1899.
November 14.

ARMUGAM *et al. v.* SANMUGAM.

D. C., Jaffna, 1,360.

Validity of a deed duly attested by a notary—Presumption in favour of it, if ex facia *regular—Evidence of witnesses that formalities were not observed.*

Per BONSER, C.J.—It is a dangerous doctrine that a deed, on the face of it regular, executed before a notary, who is a public officer, and bearing his attestation that everything was done in due form, should be set aside on the statement of one of the witnesses that the formalities were not observed. It is only by very cogent evidence that the presumption of law, that all its requirements have been complied with, can be rebutted.

THE second plaintiff, wife of first plaintiff, alleging herself to be the owner of certain lands, complained that the defendants had wrongfully ousted her, pretending title thereto upon a deed No. 6,228 dated 8th January, 1891, which the second plaintiff alleged was never granted by her to the father of the first, second and fourth defendants. Plaintiffs prayed that the said deed may be declared a forgery, and cancelled and set aside as null and void; that second plaintiff may be declared the owner of the said lands; and that the defendants be ejected therefrom and condemned to pay damages and costs.

Defendants pleaded, *inter alia*, that the deed in question was the act of the second plaintiff, and one of the issues framed was as to the genuineness of the deed.

At the trial the notary was not called by the plaintiffs, as he was dead. Though the attestation of the notary declared that the deed was duly signed by the grantor in the presence of the witnesses and of each other, two of the three attesting witnesses denied that, at the time each of them put his signature, the other was present, while the third witness denied his signature altogether.

The District Judge found that the deed was genuine, but as the witness said that they did not sign in the presence of each other, he held, on the authority of *Punchi Baba v. Ekanayaka* (*4 S. C. C. 119*), the deed to be invalid, and gave judgment for the second plaintiff.

Defendants appealed.

Tambayah, for appellants.

Sampayo, for respondents.

14th November, 1899. BONSER, C.J.—

The question raised by this appeal is as to the validity of a deed purporting to have been executed by the second plaintiff on the 11th January, 1891. The deed is attested by a notary and three witnesses, and the attestation clause is in the ordinary form. It states, amongst other things that the witnesses subscribed to it in the presence of the grantor and each other. The second plaintiff denied the execution of the deed. The notary is dead; but the three attesting witnesses were called, one of whom denied his signature. The other two witnesses admitted their signatures, but they stated that when they respectively signed they did not see the other witnesses present. The District Judge believed that the deed was a genuine deed, and was actually signed by the second plaintiff; but he was of opinion that the evidence of the attesting witnesses showed that they had not signed it in each other's presence, and accordingly he held the deed was invalid, following a decision of this Court (*Punchi Baba v. David Ekanayaka, 4 S. C. C., 119*).

Now, it seems to me a very dangerous doctrine that a deed, on the face of it regular, executed before a notary, who is a public officer, and bearing his attestation that everything was done in due form, should be set aside on the statement of one of the witnesses that the formalities were not observed. The presumption of law is that the requirements of the law were complied with. Of course that presumption may be rebutted, but in my opinion only by very cogent evidence, especially when, as in this case, the deed has been acted upon, as the District Judge finds, for seven or eight years. If this deed be held invalid on the evidence in this case, hardly any deed will be safe. In my opinion it is safer to assume that the memory of the witness was defective. The evidence that the requirements of the law were not complied with in the present case is not sufficiently strong to rebut the presumption of the regularity of the deed

WITHERS, J.—

I agree for the same reasons, and have nothing further to add.