(1880) 04 CAL CK 0005

Calcutta High Court

Case No: None

Khetter Chunder Mookerjee		APPELLANT
	Vs	
Khetter Paul Sreeterutno		RESPONDENT

Date of Decision: April 2, 1880

Acts Referred:

- Evidence Act, 1872 - Section 65

Citation: (1880) ILR (Cal) 886

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

I think that the document is admissible in evidence. There are two questions to be considered first, proof of the contents of the document tendered; secondly, proof of execution. Section 65 of the Evidence Act deals with the first question, and this case comes under Clause (c), which provides that secondary evidence may be given "when the original" has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time." The will in question is shown to have been lost, and therefore its contents may be proved by secondary evidence. Section 90 deals with the second question; it provides that, "where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person''s handwriting; and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested." Under the section the execution of a document produced from proper custody, and more than thirty years old, need not

be proved, if the document "is produced." I do not think the use of these words limits the operation of the section to cases in which the document is actually produced in Court. I think that, as the document has been shown to have been last in proper custody, and to have been lost, and is more than thirty years old, secondary evidence may be admitted without proof of the execution of the original.