

1880
 MORINDRO-
 BHOOSUN
 BISWAS
 v.
 SORHER-
 BHOOSUN
 BISWAS.

completely to adjudicate upon and settle all the questions in the suit, be added."

In the first place this does not contemplate any application by the person proposed to be added.

The Court has a discretion as to whether it will act or not, and no doubt facts may be proved before it which would justify it in acting. But I do not think that any facts have been shown which make it necessary to have the mortgagees added as parties. At this stage of the suit their presence is not necessary "to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." The question as between the plaintiff and the defendant is, who is entitled to the property in dispute? To determine that question, it is not necessary that the mortgagees should appear; they will not be bound by any finding come to in their absence.

In case of a decree for partition being made, the mortgagees should have leave to come in and attend the partition-proceedings.

Application refused.

Attorney for the applicants: Mr. Pittar.

Attorneys for the plaintiff: Messrs. Mookerjee and Deb.

Attorneys for the defendants: Messrs. Swinhoe, Law and Co.; Baboo Gonesh Chunder Chunder, Messrs. Diguan and Robinson.

Before Mr. Justice Wilson.

KHETTER CHUNDER MOOKERJEE v. KHETTER PAUL
 SREETERUTNO.

1880
 April 2.

Evidence Act (I of 1872), ss. 65, 90—Secondary Evidence—Document more than thirty years old—Proof of Execution.

Secondary evidence of the contents of a document requiring execution, which can be shown to have been last in proper custody, and to have been lost, and which is more than thirty years old, may be admitted under s. 65, cl. (c) and s. 90 of the Evidence Act, without proof of the execution of the original.

In a suit to recover possession of certain immoveable property, the plaintiff claimed to be entitled as heir of one Shri

Chunder Bhuttacharjee, who was alleged to have died intestate many years previously. The defendant derived his title under a conveyance made to him by one Bedomoyee Dabee, the grand-daughter of Shib Chunder Bhuttacharjee. Bedomoyee Dabee, it was alleged, had obtained possession of the property under the will of Shib Chunder Bhuttacharjee, made more than thirty years before the institution of the suit. The will had remained in the possession of Bedomoyee until about eight years before the suit, but since then had been lost. Proof of the loss of the will was given, but not of its execution, and a copy was tendered in evidence.

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Mr. T. A. Apear for the plaintiff.

Mr. Bonnaud for the defendant.

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 cl. (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

1880 section to cases in which the document is actually produced in
 KHETTER CHUNDER MOOKERJEE v. KHETTER PAUL SREETERUTNO. Court. I think that, as the document has been shown to have been lost 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.

Attorney for the plaintiff: Babo Denonath Bose.

Attorney for the defendant: Mr. Zorab.

Before Mr. Justice Wilson.

1880
 June 3 & 24.

IN THE MATTER OF THE INDIAN COMPANIES' ACT, 1866, AND OF THE
 CALCUTTA JUTE MILLS CO., LIMITED.

*Jurisdiction of High Court—Winding up of Company formed in England—
 Principal Place of Business—Indian Companies' Act (X of 1866), s. 213.*

A limited company formed in England under the English Companies' Act, 1862, and having its registered office in England, but which has its principal place of business in Calcutta, and is managed exclusively by directors in Calcutta, and the business of which is carried on exclusively in India, can be wound up by the High Court.

In re Agra and Masterman's Bank (1) distinguished.

THIS was a petition by the directors and mortgagees of the Calcutta Jute Mills Company, praying for an order that the Company might be wound up by the Court under the provisions of s. 213 of the Indian Companies' Act, 1866.

The Company was formed in London; and duly incorporated there, under the English Companies' Act of 1862, on the 16th April 1872. The Memorandum of Association provided that the registered office of the Company should be situated in England, and the Articles of Association provided that the general meetings of shareholders should be held in England. On the 18th of August 1876, new Articles of Association were adopted in lieu of those under which the Company had been previously working. By these articles it was provided that the meetings of shareholders should be in Calcutta. Although the