CAROLIS *v.* BASTIAN.

211—D. C. Matara, 5,349.

A St. V. Jayawardene and *Mendis*, for the record defendant, appellant.

Allan Drieberg and *Balasingham*, for the respondents.

Cur. adv. vult.

February 25, 1913. PEREIRA J.—

His Lordship set out the facts, and after discussing the evidence continued:—

As regards deed P 3, the second defendant denies execution, and execution by him has not been proved, in terms of sections 68 and 69 of the Evidence Ordinance. It is contended that, inasmuch as the second defendant has executed the deed by drawing a cross or mark on it, it need not be proved in terms of section 69 of the Evidence Ordinance, but it has already been held by this Court that the combined effect of section 69 of the Evidence Ordinance and section 3, sub-section (17), of the Interpretation Ordinance, 1901, is to render it necessary to prove even such a deed in the manner required by section 69 of the Evidence Ordinance. In an Indian case (*Abdulla Paru v. Gannibat, I. L. R. 11 Bom. 690*) it was held that where a notary's signature was proved, his statement in the attestation clause would be evidence. I doubt that this case would apply to us. Anyway, in the present instance the notary has stated in the attestation clause that the second defendant was not known to him.

I would set aside the judgment appealed from, and enter judgment declaring the second defendant entitled to lot C and for a partition of A and B, on the footing that the second defendant is entitled to half and the plaintiff and the first defendant (in equal shares) to the other half. I think that the appellant is entitled to his costs in both Courts.

ENNIS J.— I agree.