1957 *Present :* Basnayake, C.J., and Pulle, J.

PERERA *et al.*, Appellants, *and* WIJESURIYA *et al.*, Respondents

S. C. 411–412—D. C. Panadura, 2836

Possessory action—Prescription Ordinance (Cap. 55), s. 4—Trespass without ouster—Can it amount to "dispossession" ?—Requirement of possession for a year and a day.

Trespass without ouster may, in appropriate circumstances, amount to dispossession within the meaning of section 4 of the Prescription Ordinance.

The land in dispute in this action was part of a larger land and had been in the possession of the plaintiff for over 25 years. On June 13, 1951, the defendants (husband and wife) entered the land after cutting down the live fence which formed one of its boundaries. When the plaintiff informed the Police, the latter advised the rival parties to submit their dispute for adjudication by a Court of law and to abstain from the exercise of any rights in respect of the land in the meanwhile. On June 22, 1951, however, the 2nd defendant and several others entered the land and commenced to construct a hut thereon. They were again warned by the Police against a breach of the peace and proceedings were instituted in the Magistrate's Court on the next day to have the wrongdoers bound over to keep the peace. The proceedings in the Magistrate's Court were withdrawn by the Police on July 28, 1951, in consequence of an undertaking given to Court by the 2nd defendant not to enter the portion in dispute "pending the decision of this matter in a suitable action", which civil action was to be filed by the plaintiff within two months from July 28, 1951. Pending the proceedings in the Magistrate's Court, the plaintiff erected on June 23, 1951, two mud huts on the land and placed her agents therein. Subsequently, in accordance with the undertaking given in the Magistrate's Court, the plaintiff instituted the present action on August 24, 1951, claiming a possessory decree to prevent the defendants from entering the land again.

Held, that, although the plaintiff was in possession of the land on the date of the institution of the action, the acts of the defendants on the 13th and 22nd June, 1951, amounted to dispossession of the plaintiff within the meaning of section 4 of the Prescription Ordinance. The plaintiff, therefore, having been in possession of the land for over a year and a day prior to 13th June, 1951, was entitled to maintain a possessory action.

Pattirigey Carlina Hamy v. Mugegodagey Charles de Silva (1883) 5 S. C. C. 140, not followed.

Obiter, per BASNAYAKE, C.J.—"There is no binding decision of this Court that an action under section 4 of the Prescription Ordinance cannot be maintained unless the plaintiff had had possession for a year and a day."

APPEALS from a judgment of the District Court, Panadura.

G. P. J. Kurukulasuriya, for 2nd Defendant-Appellant in S. C. 411 and 2nd Defendant-Respondent in S. C. 412.

N. E. Weerasooria, Q.C., with *Titus Goonetilleke*, for 1st Defendant-Appellant in S. C. 412 and 1st Defendant-Respondent in S. C. 411.

H. V. Perera, Q.C., with *A. C. Gooneratne* and *E. Gooneratne*, for Plaintiff-Respondent in both appeals.

Cur. adv. vult.

August 28, 1957. BASNAYAKE, C.J.—

This is an appeal from a decree under section 4 of the Prescription Ordinance declaring the plaintiff entitled to be restored to the possession of an allotment of land called Delgahawatte in extent about 1½ acres.

Learned counsel for the 1st defendant contended firstly that the plaintiff had not been dispossessed of her land and secondly that even if the plaintiff had been dispossessed, having at the date of the action regained possession, she is not entitled to maintain this action.

Shortly the facts are as follows : The land in dispute was once a part of a larger land known as Delgahawatte several acres in extent. For over 25 years it has been in the possession of the plaintiff and has been a separate entity of about 1½ acres in extent with barbed wire fences all round. Adjoining it on the west is the plaintiff's land and on the south the land of the defendants.

In October 1945 the first defendant who is the wife of the second defendant purchased some undivided shares in the larger land Delgahawatte. On 6th June 1946 she instituted a partition action in respect of that land naming the plaintiff as the 1st defendant to that action. About 7th June 1951 the partition action was withdrawn. On 13th June 1951 the defendants cut the barbed wire and the trees of the fence that separated their land from the land in question. The plaintiff informed the Police and the Village Headman, both of whom visited the land and observed that the fence had been cut. The defendants admitted to the Headman that they had cut the fence to take earth from the land in dispute. The second defendant also claimed the right to cut the fence on the ground that he had erected it. The police advised the rival parties to submit their dispute for adjudication by a Court of law, and to abstain from the exercise of any rights in respect thereof in the meanwhile. Thereafter nothing untoward occurred till 22nd June 1951 when the 2nd defendant and several others entered the land at about 9.30 at night and with the aid of powerful lights commenced to construct a hut thereon. The plaintiff again informed the Police who came immediately and took steps to prevent a breach of the peace. Some of those assisting the 2nd defendant were reconvicted criminals. They were warned against a breach of the peace and proceedings were instituted in the Magistrate's Court the very next day to have the wrongdoers bound over to keep the peace. The proceedings dragged on till 28th July 1951 when the application to have them bound over was withdrawn in view of an undertaking given by the 2nd defendant and his associates not to enter the land pending civil legal proceedings by the plaintiff. The record by the Magistrate of the understanding reached on that day reads as follows :—

"It is agreed that respondents 1-6 will remain within the present fence on Lot No. 10. It is further agreed that neither these respondents nor anyone else on their behalf will (not) enter Lot 10 on the southern side of the fence pending the decision of this matter in a suitable civil action. It is also further agreed that neither the respondents nor Wijesuriya will interfere with the existing fence as they said today. Mr. Wijesuriya undertakes to bring an appropriate civil action to assert

his rights to that portion of Lot 10 or any portion thereof, within two months from today. If this action is not brought within two months or is not prosecuted with due diligence, it is agreed that this present agreement would cease to have any binding force on the respondents.

"The respondents 7-10 are outsiders. They are severally warned not to enter this land or take any part in these transactions hereafter."

While these proceedings were pending on 23rd June the plaintiff erected two mud huts on the land and placed her agents therein. The plaintiff's son giving evidence for her said :

"We have been in possession even today and for many years. Our complaint is that on 13th June 1951 the defendants forcibly entered our land and cut our fence, and thereafter on 22nd June1951 they once again forcibly entered our land. This action is to prevent the defendants from doing so again. There were no mud huts on the disputed portion before."

The events of 13th and 22nd June are not seriously disputed. The second defendant claimed that he was asserting the 1st defendant's rights over the land.

The learned District Judge has held that the land in dispute was not held in common and that the plaintiff was in exclusive possession of it for over a year and a day prior to the 13th June 1951. He answered in favour of the plaintiff the following issues framed at the trial :—

(1) Was the plaintiff in possession of the land depicted in Plan No. 1,263 dated 28th January 1952 which is the same as Lot 10A in Plan No. 1,647 of 28th January 1952 for over a year and a day prior to 13th June 1951 ?

(2) If so, is the plaintiff entitled to a possessory decree in respect of the said land ?

I shall now deal with the submissions on law of learned counsel for the appellant. Learned counsel submitted that the cutting down of the fence and the attempt to erect a hut on the land did not amount to dispossession of the plaintiff. He submitted that they were acts of trespass and did not entitle the plaintiff to a decree under section 4 of the Prescription Ordinance. He cited the case of *Pattirigey Carlina Hamy v. Mugegodagey Charles de Silva*[1] in support of his submission. In that case Burnside C.J. who delivered the judgment of this Court stated :—

"It is clear that the dispossession referred to in this section (s. 4) consists of an amover or deprivation of possession, or in another word well known to the law, 'an ouster'. Acts which merely amount to a trespass without 'ouster' do not amount to dispossession."

The defendant in that case in the absence of the plaintiff entered his land and erected a fence separating the portion on which he lived from the rest and plucked the nuts of the portion so separated. The plaintiff thereafter did not receive the fruits of the separated portion. On this

[1] *(1883) 5 S. C. C. 140.*

material it was held that the acts of the defendant did not amount to dispossession of the plaintiff. With great respect I find myself unable to agree with that decision.

In the first place it is necessary to ascertain the content and meaning of the expression "dispossession" in section 4 of the Prescription Ordinance.

Under the Roman Law the remedies against unlawful disturbance or deprivation of immovable property were the interdicts of *Uti possidetis* and *Unde vi*. The former interdict was issued when a person's possession was disturbed. The corresponding Roman Dutch remedy was known as *Mandament van Maintenue*. The latter interdict was issued when a person was unlawfully deprived of his possession of immovable property either by violence, fraud or any other means. The corresponding Roman Dutch remedy was known as *Mandament van Spolie*. As our section 4 uses only the expressions "dispossessed" and "dispossession" and does not expressly refer to "disturbance", the question arises whether the Roman Dutch remedy of *Mandament van Maintenue* (*uti possidetis* of Roman Law) is caught up by it or not. If it is not, can a person whose possession is disturbed seek that remedy? The answer to the question whether a person who is not deprived of but is only disturbed in his possession is entitled to seek the remedy provided by the section depends on the meaning of the word "dispossessed" in the context. The ordinary meaning of the word "dispossessed" is "to put out of possession", "to deprive of possession", and "to oust".

Next it is necessary to ascertain when a person can be said to be "put out of possession" or "deprived of possession" or "ousted". What is possession? Savigny (On Possession, page 2) defines it thus:

> "By the possession of a thing, we always conceive the condition, in which not only one's own dealing with the thing is physically possible, but every other person's dealing with it is capable of being excluded."

Possession in this connexion is defined by Voet in Book XLI, Tit. 2, Section 12, of his Pandects. He says:

> "Possession is kept (i) By mind and body together; or (ii) Even by the mind alone, so much so that, although another has seized possession by stealth in the absence of the possessor, nevertheless the earlier possessor does not cease to possess until, being aware that the other has made an entry, he has not had the courage to go back into possession, because he fears superior force. In such a case he who seized possession appears to possess rather by force than by stealth."

Any act which prevents a person from exercising his rights of possession would be a deprivation of his possession or an ouster of him. In that sense the defendants' acts amount to a dispossession of the plaintiff, because on both occasions she was by fear of superior force compelled to seek the aid of the Police and refrain from entering on the land. Section 4 also speaks of a "restoration of such possession". The question of

restoration of possession does not arise unless a person has been deprived of it. It would appear therefore that the word " dispossession " bears in section 4 of the Ordinance the meaning of " put out of possession " or " deprived of possession " or " ouster ".

There is a difference of opinion among the writers on Roman Dutch Law as to whether actual violence of a physical nature was necessary for the *Mandament van Spolie,* but the better view is that neither force nor fraud is necessary. The essence of the action lay in unlawful dispossession. This is the view adopted in the leading South African case on this point (*Nino Bonino v. De Lange* [1]), which holds that the essence of the remedy of *Spolie* lies in unlawful dispossession committed against the will of the plaintiff and neither force nor fraud is necessary. Our section 4 seems to adopt this view for it gives the remedy thereunder to " any person who shall have been dispossessed of any immovable property otherwise than by process of law ". Section 4 therefore affords no authority for an action on the lines of *uti possidetis* or *Mandament van Maintenue.* Does it exclude such an action ? I think not. Section 3 indicates that the Prescription Ordinance did not intend to take away a person's right to bring an action for the purpose of being quieted in his possession of immovable property. The purpose of the Roman remedy of *uti possidetis* and the Roman Dutch remedy of *Mandament van Maintenue* was to give a right of action in cases of mere disturbance of or threat to possession so that the plaintiff may continue in his possession quiet and undisturbed.

Voet defines disturbance of possession in Book XLIII, Tit. 17, Section 3. He says :

> " This interdict is granted against those who maintain that they also have possession, and who under that pretext disturb one who abides in possession. They may do this by bringing force to bear upon him, or by not allowing the possessor to use at his discretion what he possesses, whether they do so by sowing, or by ploughing, or by building or repairing something or by doing anything at all by which they do not leave the free possession to their opponent. This applies whether they do these things by themselves, or bid them to be done by their agent or household, or ratify the act when done, in the same way as that in which I have said in my title on ' The Interdict as to Force and Force with Arms' that this rule holds good with the interdict against force. "

The next question is whether the plaintiff must fail merely because she regained possession on the 23rd June and was at the time the action was brought in possession of the land. I think not. As stated above, the remedy is designed to prevent persons taking the law into their own hands. Although the plaintiff got back her possession on the 23rd she was entitled on the facts of this case to institute an action against the person who dispossessed her on 13th and 22nd June and ask for a decree

[1] (*1906*) *T. S. 126.*

against that person for the restoration of her possession. Without such a decree she is likely to be deprived of her possession once more by the defendants who have agreed not to enter on the land only until the dispute as to possession is decided by a competent Court of civil jurisdiction. If there is a dispute as to title that must be fought in a separate action. The maxim is *spoliatus ante omnia restituendus est* and the fact that she has been able to enter on the land and remain there by virtue of the undertaking given by the defendants not to enter on it themselves pending the action, is no ground for refusing the plaintiff the decree she is declared by the statute to be entitled to on the facts established in this case.

Though the question does not arise for decision in this case, I wish to refer to another aspect of section 4 which was argued before us. Does it require that the plaintiff at the time of dispossession should have possessed for a year and a day? There are decisions of this Court which regard the proviso to the section as importing into our section the requirement of a year and a day's possession as in the case of the Roman Dutch remedy of *Mandament van Complainte*. The words of the proviso are " Provided that nothing herein contained shall be held to affect the other requirements of the law as respects possessory cases." Now what are the requirements applicable to possessory cases. *Complainte* required a year and a day's possession but not the other two remedies of *Mandament van Maintenue* and *Spolie*. Neither of the Roman Law remedies of *uti possidetis* and *unde vi* required a year and a day's possession. I am therefore not inclined to regard the proviso as introducing the requirement of a year and a day's possession of *Mandament van Complainte* especially because the special procedure of that remedy had in later years fallen into desuetude. Then what are the other requirements referred to in the proviso ? They cannot be the procedural requirements of the Roman Dutch Law as the Roman Dutch procedure has since the procedural enactments of the early days of the British ceased to be in force. The only requirements common to all possessory cases following dispossession were that the possession of the plaintiff should have been obtained *nec vi, nec clam*, or *nec precario*. That requirement runs through all the *Mandaments—Complainte, Maintenue*, and *Spolie*—and even the Roman Law remedies of *unde vi* and *uti possidetis*. In the case of *Goonewardena v. Pereira* [1] Bonser C.J. stated :

> " As regards possession for a year and a day, speaking for my own part, I am not prepared to assent to the proposition that, where there is an ouster by violence of the person who is in possession of the property, anything more is required to be proved by him than that he was in possession and that he was violently ousted. "

As no reasons are given for the opinion it is not clear on what the opinion is founded. Neither section 4 nor the remedy of *Spolie* requires that the ouster should be by violence. Wendt J. the other member of the Bench expressed no opinion on the question of the requirement of possession for a year and a day.

[1] *(1902) 5 N. L. R. 320.*

In the later case of *Abdul Aziz v. Abdul Rahim* [1], (a judgment of a Bench of three Judges), Hutchinson C.J. expressed the following view :—

> " The Roman-Dutch law requires the plaintiff in a possessory action to have had quiet and undisturbed possession for a year and a day ; and the requisites of ' possession ' are the power to deal with the property as he pleases, to the exclusion of every other person, and the *animus domini*, i.e., the intention of holding it as his own. "

Here too no reasons are given for the opinion that a year and a day's possession is a prerequisite to a possessory action. Middleton J. quotes the following passage from Kotze's translation of Van Leeuwen :—

> " Possession is only a bare and naked apprehension and detention of a thing with the intention of using it as one's own. It consists in this that a person having so possessed anything or right for a year and a day is entitled to retain the possession until somebody else who disputes his possession has lawfully established his right of property ".

This passage occurs in the chapter on Possession and Prescription and refers to the old period of prescription for a year and a day. The passage itself indicates that the erudite commentator is not dealing with the possessory action ; but with rights of property, for, he says that the possessor who has had a year and a day's possession is entitled to retain the possession until someone has lawfully established his right of property. He is not here dealing with the right of a person who has been dispossessed without legal process to be restored to possession. The passage is therefore not an authority for the proposition that possession for a year and a day is a prerequisite to a possessory action. Middleton J.'s statement later on in his judgment that the right to bring a possessory action depends on *proof of possession for the time limited* finds no support among the writers cited by him, nor is it supported by section 4 of our Ordinance. Wood Renton J. the other Judge who formed the Bench did not deal with the question of possession for a year and a day as it did not arise for decision in the case ; but confined himself to the real issue, viz., the nature of possession necessary to enable a dispossessed person to institute an action under section 4.

In the later case of *Silva v. Dingiri Menika et al.* [2], where the question whether a year and a day's possession was necessary to enable a dispossessed person to institute a possessory action arose, Hutchinson C.J. and Middleton J. two of the Juges who decided the case of *Abdul Aziz v. Abdul Rahim* (*supra*) held that it was not necessary. No reference was made to their judgments in Abdul Aziz's case, but reference was made to the judgment of Laurie J. in the case of *Perera v. Fernando* [3], where he held that possession for a year and a day was necessary to enable a dispossessed plaintiff to institute an action under section 4. He relied on Van der Linden for his view. In the passage referred to Van der Linden speaks of *Mandament van Complainte*. He says (Juta's translation, page 100) that several legal proceedings with regard to possession

[1] *(1909) 12 N. L. R. 330.* [2] *(1910) 13 N. L. R. 179.*
[3] *(1892) 1 S. C. R. 329.*

have been introduced in the practice of Holland. He then goes on to enumerate the proceedings of *Mandament van Immissie, Mandament van Maintenue,* and thirdly *Mandament van Complainte,* and describes the last named thus :—

> " 3. To recover lost possession. This is called Writ of *Complainte* (*Mandament van Complainte*). In order to obtain this remedy a person must have been in quiet and peaceful possession for more than a year and a day, and must have been ousted within the year. For the benefit of persons who have been ousted from possession with violence, we have adopted in our practice the remedy of the Canon Common Law known as the Writ of *Spolie Mandament van Spolie.*

Van der Linden therefore affords no authority for saying that in an action under section 4 possession for a year and a day must be proved.

From the foregoing it is clear that there is no binding decision of this Court that an action under section 4 of the Prescription Ordinance cannot be maintained unless the plaintiff had had possession for a year and a day.

The appeals are dismissed with costs.

PULLE, J.—

The appeals of the two defendants which arise out of an action instituted on the 24th August, 1951, relate to a land called Delgahawatta of the extent of 1A. 1R. 38P. shewn on a plan, marked P2, and dated the 28th January, 1952. The plaintiff sought a possessory decree alleging that she had possession of the land in her own right for over a year and a day, that the defendants on the 13th June, 1951, entered the land after cutting down the live fence which formed its northern boundary and that on the 22nd June, 1951, they attempted forcibly to construct a hut on the land. The first defendant is the wife of the second. The defence was that the first defendant was by right of purchase on a deed marked D17 dated 12th October, 1945, the owner of certain undivided interests in a land called Delgahawatta of the extent 16A. 2R. 37P. shewn on the plan dated 18th May, 1946, marked D2, and that in lieu of those undivided interests she was in possession of lot 10 in that plan and that the portion in respect of which the plaintiff sought a possessory decree was itself an undivided portion of lot 10. A point of law pressed both in the trial court and in appeal is pleaded by each of the defendants as follows :—

> " The plaintiff is not entitled to maintain a possessory action against this defendant as she is in possession of the interests claimed by her in this action."

It may be stated that the evidence called by the defence amounted to an allegation of forcible deprivation of possession of the defendants by the plaintiff's agents from the land which is the subject matter of this action.

The principal issue which was tried was whether the plaintiff was in possession of the land depicted in P2 (which is identical with lot 10A in another plan D1 also prepared for this case at the instance of the defendants) for more than a year and a day prior to 13th June, 1951.

The learned trial Judge's findings on all the material questions of fact were in favour of the plaintiff. He was quite satisfied on the evidence that for several years prior to the conveyance D17 of 1945 in favour of the 1st defendant the plaintiff had exclusive possession of the lot in dispute without acknowledging any rights of co-ownership in either the defendants or any one else. There was ample evidence to support his findings and I see no reason to differ from them. All that remains to be considered is the submission on behalf of the appellants that even if one accepts all the evidence called for the plaintiff the learned Judge was wrong in granting a possessory decree. The argument was based principally on the case of *Pattirigey Carlina Hamy v. Magegodagey Charles de Silva* [1] which is to the effect that acts which merely amount to trespass without ouster do not amount to dispossession for the purpose of section 4 of the Prescription Ordinance. The defendants say that it is a pre-requisite to the passing of a decree under section 4 that a plaintiff should have lost possession and that in the present case there was no question of restoration of possession because the plaintiff, when she came to court, was already in possession.

It is submitted on behalf of the plaintiff that there was a dispossession such as contemplated by section 4 and that, in any event, the plaintiff was disturbed in her possession and that under the common law she was entitled to be quieted in possession.

For the purpose of dealing with the submissions on behalf of both parties it is necessary to state in some detail the events which led up to the institution of the present action.

To the north of the portion of Delgahawatta which is in dispute is another portion of land of the same name in the occupation of the defendants. A live fence separated the two portions and this was admittedly cut by the first defendant on 13th June, 1951. When the village headman to whom a complaint was made on the same day went to the land the first defendant stated that the fence had been put up by her and that she cut it " as it was necessary to take the clay for the construction of the house." Throughout the trial the defendants strenuously maintained that the portion in dispute was never in the possession of the plaintiff and that the fence was erected by them to protect some plantain bushes and to prevent theft from a building standing on the portion to the north of the fence. An incident of a more serious character occurred on the night of 22nd June, 1951. A party of people, of whom some were reconvicted criminals, entered with lights the portion in dispute in the company of the second defendant and commenced to build a hut. On a complaint made by the plaintiff's son the Inspector of Police, Mount Lavinia, arrived at about 10 p.m.

[1] *(1883) 5 S.C.C. 110.*

and saw the second defendant and nine others putting up a cadjan hut. He feared a breach of the peace and moved the Magistrate's Court on the 23rd June, 1951, for an order binding over the second defendant and nine others to keep the peace. The application was withdrawn on the 28th July, 1951, in view of what is recorded in those proceedings as an " agreement " entered into by the parties. The second defendant and five others agreed not to enter the portion in dispute " pending the decision of this matter in a suitable civil action ", which civil action was to be filed by the plaintiff within two months reckoned from 28th July, 1951. It was further provided, " If this action is not brought within two months or is not prosecuted with due diligence, it is agreed that this present agreement would cease to have any binding force on the respondents."

The attempt of the defendants to put up forcibly a hut on the disputed portion was frustrated by the counter action of the plaintiff who started to erect two mud huts on the 23rd June and placed watchers in them. The plaintiff's position is that, but for the events which occurred on the 13th and 22nd June, her possession was complete and undisturbed. Her son who gave evidence stated,

> " We have been in possession even today and for many years. Our complaint is that on the 13th June, 1951, the defendants forcibly entered our land and cut our fence. Thereafter on 22nd June, 1951, they once again forcibly entered our land. The action is to prevent the defendants from doing so again."

Referring to the attempt of the defendants to build a hut on the night of 22nd June, 1951, the witness said

> " The defendants tried to put up a hut. That could not be completed when the Police came on the scene and they were asked not to proceed with the work. There was nothing to demolish. It was in the process of being made when they abandoned it and went."

It was strongly urged on us that on this evidence the plaintiff could not claim to have been " dispossessed " within the meaning of section 4 of the Prescription Ordinance and was, therefore, not entitled to the relief provided by that section.

There appears to be some force in the submission on behalf of the defendant that the plaintiff cannot maintain that, at the date of the action, she stood dispossessed, in the sense of having suffered an ouster, and that she required a decree of court to be restored to possession. But I think this argument fails in the light of the very special circumstances in which the action was instituted. Even prior to the conveyance D17 in favour of the first defendant the plaintiff was in secure possession of the lot in dispute. It was fenced on the north, west and south and the land immediately to the east is admittedly the plaintiff's. On the 13th June, 1951, the defendants used force by cutting the fence on the north, which was nothing less than a symbolic act of annexation. When the plaintiff complained to the authorities the defendants did not

desist but went a step further. With the aid of some criminals they dug up the ground a few days afterwards and attempted to build a hut. It is true that the plaintiff herself began to build two huts but in the proceedings taken in the Magistrate's Court the plaintiff had to agree to remain on her land with an assurance that she would not be turned out of it, if within two months she filed a civil action to vindicate her rights. In other words the acts of the defendants resulted in her having to vindicate that the forcible ouster which began on the 13th June and culminated on the 22nd June was wrong and to ask that she be restored to the fullness of the possession she enjoyed without any disturbance prior to 13th June. If, as it has turned out to be, that the defendants did not have a single day's possession of the lot in dispute prior to 13th June, 1951, and by their acts compelled the plaintiff to assert and prove in a court of law that she was not liable to suffer forcible eviction at their hands, then it seems to me that the remedy of a possessory suit granted by the Roman Dutch Law recognized by section 4 of the Prescription Ordinance is available to the plaintiff.

If the opinion which I have just expressed is erroneous I would hold that the equivalent of the possessory remedy "*uti possidetis*" is available to the plaintiff to be quieted in possession against acts of disturbance. In the case of *Pretapetantrige Miguel Perera v. Gangeboda Valage Sobana* [1] Burnside, C. J., states

> "Possessory actions in this Colony rest upon the edicts *unde vi* and *uti possidetis* of the Roman Law as adopted by the Dutch Law, the former relating to the forcible deprivation of possession, the latter to the disturbance of possession."

Voet says in Book 43, Title 17, section 3 (vide The Selective Voet, 6th Volume, p. 497, by Percival Gane) of *uti possidetis*,

> "This interdict is granted against those who maintain that they also have possession and who under that pretext disturb one who abides in possession. They may do this by bringing force to bear upon him or by not allowing the possessor to use at his discretion what he possesses or by ploughing, or by building or repairing something or by doing anything at all by which they do not leave the free possession to their opponent."

The foregoing is in large part an apt description of the acts committed by the defendants, and, in my opinion, the plaintiff is entitled to ask a court to provide her with a remedy by which she could remain in peaceful possession of her land unmolested and undisturbed by the defendants taking the law into their own hands.

The defences taken are entirely without merit and I would dismiss the two appeals with costs.

Appeals dismissed.

[1] *(1883) 6 S.C.C. 61.*