to uses.) When the land descends to real representatives, they, and not the personal representatives, are entitled to the deeds, though for greater certainty a search with the latter would be advisable, especially in the case of a missing mortgage. The presumption that the deeds follow the title and go to him entitled may be destroyed; as for instance, by the fact that they covered other lands retained by the vendor (*Yeo* v. *Field*, 2 T. R. 708), or that some prior owner on sale of a portion gave a covenant to produce. Where a vendor on sale of a part of his lands retains the deeds and gives a covenant to produce, it does not follow that on conveyance of the residue the title deeds remain with him to answer his covenant to produce; on the contrary it would seem that in the absence of stipulation the vendee of the residue will be entitled to the deeds even against the prior vendee, and be bound by the covenant to produce as running with the lands (Sugden Vendors, ch. 11, s. 4, cl. 5). On sale of part of an estate without any stipulation as to the deeds, the holder of the portion of the highest value is entitled to the custody, whether seller or purchaser, giving a covenant to produce (Sugden Vendors, ch. 11, s. 4, cl. 5). Of joint owners, or tenants in common, coparceners and joint tenants, whichever of them obtains possession of the deeds is entitled to retain them, and the presumption would be that they would go to the grantee or heir at law of the possessor, except in the case of joint tenants, whose heir at law would not be entitled.

Where the instrument, if subsisting, should be in possession of a party to the cause, who desires to give secondary evidence, the proper course is that he should search with a witness, and that it should be "so conducted and in such places as to afford a reasonable ground for concluding that it was made *bona fide*, both as regards the witness and as regards the party, by giving and using all possible facilities to make it effectual." If he should himself have searched accompanied by a witness, but the witness should have made no search, and have acccpted the statement of loss of such party as true, the search will not be sufficient (*Bratt* v. *Lee*, 7 U. C. C. P. 280).

It may sometimes be that as against a person claiming the freehold mere notice to him to produce may suffice, without evidence of search, on the presumption above referred to, that the deeds follow the title and are in the possession of the party to whom notice is given (but see *Marvin* v. *Curtis*, 6 U. C. C. P. 212); for search would be useless with prior owners when the law would presume the title deeds were not with them, but passed from each prior owner to his grantee. That notice to produce alone should suffice, there must be nothing to destroy the presumption that the deeds followed the title, as, for instance, a covenant to produce given by a prior owner.

On a question of sufficiency of search, and proof of loss to let in secondary evidence, Richards, C. J., in a recent case *Russell* v. *Fraser*, 15 U. C. C. P. 380; (see also as to search *Ansley* v. *Breo*, 14 U. C. C. P. 371; *Gathercole* v. *Miall*, 15 M. & W., 319; *Doe Padwick* v. *Willcomb*, 6 Ex. 601, 5, 6; S. C. 4, H. L. Ca. 431,; Taylor on Evidence; *Smith* v. *Nevilles*, 18 U. C. Q. B. 473; Best on Evidence, 4 ed. 606; *Marvin* v. *Hales*, 6 U. C. C. P. 203; *Marvin* v. *Curtis*, id. 212; *Bratt* v. *Lee*, *supra*, 7 U. C. C. P. 280) expressed himself as follows:

"In *Reg.* v. *The Inhabitants of Kenilworth* (7 Q. B. 642), Lord Denman, in reference to a general rule established as to what is a sufficient search to let in secondary evidence said, 'I think that no general rule exists. The question in every case is whether there has been evidence enough to satisfy the Court before which the trial is had that, to use the words of Baily, J., in *Rex* v. *Denis*, 'A *bonâ fide* and diligent search was made for the instrument where it was likely to be found. But this is a question much fitter for the Court which tries than for us. They have to determine whether the evidence is satisfactory, whether the search has been *bonâ fide*, whether there has been due diligence, and so on. It is a mere waste of time on our part to listen to special pleading on the subject. To what employment shall we be devoted, if such matters are to be brought before us as matters of law? The Court below must exercise their own judgment as to the reasonableness of the search, taking into consideration the nature of the instrument, the time elapsed, and numerous other circumstances, which must vary with every case.'

"As to the diligence in the search necessary to let in secondary evidence, the following quotation from Taylor on Evidence seems to lay down the proper principles to be acted on by the courts: 'What degree of diligence is necessary in the search cannot easily be defined, as each