

Furthermore, as the distinguished District Judge of Colombo has observed (*vide* subparagraph (c) of the above summary), the form of delegation is governed by the law of the place where the delegation is made, which in this case is India, and the Respondents have failed to discharge the burden placed on them by law to prove the applicable legal principles and formalities in force in that country at the relevant period.

It is trite law that in terms of Section 45 of the Evidence Ordinance, the law of a foreign country has to be proved through the evidence of experts, or as outlined in the first proviso to Section 60, through other means such as the production in court of treatises on law where the author is dead or whose presence cannot be reasonably procured, and no expert testimony of the law in force India has been tendered in evidence or other material produced in court. The decision of this Court in *Sreenivasaraghava Pyengar v. Jainambeebe Ammal* (1947) 48 NLR 49 in this regard should be understood in the light of the fact that at the time of that decision, British India was part of Her Majesty's realm as much as Ceylon was, and was not a foreign country. In that case, the Supreme Court refused to rely on a document purporting to be a "true copy" of the original power of attorney, which had been copied by a registering officer in a book kept under the Indian Registration Act, 1908, and held that this was not in itself sufficient to establish the fact of execution of the original power of attorney. In the case before us, what has been produced is a mere photocopy, with no evidence in regard to how the photocopy was obtained, and in this case too there is no evidence to show that the power of attorney had been registered under the Indian Registration Act, 1908.

It was in these circumstances that Mr. Dayaratne sought to rely on the presumption in Section 85 of the Evidence Ordinance in regard to the Power of Attorney marked P7. In my considered opinion, the Respondents cannot invoke the assistance of this presumption, as the "authentication" required to attract the said presumption must be clear, specific and decisive. It has been held in *Mohanshet v. Jayashri* AIR (1979) Bom. 202, that "authentication" for this purpose is something more than execution, and cannot be based on the identification by a third person who is not called to testify in the case, in circumstances where the executant was not personally known to the Magistrate before whom the power of attorney in question was executed. As Desai, J., observed in the course of his judgement at pages 204 to 205 -

It is now well settled that authentication is more than mere execution before one of the persons designated in Section 85.....

As far as the identity of the executant is concerned, the Magistrate in fact indicates that he is personally unaware of the executants but puts his signature on the basis of identification made by an Advocate. It is true that such identification by the advocate is mentioned in the rubber stamp, and one may presume that it is on the basis of such identification that the Magistrate proceeded to put the rubber stamp. But will this amount to authentication by the Magistrate? Section 85 contains a presumption, a presumption which may operate in favour of the party relying on a document and to the prejudice of the party alleging that the document is not a genuine one. For the purpose of such presumption to operate, particularly in the background of the facts above ascertained, the authentication must be clear, specific and decisive, and bereft of the features which I have indicated earlier. If there is the slightest doubt, then the Court must be loathe to rely on the presumption contained in S. 85 and must be