

evidence is evidence though not the best evidence. I know it is only allowed to be given under certain conditions and that until these conditions are fulfilled, as they were not in the present case, it is not usual to regard it as evidence at all. Still there is a difference between what is evidence under certain conditions and what under no conditions can be a difference that should be recognized. I do not forget that in the case which Phipson cites as authority for the proposition I have quoted (Jacker and International Cable Co., *supra*), it was a document that had been wrongly admitted, but there is nothing in the report to shew why it was wrongly admitted by the trial Judge, or why it was rejected by the Court of Appeal, and all the indications are that it was rejected not because it was a copy, let us say, but because it was inadmissible under any circumstances. That is the way I think we should read Phipson's rule—making it inadmissible under any conditions.

I will allow the secondary evidence to remain. If I were not to do that I would give the plaintiff leave to furnish additional evidence—to furnish the best evidence where now we have only secondary or establish his right to give secondary. But this it seems to me would only mean making the costs greater to no good purpose for the result would unquestionably be the same.

-The plaintiff will have judgment with costs.

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