1900.
July 11.

PULLENAYAGAM *v.* FERNANDO.

C. R., Chilaw, 489.

Action rei vindicatio—*Burial ground*—Locus religiosus—*Dedication by owner, when presumed.*

Where, in an action *rei vindicatio*, it was proved that the plot of ground in question had been fenced off and used for burial purposes for more than twenty years without any objection on the part of the plaintiff's predecessors in title, *held*, that this was sufficient to raise the presumption of dedication to the public and to constitute the plot a *res religiosa*, and that therefore the conveyance in favour of the plaintiff did not pass any title to him.

IN this action plaintiff prayed for a declaration of title as against the defendants, in that they had taken forcible and unlawful possession of a portion of a certain land belonging to him. The defendants pleaded that they and other villagers of Marawila had used the said land as a burial ground for several generations. The Commissioner found, after evidence taken and considered, that the portion in question had always been jungle and waste; that it had been used by the villagers for more than ten years as a burial ground; and that the plaintiff had shown no manner of title to it. He therefore dismissed the action with costs.

The plaintiff appealed.

Bawa, for appellant.—Defendants do not claim the land as against the plaintiff, but assert it is a burial ground. [BONSER, C.J.—Then it is a *locus religiosus*. You cannot bring an action *rei vindicatio* in regard to it. It cannot be sold or bought.] That is so only where the land is made *locus religiosus* by grant. The plaintiff who claims the land as part of a larger land which belongs to him did not make any grant in favour of the defendants or their ancestors (*Censura Forensis, 2, 1, 10; Voet ad Pand., 2, 7, 4*). [BONSER, C.J.—A grant may be presumed in this case. There is no evidence of any objection on his part, or on the part of his predecessors.] In *Adakken v. Silva* (*6 S. C. C. 21*) it was held that where a large number of people had been in the habit of burying and cremating their dead within an undefined area, part of a larger tract of land, without erecting tombs or other sepulchral monuments, such people were not entitled as against the owner of the land to insist on using the plot in question for future interments.

Van Langenberg, for respondent.—The presumption of dedication by reason of long and uninterrupted use applies to the present case, and there is no evidence to show that the plot in question was possessed by plaintiff or his predecessor in title.

BONSER, C.J.— 1900. *July 11.*

In this case the plaintiff has brought an action against six persons who are villagers inhabiting Marawila, claiming as against them to be declared the owners of a small piece of land about 3 roods in extent, which he says belongs to him, and of which he alleges the defendants have taken unlawful possession. He asks that they may be ejected and he placed in possession. This, therefore, is an action *rei vindicatio* by a person who alleges that he is the owner of certain immovable property to vindicate that property. The defendants allege that the land is an ancient village burial ground, and has been so used for nearly one hundred years past. At the trial the plaintiff gave evidence and produced the deed under which he had purchased in 1894 an estate of some 9 acres, which within the boundaries set out in the conveyance included this piece of land. He also produced a title deed of 1864 by which this estate had been conveyed to his vendor. Apparently the estate has been cultivated as a coconut plantation, but this small plot of land in dispute has never been planted. To support his case he called a witness, who, however, proved the case for the defendant, for he stated that this plot of ground had been used for burial purposes by the villagers for generations. He said his mother and wife had been buried there not more than three years ago; that it was fenced off from the rest of the estate, and had been so for a very long time, for he remembered the fact when he was a boy. He stated that he was now thirty years of age, so that it would appear from his evidence that this plot had been fenced off from the rest of the land for at least twenty years. In this state of things we are bound to assume that this piece of land was dedicated by the owner a long time ago for the purpose of a burial ground. No one has ever objected to a corpse being buried there, and I say we are bound to assume that burials have taken place with the approval of the owners of the soil. It seems to me that that constitutes this burial ground a *res religiosa*, and by the law of this Island a *res religiosa* is *res nullius*—no one's property. As Van Leeuwen states, *extra commercium ita ut plane nullius in bonis sint nec alicujus fieri possint, sunt res sacræ religiosæ et res sanctæ* (*C. F. 2, 1, 10*, and *Voet, 2, 7, 4*). That being so, the conveyance of 1894 did not pass any title to the purchaser, and he cannot make it the subject of an action *rei vindicatio*.

In my opinion, therefore, the Commissioner was right in dismissing the action.