been posted it is unnecessary to produce the ledger without previous notice (*Hervey* v. *Harvey*, 15 Me. 357).

The English courts will not admit a book entry as evidence unless it has been made by a clerk or principal who was under obligation to another to enter the very thing sought to be proved. In one case admission was refused to entries made by a physician on the ground that he owed no duty to another that required him to make the record, but if he had had a partner to whom he would have been obligated to make the entries they would have been admissible. The courts of the United States have taken a view that is more favorable to business. They have usually maintained that the clerk or agent making the entry must have made it in the discharge of a duty to the employer or principal to perform the specific act or in the regular course of business but that this rule does not apply to entries made by the employer or principal.

The suppletory oath of the maker of the entry is necessary for verification in most states except New York and New Jersey. The testimony of the person for whom the books have been kept or of a clerk or servant or third person, in the absence of statute, generally will not be sufficient. However, the statutes of Illinois and Minnesota allow an interested party to testify to his own accounts which have been kept by a clerk. It is usually considered that the suppletory oath may be dispensed with upon proof of handwriting if the maker is deceased, insane, outside the state or otherwise unavailable or incompetent (*Burham* v. *Chandler*, 15 Texas 441). In South Carolina the mere absence of the maker of the entry from the state is not sufficient to render the entry admissible. Since the circumstances may be such that it would be inconvenient and expensive to obtain the oath of a maker of book entries, the courts tend to dispense with this oath on the ground of expediency if the rest of the details are regular.

In conformity with the general principle of evidence that a person whose statement is admitted as testimony should speak from personal knowledge, it is essential that an entry be made by a person with a knowledge of the facts which he records or that the information be furnished him by an individual employed in the

business who has the duty of making the transaction and reporting it to the maker of the book entries. The maker of the entry and the party furnishing the information must take an oath as to the correctness of the books, or other satisfactory proof must be produced. In Nebraska, Illinois and Colorado, the clerk who made the entries must swear that he believes the entries to be true, or sufficient reason must be given as to why the verification is not made. In Massachusetts it is unnecessary to call as witness one who has furnished oral information for the entry. If the party who has given information is dead or otherwise unavailable the entries are admissible when supported by the testimony of the entrant and by supplementary proof. The testimony of all the parties involved is necessary in case two or more persons have coöperated in making an entry. When several entries are made by several persons, each individual may testify only as to the entries made by himself. In some jurisdictions it must appear that the maker of the entry had no motive to misrepresent in recording the transaction (*Lord* v. *Moore*, 37 Me. 208), but the law does not specify that the entries shall be contrary to the interests of the party making them (*Augusta* v. *Windsor*, 19 Me. 317).

When the information passes through several hands before reaching the bookkeeper the question arises as to whether or not it is necessary to produce the employees who alone have a first-hand knowledge of the transactions recorded in the books. The present-day tendency was expressed by the court in *Givens* v. *Pierson* (167 Ky. 574 [1916]) where it was held that the testimony of the bookkeeper was sufficient when the slips from which the entries were made had been destroyed by fire and the identity of the persons who had made the sale had been lost. An analogous situation occurs when a large business concern has lost track of its former employees or when the expense involved in finding and producing those who have a direct knowledge of the transactions is unreasonably heavy.

A book entry should be intelligible to a party of ordinary understanding, but it is admissible if intelligible only to persons in the particular business or profession involved, if supported by adequate evidence as to meaning. In *Bay* v. *Cook* (32 N. J. L. 343), a physician's book of accounts was admitted in evidence although some of the charges were of such a character that few people outside of the medical profession were able to understand them. The entry must show with reasonable certainty what is made the

basis of the charge and should contain the price or value of the goods or services concerned. The latter requisite is satisfied if the price is set by law, or, in some states, if the books are accompanied by proof of the value or price. However, it has been held in Massachusetts (*Pratt* v. *White*, 132 Mass. 477) and Maine (*Hooper* v. *Taylor*, 39 Me. 224) that the omission of measure, weight and quantity in a book charge for goods did not render the account inadmissible as evidence. The court, in *Miller* v. *Shay*, (145 Mass. 162), ruled that entries consisting of mere marks or figures are admissible if other evidence is produced which explains them and shows their relationship to the transaction involved in the litigation.

The courts insist that the entries must present the appearance of having been honestly made in the regular course of business. In *Swing* v. *Sparks* (7 N. J. L. 59), it was maintained that a book of accounts containing charges running over several successive years, made from oral directions and all against one person without intervening charges to others, was not proper evidence to be submitted to the jury. Entries on the first leaf of a tradesman's records, before the first regular page of the book and not in the regular course of charges, are inadmissible as evidence to prove the account (*Lynch* v. *McHugo*, 1 Bay [S. C.] 33). The same is true of entries on the last leaf if it is separated from the other entries by blank pages and is dated within the time limits of such other entries (*Wilson* v. *Wilson*, 6 N. J. L. 95). However, a Missouri court admitted an account which was written on the fly leaf of a bible, and in *Gibson* v. *Bailey* (13 Met. [Mass.] 537), charges entered on one leaf with no intervening entries were declared to be admissible. The statutes of Iowa and other states specify that the records must show continuous dealings with various parties, or have several items of charges at different times against a party. In *Shaffer* v. *McCrackin* (90 Iowa 578), the court maintained that an account to be used as evidence to prove that something did not occur must be both regular and exhaustive.

A book of accounts will not usually be declared inadmissible in evidence merely because the entries are not dated if the date may be determined from other evidence (*Doster* v. *Brown*, 25 Ga. 24). In several decisions the courts have held that there must be dates to entries, although it is unnecessary that the exact day be given if the month is stated and the records in other respects have the appearance of regularity (*Cummings* v. *Nichols*, 13 N. H. 420).

Accounts dated on Sunday have been rejected in Pennsylvania on the ground that they were incompetent evidence.

According to the consensus of judicial opinion it is immaterial that entries are made on a separate sheet or on separate sheets of paper. A Delaware court admitted a sheet sewed together in octavo. Contrary to the weight of authority, the court in *Jones* v. *Jones* (21 N. H. 219) ruled that entries made on loose or unconnected sheets of paper are not books of account because they do not appear to be regular entries of business transactions.

In order to render a book entry admissible as evidence, it must be a charge by one party against another and must have been made with the intention of charging that party. If a charge has been made to a wrong name by mistake, the entry may be used as evidence against the person who should have been charged, after the error has been explained to the satisfaction of the court (*Schettler* v. *Jones*, 20 Wis. 412). A charge to a false name given by a customer is admissible against him. In *Kidder* v. *Norris* (18 N. H. 532), the court held that charges against individual partners were admissible against the firm to prove delivery of goods so charged. A Texas court ruled that when a party charged a debt to a third person, and not to the real debtor, the entry was admissible as evidence against the debtor (*Loomis* v. *Stuart*, 248 S. W. 1078).

A rule which was laid down in early times but is not followed at present in many jurisdictions is refusal to admit the book accounts of a party if that person employs a clerk. The law considered that the testimony of the clerk would be better evidence of business transactions than book entries. However, when the party himself made the entries the employment of a clerk was immaterial (*Townsend* v. *Coleman*, 20 Texas 817). A bookkeeper or the wife of the owner is not a clerk in the eyes of the law, and the entries of a wife who keeps her husband's accounts are admissible if made under his supervision (*Luce* v. *Doane*, 38 Me. 478). The statutes of Minnesota and Illinois allow a party to prove his own books whether made by himself, an agent, a clerk or a bookkeeper. Entries made partly by a party and partly by his clerk will not be inadmissible as far as the entries of the party are concerned (*Dunlap* v. *Cooper*, 66 Ga. 211). In South Carolina a court held that an entry made by a person occasionally acting as clerk was inadmissible in a case in which the owner sold and delivered the goods. The entries of a partner are admissible

against his copartners on account of the agency relationship and on the ground of estoppel, since the books are open to common inspection by members of the firm.

The courts of most states have ruled that admissible book entries must appertain to the business carried on by the party for whom the record is made and not to matters extraneous to the business. Consequently, an entry in a regular book for the sale of an article not handled in the particular line of business involved will not be admitted as competent evidence. In *Shoemaker* v. *Kellog* (11 Pa. St. 310), the court held that an entry for the sale of a horse on the account books of a dry-goods merchant was inadmissible.

Some charges, such as the commission of a ship broker and those for literary labor and unliquidated damages, for which better evidence is or should be available, may not be proved by book entries. The court, in *Leighton* v. *Manson* (14 Me. 208), held an entry inadmissible where the articles involved were of such bulk that they could not have been delivered without assistance. In respect to board as a proper subject of book charge, the decisions differ. The courts of Massachusetts have admitted charges for board while the courts of Pennsylvania have rejected them. That the book of a purchaser or employer is not admissible in his favor is the rule in Illinois. Entries are not usually admitted to prove any matter collateral to the issue of debit and credit between the parties (*Davis* v. *Tarver*, 93 Ill. App. 572).

A book of original entries having marks of erasures or alterations in a material point will be rejected as evidence unless the irregularities are explained to the satisfaction of the court (*Pratt* v. *White*, 132 Mass. 477). In *Caldwell* v. *McDermit* (17 Cal. 464) the court held that the explanation must be made by a disinterested person. Mutilated records are not usually admitted in evidence in favor of the owner, and in conformance with this rule are many cases in which books of original entry with sheets torn from them have been rejected. But in Ohio it was held that proof was admissible to show that a single sheet cut from a book by mistake or accident was part of an account book, in order that it might be admitted. Shop-worn books with a few outside leaves missing have been admitted when there was nothing to indicate fraud or an attempt to destroy entries. Unless there is evidence that the records have been fraudulently falsified, the mere existence of errors will not render them incompetent (*Levine* v. *Lancashire Insurance Company*, 66 Minn. 138).

Since the courts require that book charges be specific, the lumping of accounts usually renders them inadmissible. The following entries have been held to be too vague for admission to the jury:

1. "B. Corr, Dr., July 13, 1880. To repairing brick machinery, $1,932.76."
   (*Corr* v. *Sellers*, 100 Pa. St. 169)
2. "To building 92¾ rods cedar fence at 75 cents, $69.56."
   (*Towle* v. *Blake*, 38 Me. 95)
3. "13 dollars for medicine and attendance on one of the General's daughters in curing whooping cough."
   (*Hughes* v. *Hampton*, 3 Brev. [S. C.] 544)
4. "Balance from former account."
   (*Buckner* v. *Meredith*. 1 Brews. [Pa.] 306)
5. "Seven gold watches, $308."
   (*Bustin* v. *Rogers*, 11 Cush. [Mass.] 346)

However, the circumstances of each case must be considered, and the matter is often left to the discretion of the court. Single charges for services extending over several days or for goods delivered over a period of time under a single order have been admitted in some states. In *Tremain* v. *Edwards* (7 Cush. [Mass.] 414), it was decided that meals furnished to a man and his servants from day to day could be proved by a single charge.

As a general rule, book entries are not admissible in favor of the owner of the records to prove the loan or payment of money or other cash dealings between parties, because these transactions should be proved by better evidence, such as receipts, notes and cheques. An extreme viewpoint was expressed by the court in *Inslee* v. *Pratt's Executors* (23 N. J. L. 463), in which the following statement was made: "I hold, first, that there is not and never was a necessity for making books of entry evidence for the payment or lending of money." There has been a tendency on the part of the courts and legislatures to break away from this narrow idea. The statutes in some jurisdictions permit the admission of entries indicating loans or advances of money, provided the account is otherwise admissible. In *Lewis* v. *England* (Wyoming) (2 L. R. A. [N. S.] 401), the court held that books of account were admissible to prove cash loans when the entries appeared in the general course of accounts as part of business transactions between the parties. The courts of many states admit money charges made by banks, commission houses and establishments of a like nature that do a cash business, on the ground of obviating the delay and inconvenience that cash receipts would involve. Several

states admit money charges not exceeding a certain sum, irrespective of the type of business, but the limitation as to amount does not apply to entries made by a person since deceased. (*Union Bank* v. *Knapp*, 3 Pick. [Mass.] 96).

A mere entry in a party's account book of a settlement with another is not legal evidence of the settlement as against the adverse party (*Prest* v. *Mercerau*, 9 N. J. L. 268), nor are accounting records admissible to show to whom credit has been given (*Kaiser* v. *Alexander*, 144 Mass. 71), nor are they evidence against a defendant to prove charges for goods delivered to a third person on the order of the adverse party.

In California, Iowa, New York and several other jurisdictions the courts have decided that charges for goods or services under a special agreement may not be proved by account books because such an agreement takes the transaction out of the usual course of business and the performance or non-performance of the agreement should be proved by better evidence. However, if the terms are vague with respect to any material point, the agreement is taken out of the special class and accounting records are admissible to prove the charge.

The proprietor of a business may offer books kept by himself as evidence in his own behalf (*Lovelack* v. *Gregg*, 14 Colo. 53), but the records must come in as general evidence, and consequently they may be used by an adverse party if that person so desires (*Winant* v. *Sherman*, 3 Hill [N. Y.] 74). A plaintiff who swears to his book of original entries puts his character for truth and veracity and the character of his records for honesty in evidence and lays both open to attack by the adverse party. In *Roberts* v. *Ellsworth* (11 Conn. 290), it was decided that evidence is inadmissible to show that the party had the reputation of keeping inaccurate, false and fraudulent accounts and a New York court refused to permit a defendant to prove the general moral character of the plaintiff to be bad for the purpose of discrediting the books of the latter. However, in *Merchants Bank* v. *Rawls* (7 Ga. 191), the court allowed a party to show the general character of the books by calling witnesses to prove that entries charging other persons were false and fraudulent.

Under modern statutes permitting parties to testify in their own behalf, account books may be used to refresh the memory of a witness although he may have little or no recollection of the transaction recorded and the account may consist of so many items that

refreshing the memory means nothing more or less than the mere reading of the book. Usually, when accounts are used for this purpose, the entries are not considered to be directly in evidence, so the jury must rely upon the oral testimony of the witness. In some jurisdictions book entries are admitted for the purpose of confirming (*Petit* v. *Teal*, 57 Ga. 145) or discrediting (*Moshier* v. *Frost*, 110 Ill. 206) the testimony of a witness, although the entries may be of such character as to be inadmissible to prove the items of account.

An account book used by a defendant in his business may be used as evidence against him no matter what the book may be called (*Boyle* v. *Reid*, 31 Kansas 113) or what mutilations exist (*McLellan* v. *Crofton*, 6 Me. 307) or whether the entries were made by himself or by an agent if the latter was authorized. Entries on partnership books by a partner or by authorized clerks are admissible against the firm and bind all partners having access to the records. The correctness of the books is considered to be immaterial (*Foster* v. *Fifield*, 29 Me. 136). If the adverse party insists upon the introduction of a party's books in evidence, all entries appertaining to the transaction under litigation are consequently made evidence, the unfavorable as well as the favorable (*Dewey* v. *Hotchkiss*, 30 N. Y. 497). In *Rembert* v. *Brown* (14 Ala. 360) the court held that entries in an account book are admissible against an adverse party when the entries have been made by that party. If the entries have been read in his presence without objection or have been used as a basis for settling the account, or if their correctness has otherwise been agreed to, the adverse party may not object to their admission as evidence to the jury.

In *Holmes* v. *Marden* (12 Pick. [Mass.] 169) it was ruled that when a party's account books, with his suppletory oath, are competent evidence to prove the charges which they contain, secondary evidence of the contents may be admitted should the records be destroyed. A transcript of an account from a destroyed book, accompanied by proof that the entries had actually existed in the book and that the transcript had been faithfully copied, was admitted by the court in *Prince* v. *Smith* (4 Mass. 455).

In some circumstances accounting records may be submitted in evidence without actual production of the books in court. The supreme court of North Carolina held that when it was necessary to prove the results of an examination of the books of a bank in a distant city, whose business would be interrupted if it were forced

to part with its records, the results might be proved by a competent party who had examined the books. If the original record is lost, destroyed or otherwise unavailable the courts will usually excuse its production (*Rigby* v. *Logan*, 160 Ill. 101).

The admission of accounts as evidence has been criticized by some jurists and writers. Chief Justice Coton, in *Waggeman* v. *Peters* (22 Ill. 42), said: "There has been a growing disposition to open the door wider and wider for books of account as evidence till now it seems to be thrown down altogether, and the original consideration of necessity which first introduced them is altogether lost sight of." Professor Burr W. Jones in *The Blue Book of Evidence* makes this statement: "It has been said that books of account are received in evidence only upon the presumption that no proof exists. They are justly regarded as the weakest and most suspicious kind of evidence. The admission of them at all is a violation of one of the first principles of evidence, which is that a party shall not make evidence in his own favor. The practice of admitting such evidence is, however, universal."

Notwithstanding the opinions of Chief Justice Coton and Professor Jones, most of our jurists favor an increasing liberality in the admission of accounting records as evidence. These men look beyond the strict legal view and try to meet the needs of modern business with its manifold complications. The courts would be greatly handicapped in the administration of justice and business would be retarded, with a consequent loss to society, if accounts of litigants were not freely admitted to the jury.

The preceding paragraphs have shown that the laws governing the admission of account books as evidence vary considerably among the states. A few jurisdictions, namely, Alabama, California, Mississippi, New York, Pennsylvania and Texas, have liberal statutes and court decisions, and a few retain the strict common law, while most of the states have statutes or decisions or both that range between these extremes. Since much of our business consists of interstate commerce it would be generally advantageous if all the states adopted a uniform law governing admission of this class of evidence. It seems advisable to look to the future and to make provisions broad enough to accommodate the new and more elaborate records which new business conditions will necessitate. There is little doubt that business would be facilitated as a result of the confidence engendered by liberal legislation of this character.