

ARNOLIS v. MUTU MENIKA.

1896.
October 22.*D. C., Ratnapura, 542.**Evidence—Proof of deed—Number of witnesses to be called.*

In order to prove the execution of a mortgage bond attested by a notary and two witnesses it is not necessary that the notary and both the attesting witnesses should be called. It may be proved by the evidence of only one witness, although as a matter of precaution it may be advisable in many cases to call all the attesting witnesses.

THIS was an appeal by the plaintiff from a judgment of the District Judge dismissing his claim with costs. The action was one on a mortgage bond, which the defendant impeached as a forgery. The plaintiff called the notary and one of the two attesting witnesses to prove the bond. The District Judge held that as a matter of law it was necessary to call both the attesting witnesses. He also expressed dissatisfaction with the evidence of the witnesses called, and dismissed the action with costs.

In appeal, *Dornhorst*, for appellant ; *De Saram*, for respondent.

October 22, 1896. BONSEE, C.J.—

The plaintiff in this case sues on a bond dated the 25th March, 1886.

The bond was given by a Kandyan married woman, and purported to mortgage certain landed property to secure a sum of two hundred and fifty rupees and interest.

The bond was executed before a notary at Balangoda. The defendant on being sued set up a defence that the bond was a forgery.

The plaintiff called the notary and one of the attesting witnesses. It appears that the other attesting witness had left the district and had not been seen for some time, so that his absence was accounted for. Mr. Drieberg, the Acting District Judge of Ratnapura, held that as a matter of law it was necessary to call both the attesting witnesses. I am unable to agree with that statement of the law. A deed can be proved by the evidence of one witness, though as a matter of precaution it may be advisable in many cases to call all the witnesses.

[His Lordship here discussed the facts of the case, and held that the deed was sufficiently proved, and allowed the appeal.]

LAWRIE, J.—

In my opinion there is sufficient proof of the execution by the defendant of the bond sued on. The notary and one of the attesting witnesses have given evidence that the defendant did put her mark as mortgagor on the bond.

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