

Mr. Berwick's celebrated judgement in the *Nama Sivaya* case, may for convenience summarized as follows:-

- (a) Mere "solemnities" (as the Civil Law calls them), however essential they may be to give validity to an act, and to whatever extent they may have been devised with a view to better authentication and proof under the English law, have not been introduced in Ceylon by virtue of the introduction of the English Law relating to evidence;
- (b) It therefore does not follow that, even if in the English Law a power of attorney to execute an instrument must be evidenced by an instrument of equal solemnity, the same is the Law of Ceylon;
- (c) The delegation of authority to enter into a deed is a personal act; the execution of the personal delegation is a "real" act. The latter must, in the present case, be done in conformity with the *lex loci citæ*; it may be that the former is to be governed by the law of the place where the delegation is made, viz., England, where the law does not require the conferment of such authority shall be attested either by a notary or by witnesses.
- (d) The Roman-Dutch Law authorities are silent as to the necessity of any special solemnities for the valid constitution of the mandate of an attorney, and nowhere in his *Treatise on the Contract of Mandate* does Pothier advert to the necessity for notarial attestation for this purpose;
- (e) Van Leeuwen, in his *Censura Forensis* (part 1, lib. 4, cap. 24) divides powers of attorneys into general and special, and also into express and tacit; and while he points out that there are many things which cannot be done under a general power of attorney (among others, sales and alienations), but which require a special power, he indicates no such difference under the further division into express (*Quod expressum verbis sit [aut literis]*) and tacit mandates, which is part of the law relating to agents; and
- (f) The contention in the context of Ordinance No. 7 of 1840 that the power of attorney itself establish an "interest affecting land" cannot be sustained because the power of attorney does not establish or convey any interest in land; it only authorizes another person to convey such an interest by all legal form and solemnities which the law of the Island may require.

If we have to apply to this case the principles of the Roman-Dutch law so authoritatively enunciated by Mr. Berwick in the aforesaid judgement, the Respondents will necessarily fail simply because the Power of Attorney marked P7 is not a special power of attorney which is requisite for empowering another to enter into a sale or alienation as explained by Van Leeuwen, in his *Censura Forensis* (part 1, lib. 4, cap. 24). I quote below the operative paragraph of P7 which makes it abundantly clear that this was definitely not a special power of attorney:-

- 5. To superintend, manage and control the aforesaid land or any other landed property which I now or hereafter may become entitled to, possessed of or interested in and to sell and dispose of the said land which now or hereafter I may become entitled to possessed of or interested in by private contract or to enter into any agreement for sale thereof for such price or prices and upon such terms and conditions as my said Attorney shall think fit.