

1931

*Present: Maartensz A.J.*ILLANGAKOON *v.* AMARIS FERNANDO *et al.*206—7—*P. C. Colombo, 208,008.**Burial ground—Using without permission of Governor—Claim of title—The Cemeteries, and Burials Ordinance, 1899, s. 8.*

Where the accused were charged with using a burial ground, in which burials had been discontinued by proclamation,—

Held, that it was no defence that the accused had acquired title to the land by prescription.

A PPEAL from a conviction by the Police Magistrate of Colombo.

Weerasooria, for accused, appellants.

M. F. S. Pulle, C.C., for complainant, respondent.

March 20, 1931. MAARTENSZ A.J.—

The appellants in this case were convicted under section 8 of the Cemeteries and Burials Ordinance, 1899, for using a portion of the Buddhist burial ground situated at Mayfield road, Kotahena, without the permission of the Governor. It was proved that burials on the land, which had been exclusively set apart for the burial of the dead, had been discontinued by a proclamation dated December 23, 1875, and that the accused were living on the land without the permission of the Governor.

The appellants were fined Rs. 7.50 each and only have a right of appeal upon a matter of law.

The point of law argued on appeal was that the accused were not liable to conviction under section 8 of the Ordinance as they had acquired a prescriptive title to the land. It was contended that section 8 only applied to lands which had not become private property. I am unable to adopt this contention. Section 8 prohibits the sale or disposal or use for any purpose whatsoever of land which has been consecrated or exclusively set apart for the burial of the dead and in which burials have been discontinued under the provisions of Ordinance No. 12 of 1862 or of Ordinance No. 9 of 1899 without the permission of the Governor. The object of the provision is no doubt to prevent land in which burials have been discontinued from being used before a sufficient time has elapsed to render the use of it safe from the point of view of health; and also to prevent a desecration of the dead by a premature use of the land. The objects of the provision would be defeated if it was held that the section did not apply to land, title to which has been acquired by prescriptive possession.

Apart from these considerations section 8 creates a statutory offence and the penalty for a breach of it cannot be avoided by a plea that the land belongs to the offenders. Even if the land had originally belonged to accused they would be guilty of a breach of the section by using it for the purpose of habitation.

The appeals are dismissed.

Appeals dismissed.
