and at least one of the attesting witnesses is alive, the evidence of the notary alone, even where he knew the executant, is not sufficient and at least one of the attesting witnesses should also be called to testify. Such stringent proof is insisted upon in view of the solemnity that is attached to such a document and the need to prevent fraud. The Power of Attorney marked P7 was purportedly executed in the Ramanathapuram District of Tamilnadu, India before B. M. M. Hamid Hasan, Advocate & Notary Public. It is clear from the certification of the notary in the attestation clause of P7 that the notary did not know the executants Abdul Cader personally and depended on the "information" given by the two attesting witnesses, namely M. Shayeed, son of Mohamed Asanalabai, and V. Ravindran, son of C. Velusamy, both of Ramanathapuram District, India, neither of whom were called to testify in proof of its execution, and no explanation was given for the omission to do so. There was also no evidence in regard to whether or not the aforesaid power of attorney was registered in India in terms of the Indian Registration Act, 1908, and it is clear from the testimony of Ulludu Hewage Karunaratne, Registrar of Lands, Anuradhapura, that the said power of attorney was not registered in Sri Lanka nor was it tendered to the Registry with the second copy of the Deed marked P1 for registration. There is also no evidence to show that P7 was registered in terms of the Notaries Ordinance No. 4 of 1902, as subsequently amended, and what has been produced as P7 is not a certified copy issued under Section 8 of the said Act.

For the Respondents, Mr. Dayaratne has argued with great force that P7 was not a document that required attestation. In particular, he referred to the provisions of the Powers of Attorney Ordinance No. 4 of 1902, as subsequently amended, which provides for the registration of written authorities and powers of attorney. He pointed out that in Section 2 of the said Ordinance, the term "power of attorney" is defined so as to "*include* any written power or authority other than that given to an attorney-at law or law agent, given by one person to another to perform any work, do any act, or carry on any trade or business, and executed before two witnesses, or executed before or attested by a notary public or by a Justice of the Peace, Registrar, Deputy Registrar, or by any Judge or Magistrate, or Ambassador, High Commissioner or other diplomatic representative of the Republic of Sri Lanka", and relied on this inclusive definition for his contention that the law did not insist that a power of attorney must necessarily be in writing or should be registered. He submitted that a person may be appointed as attorney to deal with immovable property through a video recording, voice mail or telephone communication.

Mr. Dayaratne also submitted that the question whether the power or authority given for a person to execute a deed for dealing with immovable property on behalf of its owner should itself be executed in a similar manner had engaged our courts in the late nineteenth and early twentieth century in several cases, and heavily relied on the decisions in *Meera Saibo v. Paulu Silva* (1899) 4 NLR page 229, *Sinnathamby v. John Pulle* (1914 )18 NLR 273, *Beebee v. Sittambalam* (1920) 2 CLRec 72 and *Pathumma v. Rahimath* (1920) 22 NLR 159, which have held that the grant of authority to execute a notarial document does not itself require notarial execution. Mr. Dayaratne pointed out that in *Sinnathamby v. John Pulle,* it was argued on the authority of *Hunter v. Parker* 7 M&W 322 that a power of attorney to execute a deed can only be given by an instrument under seal, but Ennis, J., brushed aside this argument stating at page 276 that-

> The laws of Ceylon, however, do not provide for the distinction found in English Law between deeds, *i.e.*, documents signed, sealed, and delivered, and documents under