case must depend much on its own peculiar circumstances; but the party is generally expected to show that he has in good faith exhausted in a reasonable degree all the sources of information and means of discovery which the nature of the case would naturally suggest, and which were accessible to him. As the object of the proof is merely to establish a reasonable presumption of the loss of the instrument, and as this is a preliminary enquiry addressed to the discretion of the judge, the party offering secondary evidence need not on ordinary occasions have made a search for the original document as for stolen goods, nor be in a position to negative every possibility of its having been kept back.'"

In a recent case (*Reg.* v. *Hinckley*, 8 Law Times, N. S. 270) the following remarks were made:

"I think the only question is, if sufficient search has been made for the original. Now to determine this it must be shown that search has been made where the instrument would most probably be. It is for the presiding judge to decide whether reasonable evidence has been given to satisfy his mind that the document has been lost. But it is also a mixed question of law and facts which the court can subsequently review."

When sufficient evidence has been given of destruction of the original document, or of search and loss to let in secondary evidence, memorials afford, in cases of conveyance, a frequent means of furnishing such evidence, and are admissible or not, according to the circumstances.

When the plaintiff sought to make the defendant liable as assignee of a term on the covenants contained in a lease, and gave notice to produce the assignment, and then evidence by a memorial signed by the assignor, and further evidence that the defendant had taken proceedings in Chancery as assignee, the Court held that the memorial alone was not sufficient, but that coupled with the other facts of the case there was sufficient evidence to go to a jury (*Jones* v. *Todd*, 22 U. C. Q. B. 53).

Sir J. B. Robinson, C. J., in an ejectment suit (*Smith* v. *Nevilles*, 18 U. C. Q. B. 473) wherein the plaintiff sought to give in evidence a memorial signed by a *grantor*, under whom he claimed, but with whom the defendant who shewed no title *was not in privity*, after stating that there was not sufficient evidence of search to dispense with production of the original deeds, thus expresses himself:

"I have sometimes thought that such evidence as was offered in this case might without danger be admitted to prove the fact of the conveyance being made which is recited in the memorial, especially as against a defendant who has no title in himself; but the Legislature has not thought proper to make such evidence admissible without accounting for non-production of the deed, as is done with respect to bargains and sales enrolled under St. 10 Anne, ch. 18, s. 3."

Where the non-production of the original instrument was satisfactorily accounted for, a memorial signed by a *grantor*, who was not shewn to have had more than mere constructive possession by force of the conveyance to him, has been held to be evidence not merely against the grantor, and all claiming under or in privity with him, but also against third persons not appearing to have any title whatever except a bare possession of insufficient duration to confer a title, as being a statement and act by the party in possession against his own interest as reputed owner of the land (*Russell* v. *Fraser*, 15 U. C. C. P. 375, and cases there referred to; *Cathrow* v. *Eade*, 4 DeG. and Smales, 531; *Moriarty* v. *Grey*, 12 Irish C. L. Rep. 129; *Moulton* v. *Edwards*, 29 L. J. Ch. 181; see as regards third persons *Doe d. Loscombe* v. *Clifford*, 2 C. & K. 452; *Hayball* v. *Shepheard*, 25 U.C.Q B. 536). This case is important as shewing that the memorial is evidence even though the grantor executing it never had more than constructive possession (for the lands were wild lands, and no evidence was given as to possession); and that under such circumstances it is evidence even against one not proven to claim in privity with the grantor.

The weight of authority is in favor of taking a memorial executed by a grantor as good secondary evidence even against strangers, without corroborative evidence; but it is not clear that this would be so if at the time of the conveyance sought to be proven someone were in possession adversely to the grantor.

If the memorial were rejected as evidence of the conveyance set forth in it, and the memorial shewed a bargain and sale for money paid, the party tendering it might perhaps as a last resource admit that the instrument set forth did not exist, and contend that the memorial itself was a good conveyance by way of bargain and sale. At common law a mere verbal bargain and payment to the bargainor raised a use, and he