Present : Bertram C.J. and Shaw J. 1920.

PATHUMMA *v.* RAHIMATH.

20—D. C. Colombo, 50,582.

Oral authority to execute notarially attested instrument—Principal and agent.

An authority to execute an instrument which under our law must be notarially executed can be given orally.

THE facts appear from the judgment.

F. M. de Saram (with him *Tisseverasinghe* and *Retnam*), for the appellant.

Elliott (with him *A. St. V. Jayawardene* and *H. E. Garvin*), for the added respondent.

H. J. C. Pereira (with him *Croos-Dabrera*), for the defendant, respondent.

July 20, 1920. BERTRAM C.J.—

Many questions have been discussed in this case, but it is only necessary to give a decision on one point. What the case really turns on is whether an authority to execute an instrument, which under our law must be notarially executed, can be given orally. As to the facts, it appears that the plaintiff some years ago received from her late husband a transfer of the property in dispute. Before she had received that transfer she had given her husband a power of attorney authorizing him to transact business in her name, the object being that as she was a Muhammadan woman she need not be troubled to subject herself to the publicity which the execution of notarial documents involves. The couple had a young adopted daughter, and, subsequently, arrangements were made for the marriage of that daughter. It is alleged, and the learned Judge considers it

1920.

BERTRAM C.J.

Pathumma v. Rahimath

proved, that the plaintiff and her husband arranged that the property in dispute should be conveyed to a trustee for the purpose of being settled upon this adopted daughter when she came to be married. A deed of trust for this purpose was drawn up and was executed by the husband, and it would appear that all parties considered that the husband was authorized to execute this deed by virtue of the general power of attorney which he had obtained from his wife some years before. It now appears that the terms of that power of attorney are not sufficiently specific to cover the execution of this deed. Nevertheless, it seems to me that there can be no doubt that, if the wife consented to her husband executing the deed, and approved of his doing it under the power of attorney she had previously given him, she must be taken by that very fact verbally to have authorized him to execute the instrument.

The question is, What is the legal effect of her so doing? That has been determined by cases which have been decided in this Court, the most important of which is the case of *Meera Saibo v. Paulu Silva*.[1] That was decided more than twenty years ago, and, I think, it must be taken to be now settled law, notwithstanding a different opinion expressed by Burnside C.J. in the case of *Dias v. Fernando*.[2] The case of *Meera Saibo v. Paulu Silva*[1] was followed in a subsequent case of comparatively recent date, *Sinnatamby v. Johnpulle*,[3] and I do not think that there can be any doubt that this represents the law of the Colony. In the circumstances, I am of opinion that the part which the wife took in the arrangements for the execution of the deed of trust constitutes a verbal authorization for the execution of that deed, and that, therefore, that deed was validly executed. In these circumstances it is not necessary for us to discuss the facts of the case. There is, no doubt, much to be said on both sides. But there can be no question that the District Judge had ample justification for the conclusion which he formed: that the wife was a consenting party to the arrangement for the execution of the deed of trust. The subsequent deed by which the trustee conveyed the property to the adopted daughter upon her marriage was executed in pursuance of that deed of trust, and must also be taken to be valid. I am, therefore, of opinion that the case was rightly decided, and that the appeal should be dismissed, with costs.

SHAW J.—I agree.

Appeal dismissed.

[1] *1899) 4 N. L. R. 229.*

[2] *(1888) 8 S. C. C. 182.*

[3] *(1915) 18 N. L. R. 273.*