1903.
June 22.

VAN REETH *v.* DE SILVA.

D. C., Galle, 5,636.

Corporation sole—Creation by Holy See of Rome of Archbishop in Ceylon—Right of successor of such Archbishop to property conveyed to his predecessor—Administration.

The creation and appointment by the Holy See of Rome of an Archbishop in Ceylon does not constitute him a corporation sole with perpetual succession.

Therefore, on the death of an Archbishop so appointed, the properties purchased by him as Archbishop do not pass to his successor in office.

To allow administration to be taken out to the estate of the deceased Archbishop would not remedy the defect in the title of his successor, for then the property would vest in the administrator only.

THE plaintiff was the Roman Catholic Bishop of Galle. He alleged that an allotment of land called Digarolewatta, in extent about 7 acres, belonged to one Adrian Mendis and Nona Mendis in community; that Adrian Mendis died before 1839; that Nona Mendis and her children conveyed the land to Arnolis Mendis by deed dated 1st January, 1839; that Arnolis Mendis re-conveyed the land to Nona Mendis by deed dated 3rd June, 1839; that Nona Mendis gifted the land to Harmanis de Abrew by deed dated 16th September, 1858; that in execution against De Abrew the land was sold by the Fiscal and purchased by Joseph Fernando in 1880; that Joseph Fernando conveyed the land to Gabriel Fernando by deed dated 29th December, 1888; that Gabriel Fernando gifted the eastern portion of this land, in extent 1 acre and 25 perches, to Dr. Bonjean, Archbishop of Colombo, and his successors in office for the purpose of building a church; that a church was so built shortly afterwards; that Dr. Bonjean died in 1893 and was succeeded in office by Dr. Melizan; that in 1895 the Southern Province of Ceylon, which formed part of the Archdiocese of Colombo, was separated and constituted a distinct Bishopric or Diocese called the Diocese of Galle, whereupon the plaintiff alleged, the said eastern portion of the land, with the church built thereon, vested in the plaintiff; that Archbishop Melizan, for further assuring the same to the plaintiff, conveyed the said portion to the plaintiff by deed dated 22nd April, 1898; that Gabriel Fernando conveyed to the plaintiff and his successors in office the remaining portion of the land by deed dated 4th January, 1898; that the plaintiff thus became the owner of the entire land save the planter's interest in the fourth plantation; that the first defendant, being owner of five-sixths part of the planter's interest

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in the fourth plantation, together with the other defendants, dispossed to plaintiff in March, 1898.

The plaintiff prayed for declaration of title and for damages.

The first and the second defendants disclaimed title to the land save as to five-sixths of the planter's interest in the fourth plantation belonging to the first defendant. But the third defendant denied the plaintiff's title and claimed certain shares and interests in it, and the fourth defendant, denying dispossession of plaintiffs, set up title to a house on the land.

The District Judge, Mr. F. J. de Livera, after hearing evidence on both sides, gave judgment for plaintiff as prayed.

The defendants appealed.

In appeal, the question of law was raised and argued whether the creation and appointment by the Holy See of Rome of an Archbishop in Ceylon constituted him a corporation sole with perpetual succession, as also the question of fact relating to possession.

The case came on for argument on the 19th May, 1903.

H. J. C. Pereira appeared for the first and second defendants, appellants.

Bawa (with him *Prins*), for third defendant, appellant.

Dornhorst, K.C. (with him *Sampayo, K.C.*), for plaintiffs, respondents.

Cur. adv. vult.

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The plaintiff brought this action to vindicate a certain land mentioned in the plaint; he admits the claim of the first defendant to five-sixths of the planter's share of the fourth plantation theron, but denies the right of all the defendants to any other interest in this land. The first defendant and his wife, the second defendant, do not claim any interest in the land other than that conceded to the first defendant by the plaintiff himself. The third defendant claims title to the land and denies the plaintiff's right. The fourth defendant claims title only to a house standing on the land.

The District Judge has given judgment for the plaintiff against all the defendants, with costs. The land, it appears, was divided into two portions, and the plaintiff claims the entirety of the land under two separate titles. With reference to the portion alleged to have been last acquired by the plaintiff, the plaintiff has clearly established his title thereto, and is entitled to vindicate that land against any one who is in unlawful possession of the same, unless the person in possession has obtained a title thereto by prescription.

The portion of land alleged to have been first acquired by the plaintiff is the eastern portion consisting of 1 acre and 25 perches. The plaintiff's title to the eastern portion is based on a conveyance by way of gift to the Most Rev. Christopher Ernest Bonjean, Bishop of Colombo. The gift was an absolute gift to Bishop Bonjean for the purpose of a building a Roman Catholic Church thereon.

Bishop Bonjean died on or about 3rd August, 1893, and Theophilus Andrew Melizan was appointed Archbishop of Colombo by the Holy See of Rome. The plaintiff alleges that in the year 1895 the Southern Province of this Island, which had been included in the Archdiocese of Colombo, and in which the said land is situated, was separated and formed into a separate Bishopric or Diocese called the Diocese of Galle, and plaintiff was appointed by the Holy See of Rome as Bishop of the said Diocese of Galle, and thereupon the said eastern portion of the said land, with the church built thereon, vested in the plaintiff. This is a startling proposition of law, and even plaintiff's counsel is not prepared to support it.

The plaintiff, however, further rests his title to the said eastern portion by production of a conveyance from Archbishop Melizan in his favour dated the 22nd April, 1898. If any title vested in Archbishop Melizan on the death of Archbishop Bonjean, the plaintiff has undoubtedly disclosed a good title to the eastern portion. It is contended by counsel for the third and fourth defendants, appellants, that the Roman Catholic Archbishopric of Colombo is not a body corporate with perpetual succession.

No authority has been cited to us by the respondent to show that the creation and appointment by the Pope of Rome of an Archbishop creates a body corporate, and that our law recognizes such an appointment as creating a corporation sole. It is argued that a Bishop of the Anglican Church in England is a corporation sole with perpetual succession, where, though the individual changes and a successor is appointed from time to time, as need may be, by the Sovereign, so far as concerns the property of the corporation the Bishop never ceases to be, and continues for ever without any breach. The two cases are not analogous. I cannot find that the English Courts, or our Courts, have ever recognized the creation of a body corporate by the authority of the Pope of Rome, and no such authority has been cited to us in the course of the argument of this case. If it had ever been recognized by local or English decisions that a Bishop, appointed by the Pope of Rome, was a body corporate with perpetual succession, there could be no difficulty in counsel finding such decisions and directing our attention to them. Counsel has invited our

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attention to an old judgment of this Court where it was held by a Court of two Judges that the incumbent of a vihare was a corporation sole, and argues that we are bound by that decision, and consequently must hold in this case that a Roman Catholic Bishop is also a corporation sole. Assuming that we are bound by that decision, it is clearly not applicable to the present case, which does not deal with the rights of succession to the property of an incumbent of a vihare. The question as to whether an incumbent of a vihare is a corporation sole was, however, considered by a Full Court many years after the delivery of the judgment respondent's counsel relies on, and it was held in the latter judgment (*Rattanapala Unnanse v. Kewitiagala Unnanse et al., 11 S. C. C. 27*) that the incumbent of a vihare is not a corporation sole, but that he is personally owner of the property held by him in the character of incumbent, subject to a special law that governs the rights of succession to such property. Respondent's counsel suggests that the portion of the judgment of the Full Court, dealing with the question as to whether an incumbent of a vihare is a corporation sole or not, is merely *obiter dicta*. I have carefully perused that judgment, and it appears to me that it was a question that had to be decided in that case, because the parties were at issue as to what was the rule of succession to property belonging to a vihare on the death of the incumbent.

If the incumbent was a body corporate with perpetual succession, the property would, as a matter of course, pass to his successor as incumbent. In my opinion, on the death of Archbishop Bonjean the property did not pass to Archbishop Melizan.

It is argued for respondent that the property was merely vested in Archbishop Bonjean as a trustee. Admitting that to be correct it does not follow that Archbishop Melizan, having been appointed by the Pope of Rome to be Archbishop of Colombo, became legally vested with all property held by Archbishop Bonjean in trust.

The plaintiff, therefore, has not established his title to the eastern portion of land claimed by him, and is not entitled to vindicate it.

It is suggested that we should remit the case to the District Court to allow administration to be taken out to the estate of Archbishop Bonjean. That would not remedy the defects in plaintiff's title, for the property would then merely vest in the administrator of Archbishop Bonjean's estate.

Respondent's counsel further argued that plaintiff, if not entitled to vindicate the eastern portion of the land, is entitled to be restored to possession of it. Assuming that we are in a

position to convert this action into a possessory one, unfortunately for the respondent the whole attention of the parties in the Court below appears to have been devoted to the question of title and wrongful possession of the defendants since 1898, and the plaintiff has not placed before the District Judge material to show that he was ever in actual possession of the land, and was ousted therefrom by the defendants or any of them; so it is absoultely impossible for us in appeal to give plaintiff a judgment restoring him to possession of the eastern portion of the land, as suggested by his counsel.

With reference to the case against first and second defendants, the plaintiff admits the rights of first defendant to five-sixths of the planters's share of the first plantation, and proves that the first defendant was allowed in 1896 by Archbishop Bonjean's agent to possess the entire land on the understandnig that he would render an account to the Archbishop. He was to take the produce under that agreement and keep the land in proper order. It does not appear from the evidence that the first and second defendants ever ousted the planitiff from the land, or ever claimed anything more than the planter's share, which is admittedly due to first defendant. The first defendant appears, according to plaintiff's witnesses, to have been willing at one time to take a lease from the plaintiff. I am unable to understand on what principle of law the Judge has given judgment ejecting the first defendant and his wife, the second defendant, from the land, to retain possession of which the first defendant is clearly entitled by virtue of his admitted right to five-sixths of the planter's share of the fourth plantation, or why they should be decreed liable to pay plaintiff damages and costs of suit. Plaintiff's evidence does not establish any wrong done by these two defendants. Plaintiff's counsel, however, points out that the first defendant denied that he ever was in possession of the land and contradicted the plaintiff's evidence as to his possession. If first defendant was believed by the District Judge never to have been in possession, then plaintiff has not established any case against first and second defendants. I understand, however, he was disbelieved, so we must, for the purposes of our judgment in appeal, rely on the plaintiff's evidence, which was expressly believed by the Judge, and that evidence does not disclose material which would justify the judgment the District Judge has entered against the first and second defendants, and plaintiff's action against them must be dismissed.

I forgot to mention that the respondent's counsel drew our attention to the fact that first and second defendants joined in the

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same petition of appeal as the third and fourth defendants. That fact would not justify us, in my opinion, in upholding the judgment of the District Judge against first and second defendants, which was given before the petition of appeal was filed.

In my opinion the judgment of the District Judge must be set aside, and plaintiff's action against the first and second defendants must be dismissed with costs, and judgment must be entered for plaintiff against the third and fourth defendants for only the portion of land conveyed to him by deed dated 7th September, 1899. The plaintiff's action as to the eastern portion of the land conveyed to the late Archbishop Bonjean must be dismissed. The plaintiff and the third and fourth defendants will bear their own costs in the District Court and in this Court.

GRENIER, A.J.—I entirely agree, and have nothing to add.