The question therefore is whether the authenticity and admissibility of the Power of Attorney (P7), which was marked subject to proof, has been established through subsequent testimony and analytical reasoning.

In Sri Lanka, the rules for the proof of documents are contained in Chapter 5 of the Evidence Ordinance No. 14 of 1895, as subsequently amended. Of particular, relevance to the proof of the Power of Attorney in question are Sections 67 to 73 of the Evidence Ordinance. The Power of Attorney marked P7 is alleged to have been executed and attested in India, but the purported executant Mohamed Mohideen Abdul Cader, was not called to testify regarding its execution, nor was any attempt made to show that the signature of the purported executant appearing on P7 was that of Abdul Cader. Sections 68 to 71 of the Evidence Ordinance deal with the proof of documents which are required by law to be attested, while Section 67 and 72 of the Ordinance deal with the proof of documents which are not required by law to be attested. Section 68 of the Ordinance provides that-

> If a document is required by law to be attested, it shall not be used as evidence until *one attesting witness at least* has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence. (*emphasis added*).

Mr. Faisz Musthapha, P.C., has submitted on behalf of the Appellants that in terms of Section 2 of the Prevention of Frauds Ordinance No. 7 of 1840, as subsequently amended, any "sale, purchase, transfer, assignment, or mortgage of land or other immovable property" is of no force or avail in law unless the same is notarially attested. He has further submitted that, just as much as Deed bearing No. 6165 dated 9th February 1987 (P1) was required by the aforesaid provision to be notarially attested, even the Power of Attorney (P7), by virtue of which Mohomad Ibrahim Lebbai Noor Lebbai, the executant of P1, purported to have the authority or power to make the same, was required by law to be attested. He based this submission on the premise that the conferment of authority or power to another to enter into any sale, purchase, transfer, assignment, or mortgage of land or other immovable property, was a contract or agreement for "establishing any security, interest, or incumbrance affecting land" within Section 2 of Ordinance No. 7 of 1840, and was governed by the same formalities. It was Mr. Musthapha's contention that just as much as the Deed marked P1 was required by law to be attested, so was the Power of Attorney marked P7, and at least one attesting witness thereof should have been called for the purpose of proving its execution.

The question as to who is an attesting witness has been considered in several leading judgements of our courts, and the gist of the decisions such as *Kirihanda v. Ukkuwa* [1892] 1 S.C.R. 216, *Somanather v. Sinnetamby* [1899] 1 Tambiah 38, and *Seneviratne v. Mendis* 6 C.W.R. 211 is that as a general rule, the witnesses who were present at the time the deed, last will or other instrument was executed are attesting witnesses competent to testify, and even the notary public before whom it was executed is deemed to be an attesting witness *if he knew the executants personally*. However, it is also relevant to note that in *Baronchy Appu v. Poidohamy* 2 Browns's Reports 221, *Hilda Jayasinghe v. Francis Samarawickrame* [1982] 1 Sri LR 249 and *Samarawickrema v. Jayasinghe and Another* [2009] BLR 85, it has been held that where the execution of such an instrument is challenged *on the ground that it had been signed before it was written*,