by laying the hand on it, and by using solemn words, together with the touching of the thing with the spear or wand, showing how distinctly the early Romans had conceived the idea of individual ownership of property. As Johannes Voet explains in his *Commentary on the Pandects* (6.1.1) "to vindicate is typically to claim for oneself a right in *re.* All actions *in rem* are called vindications, as opposed to personal actions or conductions." Voet also observes that-

> From the right of ownership springs the vindication of a thing, that is to say, an action *in rem* by which we sue for a thing which is ours but in the possession of another. (*Pandects* 6.1.2)

It is in this sense that the *rei vindicatio* action is often distinguished from "actions of an analogous nature" (*per* Withers, J., in *Allis Appu v. Edris Hamy* (1894) 3 SCR 87 at page 93) for the declaration of title combined with ejectment of a person who is related to the plaintiff by some legal obligation (*obligatio*) arising from contract or otherwise, such as an over-holding tenant (*Pathirana v. Jayasundara* (1955) 58 NLR 169) or an individual who had ousted the plaintiff from possession (*Mudalihamy v. Appuhamy* (1891) CLRep 67 and *Rawter v. Ross* (1880) 3 SCC 145), proof of which circumstances would give rise to a presumption of title in favour of the plaintiff obviating the need for him to establish title against the whole world (*in rem)* in such special contexts. These are cases which give effect to special evidentiary principles, such as the rule that the tenant is precluded from contesting the title of his landlord or a person who is unlawfully ousted from possession is entitled to a rebuttable presumption of title in his favour. Burnside CJ., has explained the latter principle in *Mudalihamy v. Appuhamy* (1891) CLRep 67 in the following manner-

> Now, *prima facie*, the plaintiff having been in possession, he was entitled to keep the property against the whole world but the rightful owner, and if the defendant claimed to be that owner, the burden of proving his title rested on him, and the plaintiff might have contented himself with proving his *de facto* possession at the time of the ouster.

The action from which this appeal arises is not one falling within these special categories, as admittedly, the Respondents had absolutely no contractual nexus with the Appellants, nor had they at any time enjoyed possession of the land in question. Of course, this is not a circumstance that would deprive the Respondents to this appeal from the right to maintain a vindicatory action, as it is trite law in this country since the decisions of the Supreme Court in *Punchi Hamy v. Arnolis* (1883) 5 SCC 160 and *Allis Appu v. Edris Hamy* (1894) 3 SCR 87 that even an owner with no more than bare paper title (*nuda proprietas*) who has never enjoyed possession could lawfully vindicate his property subject to any lawful defence such as prescription. Nor would the failure to pray for the ejectment of the Appellants (an omission which has been supplied by the learned District Judge by his decision) affect the maintainability of the action for declaration of title (which declaration the learned District Judge has not granted expressly, although he may have done so by way of implication) or change the complexion of the case, which is essentially an *actio rei vindicatio.* The District Court and Court of Appeal, as has been seen, in their respective judgments have correctly assumed that the action from which this appeal arises is an *actio rei vindicatio.* They have also awarded the Respondents relief by way of ejectment despite the absence of a prayer for ejectment in their petition or even in their replication, the correctness of which award is hotly contested by the Appellants.