1954 *Present :* Sansoni, J., and Fernando, A.J.

D. C. WIJEWARDENA, Appellant, *and* THE PUBLIC TRUSTEE, Respondent

S. C. 318—D. C. Colombo, 246/Special

Buddhist Ecclesiastical Law—Sripadasthana—Nomination of Trustee by Viharadhipathi—Public Trustee's refusal to issue letter of appointment to Trustee—Dispute as to person entitled to be Viharadhipathi—Remedy of Trustee—Mandamus or regular action ?—Procedure for election of Viharadhipathi—Buddhist Temporalities Ordinance (Cap. 222), ss. 2, 10 (1), 11, 33, 41—Public Trustee Ordinance (Cap. 73), s. 3—Civil Procedure Code (Cap. 86), s. 217 (E) and (G).

Sub-section 2 of section 11 of the Buddhist Temporalities Ordinance provides :—

> Whenever a nomination is duly made under sections 9 or 10 and reported to the Public Trustee it shall be the duty of the Public Trustee to forthwith issue a letter of appointment to the person so nominated unless such appointment would contravene the provisions of this Ordinance.

Sub-section 3 (*b*) further provides :—

> Whenever by reason of any disputes as to the person entitled to make such nomination more than one person is reported to the Public Trustee as having been duly nominated trustee of any temple, the Public Trustee shall, pending a legal nomination, ... if he thinks fit provisionally appoint as trustee any person duly qualified.

Defendant, the Public Trustee, refused to issue a letter of appointment to the plaintiff when the latter was nominated as Trustee of Sripadasthana by D. who was duly elected on February 18, 1934, as Viharadhipathi of Sripadasthana. He alleged, on clearly untenable ground, that the office of Viharadhipathi had been duly filled by the election of one R. on February 14, 1934, and that R. had made his own nomination to the trusteeship. In these circumstances plaintiff sued the Public Trustee asking (1) for a declaration that he was the duly appointed Trustee of Sripadasthana, and (2) that the Public Trustee be directed to issue to him a letter of appointment as such Trustee.

Held, (FERNANDO, A.J., *dubitante*), that it was wrong to refuse the plaintiff relief on the ground that he should have applied for a writ of *Mandamus ;* the District Court had jurisdiction to grant in a regular action the relief for which the plaintiff prayed, if it found that D. was the properly elected Viharadhipathi.

Custom and procedure relating to the election of the Viharadhipathi of Sripadasthana in the Ratnapura District of the Province of Sabaragamuwa reviewed.

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *W. D. Gunasekera, M. L. de Silva* and *C. E. Jayewardene*, for the plaintiff appellant.

H. A. Wijemanne, Crown Counsel, with *V. Tennekoon*, Crown Counsel, for the defendant respondent.

Cur. adv. vult.

December 15, 1954. SANSONI, J.—

The plaintiff-appellant sued the Public Trustee (the defendant-respondent) asking (1) for a declaration that he is the duly appointed Trustee of Sripadasthana in the Ratnapura District of Sabaragamuwa Province and (2) that the Public Trustee be directed to issue to him a letter of appointment as such Trustee. The plaintiff claimed that on the 9th March, 1947, he was nominated as Trustee by Morontuduwe Sri Dhammananda Nayaka Thera, the duly appointed Nayaka Thera of Sripadasthana, who reported such nomination to the Public Trustee but the Public Trustee refused to issue

a letter of appointment to him. The Public Trustee in his answer denied that Dhammananda Thera had any legal right to the office of Nayaka Thera of Sripadasthana, and the legal capacity to nominate the plaintiff as Trustee. He denied that the refusal by him to issue a letter of appointment was wrongful. Another defence raised was that the District Court had no jurisdiction to entertain this action in the absence of any provision in the Buddhist Temporalities Ordinance (Cap. 222), conferring jurisdiction on such Court in a case where the Public Trustee has refused to issue a letter of appointment in terms of section 11 of that Ordinance.

It is common ground that according to custom the right to appoint the Nayaka Thera of Sripadasthana is vested in the priests of the Malwatta Branch of the Siamese Sect resident in the Ratnapura District (as it was then called) or Sabaragamuwa Province (as it is now called) who elect one of their number; a further qualification is that the priests exercising this right must be ordained priests. The judgment of this Court in *Vanderstraaten's Reports, page 215*, provides a useful starting point for a review of the early history of this office. The judgment of 1871 decided that Hikkaduwa Sri Sumangala Thero had been duly elected, and he continued in office till he died in 1911. There then arose a dispute between the Karaka Maha Sangha Sabhawa and the Malwatta priests of the Ratnapura District as to how his successor should be chosen. A settlement of the dispute, known as the Vaughan Settlement, was arrived at on 7th December, 1911. It purports to be a decision of the Karaka Maha Sangha Sabhawa in the following terms :—

> " That the High Priests appointed by our Maha Sangha Sabhawa for the Sabaragamuwa Disaweny or the District of Ratnapura do hold a meeting of our section of the Siamese sect resident in Ratnapura District at a suitable place in the District for the election of a high priest for Adam's Peak and that the signatures of those present at the meeting in favour of the different applicants be obtained and forwarded with the respective applications and the list of signatures; they be carefully examined by us and the candidates for whom a majority of votes has been given be duly appointed High Priest of Adam's Peak and that an Act of Appointment be issued by us and the Government be informed of such appointment. "

It was signed by the Mahanayake Thera and two Anu Nayaka Theras of Malwatta Vihara before the Government Agent, Central Province. An election was held on 21st January, 1912, at which Paragala Sobitha Thera was elected. It would appear that a list of the priests qualified to vote was sent to the Mahanayaka Thera some days before the election so as to obviate subsequent objections to the qualifications of electors, and he had the list printed after perusal. The Mahanayaka Thera had informed the Government Agent, Central Province, that if a priest with the necessary qualifications attended the election his name would be added to the list of voters after inquiry into his claims. It was also agreed between the Government Agent, Central Province, and the Mahanayake Thera that the election should be by ballot, a list of voters being sent to the latter together with the result of the election. On receipt of the report

of the election the Sabhawa met and appointed Sobita Thera and asked the Government Agent to accept him. He functioned as Nayako Thera until he died on 29th November, 1912.

The election of his successor took place on 9th February, 1913, and Rambukpotha Pannasara Thera was elected. A report of the proceedings was sent to the Mahanayake Thera by the Government Agent, Sabaragamuwa, and it disclosed that a dispute had arisen at the election over the qualification of certain priests. Apparently the presiding High Priest had gone beyond considering whether they had the minimum qualifications required of an elector, and disqualified twenty priests. The Government Agent asked the Sabhawa to inquire into the question of the rights of these priests and to decide whether the election should stand or be set aside. The Sangha Sabhawa accordingly considered the matter and reported to the Government Agent that they had appointed Rambukpotha Pannasara Thera as Nayaka Thera of Sripadasthana and asked the Government Agent to accept him, which the Government Agent did. Rambukpotha died in 1925.

The compilation of a list of voters preparatory to the election of a successor seems to have engaged the attention of certain priests. Urapola Ratnajothi Thera who contested the election with Morontuduwe Dhammananda Thera forwarded a list to the Mahanayake Thera in 1925, stating that he tried in three ways to make a correct list, viz., by informing the likely candidates, by informing the Ratemahatmayas, and by inviting the voters (through notices in the Press) to send in their names. He suggested that if any names have been omitted they can be added after reference has been made to the Lekam Mitiya. His letters show that he was endeavouring to conform to the wishes of the Maha Sangha Sabhawa. But difficulties seem to have existed in regard to holding a meeting to elect a Nayaka Thera and the Government Agent, Sabaragamuwa, wrote to the Mahanayaka Thera in 1929 suggesting that they might be overcome if the latter would call the meeting and preside over it. No election was held that year. Even in 1931 there still seems to have been some difficulty about the preparation of the list of voters. Dhammarakitta Thera, a witness called by the Public Trustee, wrote in that year to Morontuduwe Sri Dhammananda Thera pointing out that "a list devoid of defects such as omissions and additions is a work of the utmost necessity". He also gave expression to certain views as to how the eligibility of a voter should be decided.

On 1st November, 1931, the Buddhist Temporalities Ordinance, (Cap. 222), came into operation. It contained provisions for the compulsory registration of Buddhist priests. According to the amended form set out in the Schedule, applications for registration had to be sent in duplicate to the Registrar-General, countersigned by the Mahanayake Thera (or Nayake Thera in the case of a sect which had no Mahanayake Thera) of the Nikaya or the District Nayake of the Nikaya. The Registrar-General was expected to retain a copy and send the other to the Mahanayake Thera or Nayake Thera, as the case may be. The countersignature was obviously intended to ensure that a responsible person had scrutinised the application before it was filed by the Registrar-General and entered in a register to be kept by him. It was with this object that the Schedule as originally

enacted was amended on 11th March, 1932, for according to the form as originally enacted it was sufficient if the application was countersigned by the Robing or Ordaining Tutor. But in spite of the clear provisions of the Ordinance the Registrar-General, with the concurrence of the Minister of Home Affairs, seemed intent on countenancing a contravention of the requirements of the Ordinance by permitting priests who were not authorised to do so to countersign the applications for registration. He persisted in accepting applications which did not comply with the statutory requirements. On 6th November, 1932, the Mahanayake Thera wrote to the Registrar-General :—

Uposhita Pasparamaya,
Kandy,
6th November, 1932.

The Registrar-General,
Colombo.

Sir,

List of Registered Bhikkus

I have the honour to request you to be good enough as to furnish me or the Government Agent, Sabaragamuwa, with an accurate list of Upasampada Bhikkus resident in the Ratnapura District whose names have been duly registered under Ordinance No. 19 of 1931.

The absence of this list has now become the only obstacle in the way of electing a Nayake Thero for Adam's Peak which post has been vacant for several years and cannot be kept vacant any longer as there is a popular clamour for an early appointment.

I use the words accurate and duly in paragraph 1 deliberately as a copy of a list purported to have been sent by you to the Government Agent, Sabaragamuwa, has reached me through Nayake Thero of Sabaragamuwa, and this list is a curious one as apart from seven names appearing twice each I also see therein the names of a large number of Bhikkus whose applications for registration have not been countersigned either by the Nayake Thero of Sabaragamuwa or by mo although I made it quite clear to the Bhikkus of my sect by notification in the papers and otherwise that all applications for registration should be countersigned either by me or by the District Nayaka Thero of the District in which the applicant resides. I may mention incidentally that it is not only because of the considerable amount of error and discrepancy which may creep into the register by your acceptance of application forms not correctly countersigned (the intention of the Ordinance being obvious from the provision at the end of the 2nd page of the printed application form) but also in the interests of discipline and proper administration of my largo sect that I insisted and do insist now that all applications should be countersigned as aforesaid.

I would therefore specially point out that a list you will be good enough to furnish should include the names of only those Bhikkus whose applications have been countersigned either by the Chief High Priest of Sabaragamuwa or by me.

I am, Sir,
Yours faithfully,
(Sgd.) Pahamunne Sri Sumangala
(In Sinhalese)
Maha Nayake Thero of Malwatte.

I quote this letter in full as it shows plainly with what intention the Mahanayake Thera was insisting on strict compliance with the Ordinance. There followed further correspondence between the Registrar-General and the Mahanayake Thera which indicates clearly that while the Mahanayake Thera was insisting on registration according to the provisions of the Ordinance the Registrar-General did not think such compliance was an essential requisite of registration.

The Mahanayake Thera caused a notice to be published in the issue of the *Sinhala Bauddhaya* of 28th January, 1933, headed "Voters concerning the Nayakeship of Sripadasthana". It draws attention to an order made by him with regard to the certifying of the declaration forms and requires those who have not complied with the order to send certain particulars about themselves for comparison with the Lekam Mitiya ; it states that those whose claims are established will have their names entered in the list of voters, while those who do not comply with the requirements set out in the notice by the 10th February, 1933, will not be permitted to take part in any acts connected with Sripadasthana "as the permanent residents of Ratnapura District belonging to our Nikaya". It will thus be seen that those priests who had failed to comply with the earlier order of the Mahanayake Thera were as a last opportunity given two weeks within which to have themselves included in the list of voters by sending the required particulars and proving themselves to be eligible. Bearing in mind what had happened earlier I do not consider this too short a time for the purpose, nor has any witness been called to say that he was not aware of these requirements. On the 28th April, 1933, the Mahanayake Thera again appealed to the Registrar-General to remove from his register the declarations which had been improperly countersigned. In his letter he quotes instances of declarations which had not been countersigned correctly and contained incorrect entries. He pointed out that "otherwise there will be serious litigations and troubles among the Bhikkus of the (Ratnapura) District and thereby we will also have to face innumerable troubles" and concludes "Therefore we wish to remind you again that it is your duty according to law to return those declaration papers to the respective Bhikkus". On 7th October, 1933, a resolution was passed by the Karaka Maha Sangha Sabhawa in the following terms :—

"In accordance with the Order of Sangha issued on the decision of our Karaka Maha Sangha Sabha in connection with the registration of

Bhikkus under the Section 41 of the New Buddhist Temporalities Ordinance, the Bhikkus hitherto registered as belonging to our Malwatte Vihara section and permanently resident in the Ratnapura District and who had obtained the certification of the Chief High Priest of the Sabaragamuwa Province or that of the Mahanayake Thero should be recognised as voters regarding the Nayakaship of Sripadasthana or as our Bhikkus resident in Ratnapura District. Anyone who does not accept the Order of Sangha does not possess any claim, power, right or responsibility as one of our Bhikkus of Ratnapura District. Therefore, the list of Bhikkus who were registered as above, should be sent to the Chief High Priest of Sabaragamuwa Province, certified as the list of voters regarding the Nayakaship of Sripadasthana."

The list of voters prepared in accordance with this resolution has been produced. It is document D 1 dated 9th October, 1933, which was published in the issue of the *Sinhala Bauddhaya* of 13th January, 1934. It was certified as correct by the Mahanayake Thera. By his letter to the Editor of the *Dinamina* and published in the issue of 16th January, 1934, the Mahanayake Thera explained that the list of voters compiled in accordance with the resolution of the Sabhawa was sent to the Chief Priest of the Ratnapura District for the purpose of summoning a meeting to elect a Viharadhipathi for Sripada. He stated further that it must be considered the final list, and that no priests who failed to comply with the resolution referred to would have any right to interfere in any matter connected with the administration of Sripada, nor would anyone elected by the votes of such priests be recognised by him as Viharadhipathi of Sripada. The need for such a letter obviously arose from the move on the part of certain priests and laymen to hold a meeting—which was in fact held on 14th February, 1934—independently of the Sabhawa, for the very purpose of electing a Viharadhipathi.

A meeting to elect a Viharadhipathi of Sripadasthana was fixed to be held at Kiriella Paliala Pansala on 18th February, 1934, at 8·30 a.m. and notices of that meeting were published in the *Dinamina* newspaper of 22nd January and 2nd February, and in the *Sinhala Bauddhaya* of 3rd February, by Morontuduwe Dhammananda Thera as Chief High Priest of Ratnapura District. It was stated in the notices that it would be "a public meeting of priests having the qualifications and right to vote". When read in the light of the Mahanayake's letter of 16th January, 1934, and the earlier notice of 28th January, 1933, the plain meaning of these notices is that only those whose names appeared in the list published on 13th January, 1934, need attend that meeting as voters.

For the Public Trustee it was urged before us that as a result of these notices having been published in those terms priests who had the right to vote were deprived of that right by the Sabhawa, which had no right to prepare a list or impose conditions to be satisfied before a name was inserted in the list ; so long as a priest possessed the qualifications laid down in the Adam's Peak judgment of 1871, he should have been permitted to vote and the notices convening the meeting of 18th February, 1934, should have stated so in clear terms. For the plaintiff it was submitted that a list of voters is a necessary prerequisite of an election, and the

Sabhawa was the proper authority to decide how the list should be compiled. The Sabhawa resolution only declared that priests who claimed a right to vote should submit their claims in a certain way and by a certain date, and no priest who claimed to be a member of the Malwatte sect should object to such a rule laid down by the governing body of that sect. The learned District Judge took the view that the preparation of a list was not necessary ; he held that the effect of the publication of the notices and letters I have referred to was to disfranchise several priests merely because they did not conform to the orders of the Sabhawa with regard to the manner of getting their registration forms countersigned, and that the Sabhawa had no power to prevent them from voting. He also held that several priests whose names appeared in the register kept by the Registrar-General would have been deprived of their votes. He accordingly decided that the election of Morontuduwe Sri Dhammananda Thera was bad and the nomination made by him could not be regarded as having been duly made as required by the Ordinance.

The previous history of the matter seems to indicat that the Sabhawa was recognised, at any rate from the time of the Vaughan Settlement, as the proper body to conduct the election of a Viharadhipathi. It had inquired into the qualifications of certain priest. when a dispute arose in 1913, the Mahanayake Thera wa- sent a list of voters in 1911 so as to obviate subsequent objections to the qualifications of the electors, and he decided in 1912 that only Upasampada priests were entitled to vote and that only their names should be included in the list of voters. It is true that the Mahanayake Thera informed the Government Agent, Central Province, in 1912 that he had no objection to the register or list being amended even just before the election by adding to it any suitable priest who may attend the meeting, but this was a course which lay in the discretion of the Mahanayako Thera and may well have been permitted at that time becaus there was no register of priests such as came into existence under the Ordinance. The preparation of a regi ter of voters at that time seems to have been a difficult matter. I have already pointed out how Ratnajothi Thera wa- trying in 1925 to compile a correct and complete list, and that in 1931 the witness Dharmarakitte Thera was insisting on a complete list. It seems to me that a list of voters was not only customary but even necessary, seeing how desirable it is to eliminato uncertainty and confusion in regard to those who should vote at the meeting ; it also seems to me that the obvious authority to prescribe how intending voters should apply to have their names included in such a list, and the date by which such applications should be made, was the Sabhawa. Can it be said that the procedure directed to be followed by those who applied for registration was unreasonable, or imposed too heavy a burden on eligible voters ? It was at this period that the recently enacted Ordinance would have come to the knowledge of all Bhikkus; they would undoubtedly have become aware of its provisions and the need to comply with them. The Sabhawa was merely requiring them, more than a year after the Ordinance came into operation, to do what the Ordinance required. I cannot see why any priest should complain that he was asked to obey the law. It is no argument to say that a beneficed

priest had a right to vote and the procedure laid down interfered with that right. The right was open to all who had the qualifications, but they were not entitled to disregard the authority of the Sabhawa so long as they claimed to belong to the Malwatta sect. It is not alleged that a priest who accepted the authority of the Sabhawa was improperly excluded from voting. There is no question of the priests who did not comply with this order being expelled, for no order of expulsion was made nor was one necessary. If the Sabhawa has the right to expel a priest from the priesthood it surely has the right to impose the lesser penalty of depriving him of the right to vote for failure to observe such a reasonable requirement as due registration. It is unfortunately true that some priests called to give evidence for the Public Trustee denied the supreme authority of the Sabhawa, but the decisions of this Court have repeatedly held that it is the highest ecclesiastical court to whose decisions all priests claiming to belong to the Malwatta sect must bow. Priests who doubted the authority of the Sabhawa and violated the rules it laid down must expect to lose the privileges which only a recognized member of the sect can enjoy. I hold, therefore, that the meeting of 18th February, 1934, at which Morontuduwe Sri Dhammananda Thera was unanimously elected was a duly constituted one. Crown Counsel did not, very properly in my opinion, seek to support the validity of the earlier meeting at which Ratnajothi Thera was elected. It was clearly unauthorised, in that it had been summoned by priests and laymen who had no authority whatsoever to conduct such an election. They were obviously acting in intentional defiance of the authority of the Malwatta Chapter. Yet, strange to say, one of the defences put forward by the Public Trustee to the plaintiff's claim was that the vacancy in the office of Viharadhipathi had been duly filled by the election of Ratnajoti Thera, at a properly constituted meeting held on 14th February, 1934. Such a position is clearly untenable in the face of the evidence as to how previous meetings for the election of a Viharadhipathi were summoned and conducted, and the learned District Judge quite rightly held that the meeting of 14th February, 1934, was not a properly constituted one.

The election of Morontuduwe Sri Dhammananda Thera was reported to the Public Trustee by the Mahanayake Thera on 20th February, 1934 ; he asked the Public Trustee to recognise the successful candidate as the Viharadhipathi of Sripadasthana. On 24th February, 1934, the Public Trustee wrote to Morontuduwe Sri Dhammananda Thero inviting him to nominate a trustee, and the latter did so. But though three such nominations were made at various times the Public Trustee consistently refused to issue letters of appointment to the nominees on the ground that Ratnajothi Thera had also claimed to have been elected and had also nominated a trustee. In 1943 Ratnajothi Thera died, and when Morontuduwe Sri Dhammananda Thera again nominated a trustee he was asked by the Public Trustee whether he could establish his claim to be Viharadhipathi ; he was also asked to submit a statement of the grounds of his claim. This request was complied with, but the Public Trustee did not change his attitude. Eventually Morontuduwe Sri Dhammananda Thera nominated the plaintiff as trustee in 1947 and the Public Trustee asked Morontuduwe Sri Dhammananda Thera to interview

him, stating :—"This is a matter which has given me considerable anxiety and concern for a long period. I feel that the time is now ripe for any action that may be possible with a view to arriving at a satisfactory finality". Nothing, however, came of the interview and this action was therefore filed.

On the first day of the hearing Crown Counsel appearing for the Public Trustee stated that he did not press his legal objections with regard to the jurisdiction of the Court and no issue was suggested on this point. When the trial was resumed some months later he took the objection with regard to jurisdiction and an issue was framed in the terms I have set out at the beginning of this judgment. The plaintiff's counsel objected to the issue being framed on the ground that the objection to jurisdiction had been abandoned, but I do not think it could have been rejected on this ground since the parties had not even begun to lead evidence at that stage. The objection, as I understand it, is that assuming the plaintiff to have a remedy for the failure of the Public Trustee to issue a letter of appointment he should not have filed a regular action but should have sought relief by an application to this Court for a writ of Mandamus.

The plaintiff's complaint is founded on the provisions of section 11 of the Ordinance which reads :—

(1) Whenever a person is entitled to nominate a trustee under sections 9 or 10 it shall be lawful for him to nominate himself as such trustee unless he has been removed from the office of trustee under section 15 (2) or is disqualified from being a trustee by reason of section 14 :

Provided that the head of the Nuwarawewa family may nominate himself a member of the Atamasthana Committee notwithstanding that he is in the Government Service.

(2) Whenever a nomination is duly made under sections 9 or 10 and reported to the Public Trustee it shall be the duty of the Public Trustee to forthwith issue a letter of appointment to the person so nominated unless such appointment would contravene the provisions of this Ordinance.

(3) (*a*) Whenever no nomination is duly made under sections 9 and 10 within the periods specified in the said sections or within any further period that the Public Trustee may allow for such purpose, or

(*b*) whenever by reason of any disputes as to the person entitled to make such nomination more than one person is reported to the Public Trustee as having been duly nominated trustee of any temple, the Public Trustee shall, pending a legal nomination, make any arrangement he thinks necessary for the safe management of the property of such temple, and if he thinks fit provisionally appoint as trustee any person duly qualified.

This section introduced a change, because under the previous Ordinance No. 8 of 1905 a person who was duly elected trustee became *de jure* trustee and no formal act of appointment was necessary—*Appuhamy v. Tinanhami* [1]. The argument for the plaintiff is that he is the duly nominated trustee and he therefore has a statutory right to the grant of a letter of appointment by the Public Trustee, and the Public Trustee has a corresponding statutory duty to issue such a letter to him; the plaintiff has undertaken in this action to prove his claim to be the duly nominated trustee, which means that the duly elected Viharadhipathi has duly nominated him. It is submitted that if he has established these grounds of his claim it is not open to the Public Trustee to refuse to perform the duty cast upon him by the Ordinance. As against this, it was submitted for the Public Trustee that the validity of the election of Morontuduwe Dhammananda Thera cannot be decided in this action since the principal contestants are not before the Court; and even if it can, the plaintiff should have applied for a writ of Mandamus. But a Mandamus is not granted as of right, its grant is purely discretionary, and it is only available when there is no other remedy equally convenient, beneficial and effectual open to the applicant. The writ was invented for the purpose of supplying defects of justice, as Bowen L.J. said in *R. v. Commissioners of Inland Revenue* [2], and the learned Lord Justice went on to say :—" By Magna Charta the Crown is bound not to delay or prevent any one from obtaining justice. If there is no other means of obtaining justice a Mandamus is granted. But the procedure is cumbrous and expensive; and from time immemorial the Courts have never granted the writ when there is another more feasible remedy ". So here, when it is well known that a regular action is the normal mode of proceeding I cannot see why the plaintiff should be referred to an extraordinary procedure. The fate which overtook similar earlier applications made to this Court indicate quite plainly that if the plaintiff had asked for a Mandamus on the Public Trustee the latter would, in all probability, have resisted it on the ground that there existed a substantial doubt as to who the *de jure* Viharadhipathi was, which he could not resolve, and that he could not therefore be compelled to issue a letter of appointment until the doubt was resolved. Such an objection would also, in all probability, have been upheld. Notwithstanding the obvious objection to an application for a Mandamus, Crown Counsel submitted that the plaintiff could not sue in a regular action. His argument was, as I understand it, that a public officer such as the Public Trustee could not be sued in such an action for having refused to perform a statutory duty even though the Public Trustee Ordinance, (Cap. 73), provides in section 3 that " the Public Trustee shall be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole ". I think his position was that if this action was upheld the door would be opened to innumerable actions for declarations against public officers. Such an argument appears to have been dealt with by Farwell, L.J., in *Dyson v. Attorney-General* [3], when he said " If inconvenience is a

[1] *(1919) 21 N. L. R. 239.* [2] *(1884) 12 Q. B. D. 473.*

[3] *(1911) 1 K. B. 410.*

legitimate consideration at all, the convenience in the public interest is all in favour of providing a speedy and easy access to the Court for any of His Majesty's subjects who have any real cause of complaint against the exercising of statutory powers by Government departments and Government officials, having regard to the growing tendency to claim the right to act without regard to legal principle and without appeal to any Court". To refuse the plaintiff relief on the ground that he should have applied for a Mandamus seems to me therefore a wrong thing to do. Has the plaintiff then a right to bring this action, in which he can claim a remedy as of right? His claim as duly nominated trustee, assuming he can establish it, is a claim to a status which confers civil rights and duties. He will as trustee have vested in him the temporalities of Sripadasthana and he will have the duty of managing them. The refusal of the Public Trustee to issue a letter of appointment, and his denial that the plaintiff is the duly nominated trustee, gave the plaintiff a cause of action, which entitled him to come into the District Court. It could, I think, be argued with force that the Public Trustee was not bound to issue a letter of appointment if he had a genuine doubt as to the claim made by the plaintiff, but his is not the last word on the matter. He was entitled to ask the plaintiff to establish his claim in a court of law since "Courts of law exist for the settlement of concrete controversies and actual infringements of rights". I think the Public Trustee was acting within his rights in putting the plaintiff to the proof of his claim and as he is the defendant he is entitled to resist that claim to such extent as he considers proper, for while so resisting the claim he is also justifying his earlier refusal to issue a letter of appointment. But I entertain no doubt also that the plaintiff is entitled to seek his legal remedy by regular action against the Public Trustee, for to hold otherwise would be to tell him that the statutory provisions of section 11 are an empty thing, and that the Public Trustee can bring them to nought by a bare assertion that there is a dispute. The Ordinance provides no special remedy, tribunal or procedure and when a statutory duty is prescribed but no remedy for its breach is imposed it can be assumed that a right of civil action accrues to the person who is damnified by the breach. In *Cutler v. Wandsworth Standium*[1], Lord Simonds said, repeating the words of Lord Kinnear in *Butler v. Fife Coal Co.*[2], "We are to consider the scope and purpose of the statute and, in particular, for whose benefit it is intended". It is also relevant to quote the words of Romer, L.J., in *Barnard v. National Dock Labour Board*[3], "Prima facie, it is the right of everyone in this country who is involved in a legal dispute to have that dispute determined by Her Majesty's Courts. That right can be taken away; sometimes it can be taken away by contract, subject to certain safeguards, and it certainly may be taken away by statute; but except to the extent to which it is taken away (and here we are only concerned with parliamentary intervention) then prima facie that right remains". In this case the District Court was the proper forum to which the plaintiff should have gone to seek redress of his grievances. When one considers that the dispute arose in this case because of the palpably insupportable claim to

[1] *(1949) A. C. 398.* [2] *(1912) A. C. 165.*

[3] *(1953) 2 Q. B. 18.*

the office of Viharadhipathi put forward by Ratnajoti Thera—which the Public Trustee went so far as to support against the claim of Morontuduwe Sri Dhammananda Thera until this appeal came before this Court—the need for affording the plaintiff a remedy is overwhelming. In seeking to establish his right the plaintiff must, of course, establish the right of Morontuduwe Sri Dhammananda Thera, for if the latter had no right the former can have none. But I see no objection to the right of the Viharadhipathi being investigated in these proceedings, and a very thorough investigation it has been. If we were not satisfied that Morontuduwe Sri Dhammananda Thera's right as Viharadhipathi has been established, the plaintiff would necessarily fail. Section 217 of the Civil Procedure Code classifies the different kinds of decrees which a Court may enter and provides *inter alia* that a decree "may, without affording any substantive relief or remedy, declare a right or status". The plaintiff is asking for a declaration of his right or status as the duly nominated trustee and the consequential relief he claims is the issue of a letter of appointment which is also a matter contemplated by section 217 (e) of the Code for a decree may command the person against whom it operates "to do any act not falling under any one of the foregoing heads". It really matters not whether the plaintiff is only granted his declaration or also granted the consequential relief, for I can hardly believe that the Public Trustee would refuse to pay heed to a declaration of a Court. But the consequential relief sought is one which I think the District Court can grant. There may be cases where a person claims a declaration of a right which he is technically entitled to claim, but a Court may refuse to grant it on the ground that there has been no interference with the right sought to be declared. *Geldenhuys & Neethling v. Benthim* [1]. I do not regard this case as one of those cases, because there is more than a mere dispute of the plaintiff's claim. The plaintiff is effectually prevented from exercising his rights as trustee which he would have been entitled to exercise if the Public Trustee did not refuse to issue to him a letter of appointment. Granting, then, that the power to make a declaration is discretionary I consider this to be a suitable case for the exercise of that power in favour of the plaintiff. For over twenty years there has been only a provisional trustee managing the temporalities of Sripadasthana and I consider that the time has come to make an end of the uncertainty which has shrouded an election which, it seems to me, was in all respects valid. I therefore allow this appeal and set aside the judgment of the learned District Judge. The plaintiff is entitled to a decree as prayed for in his plaint.

With regard to costs, I consider that the Public Trustee put forward certain defences which were unsustainable; they unduly prolonged the proceedings in the lower Court; although he was entitled to ask that the plaintiff should establish his claim to the satisfaction of the District Judge, he put the plaintiff to unnecessary expense by raising certain issues for which there was little justification. I would therefore, under these circumstances, allow the plaintiff his costs in this Court and in the trial Court.

[1] *(1912) A. D. 126.*

FERNANDO, A.J.—

I have had the benefit of reading the judgment proposed by my brother, and only think fit to set out the reasons for my concurrence because the case is one of more than ordinary interest and has been keenly contested in both Courts.

Upon the question whether the Public Trustee rightly refused to accept the nominations to the trusteeship of Sripadasthana which were made successively by Dhammananda Thera in 1934, 1943 and 1947, the case for the Public Trustee, at its highest, is founded on the provisions of section 11 (3) (*b*) of the Buddhist Temporalities Ordinance :—" Whenever by reason of any disputes as to the person entitled to make such nomination more than one person is reported to the Public Trustee as being duly nominated trustee of any temple, the Public Trustee shall, pending a legal nomination, ... if he thinks fit provisionally appoint as trustee any person duly qualified ". The Public Trustee must deny recognition to each nominee when two or more priests, each disputing the right to the incumbency in question, purport to make separate nominations. When, therefore, such a dispute exists, the Legislature imposes as it were a doubt in the mind of the Public Trustee which cannot be resolved until the dispute itself is settled. Once there has been such a dispute between two priests it seems to me that the doubt is not removed upon the death of one of them ; in other words, the Legislature could not have intended that the question whether Dhammananda Thera or else Ratnajothi Thera was validly elected as Incumbent would be resolved automatically in favour of the survivor of the two claimants.

A dispute of the nature contemplated by the section would undoubtedly compel the Public Trustee to decline acceptance of a nomination pending a determination binding on each priest who is a party to the dispute. But in my opinion the Legislature cannot have contemplated that any rival claim, however arbitrary or frivolous, was sufficient to constitute such a dispute. If that were so, a farcical situation can be created by a succession of priests merely notifying the Public Trustee of a claim to the incumbency in question.

In this instance, Ratnajothi Thera's claim was based upon an election which in no respect conformed with the customs and formalities which were adopted in the two previous cases and recognised by the Government officers then responsible for the functions which later devolved on the Public Trustee. The three conditions of the " Vaughan Settlement " were (*a*) the election meeting to be convened by the Chief Priest of the Malwatte Chapter for the District, (*b*) the Sangha Sabhawa to scrutinize the voting lists, and (*c*) the Sabhawa to approve and appoint the successful candidate as Viharadhipathi. Ratnajothi Thera's alleged " election " satisfied none of these conditions and gave him no shadow of a claim to nominate a trustee, and there was accordingly no dispute of the nature contemplated by the Statute.

The remaining ground of appeal was that Dhammananda Thera's election was rendered invalid by the alleged irregularities in the preparation of the voters' lists. In the absence of any rules binding on the Sangha Sabhawa, it was in my opinion only reasonable for it, as the authority responsible for the preparation of the list, to require those claiming to be voters to make their claims by means of applications countersigned by the District Maha Nayake of the sect. But for this countersignature, the Sangha Sabhawa would have experienced great difficulty in deciding whether or not a prospective voter did in fact possess the qualification of permanent residence in the Ratnapura District; and much confusion would have arisen on the election day if claims as to the qualifications were left to be decided at that late stage. The decisions and notices published by the Sangha Sabhawa amounted in my view to no more than a reasonable and proper mode of avoiding such difficulty and confusion. I entirely agree with the conclusion reached by my brother that Dhammananda Thera was duly elected the Viharadipathi of Sripadasthana, and was accordingly entitled to make a due nomination of the plaintiff as trustee.

We have then to decide whether the District Court has jurisdiction to grant a declaration that the plaintiff is entitled to a letter of appointment from the Public Trustee and to order the Public Trustee to issue the letter of appointment. The learned District Judge thought that he did have jurisdiction, for the reason that section 33 of the Buddhist Temporalities Ordinance empowers the Court to order a person to discharge a duty imposed upon him by the Ordinance, upon an application made by any trustee. But the definition of "trustee" in section 2, read with sections 10 (1) and 11, includes only a person who is nominated by the Viharadipathi and holds the requisite letter of appointment as trustee issued by the Public Trustee. The plaintiff holds no such letter and is not yet a "trustee" entitled to make an application to the Court under section 33. The source of the Court's jurisdiction has therefore to be sought elsewhere.

It is argued for the plaintiff that under section 217 of the Civil Procedure Code an order of a District Court—

(1) may enjoin a person to do any act (Head E),

(2) may, without affording any substantial relief or remedy, declare a right or status (Head G).

In the present case, the plaintiff seeks orders under both these heads, and if it is clear that the Court had jurisdiction to make a mandatory order directing the issue of a letter of appointment (referable to Head E) then the declaration (referable to Head G) would be merely formal or even unnecessary. The difficult question, to my mind, is whether the District Court has jurisdiction to make a mandatory order directing a public officer to perform a duty imposed by statute, or whether, on the contrary, the only remedy is by way of prerogative writ.

In England the Common Law Procedure Act (1854) and section 25 of the Judicature Act (1873) provides for an action for mandamus "to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested". In regard, however, to this remedy, which is additional to that by way of an application for the prerogative writ of mandamus, views have been expressed indicating that its scope is somewhat limited. *Baxter v. London County Council* [1] was a case in which a coroner sued for a declaration of right that he was entitled to a certain salary or to a Mandamus to enforce those rights. The Court appeared to be quite satisfied that the coroner was entitled to the salary he claimed but was not being paid it. Nevertheless Day J. thought his only remedy was by a Prerogative writ and he said "But it was never contemplated that the action for a mandamus was to supersede the prerogative writ of mandamus. In this case no action will lie. I am perfectly clear that this is not an action which will lie between the parties, or a case in which a statutable mandamus will be applicable, because no action would lie, and a mandamus is only granted as an ancillary to the action, and for the purpose of enforcing the private right." Also in *Reg. v. The Vestry of St. George, Southwark* [2], which was an application for the prerogative writ of mandamus, it was argued that the appropriate remedy was an action for a mandamus. Wright J. there said "I think it is very doubtful whether the provision for a mandamus given either by the Common Law Procedure Act or the Judicature Act extends at all to any relief that could not have been claimed in an action before the Common Law Procedure Act, and whether the remedy given is not intended there as an additional mode of enforcing judgment which the Court has power to give."

So far as our law is concerned it is worthy of note that there is no *express provision* as in England for an action for mandamus as distinct from the prerogative writ. Even in regard to the declaratory action it was pointed out by Gratiaen J. in *Hewavitharna v. Chandrawathie et al.* [3] that, unlike in England and South Africa, the Common Law Jurisdiction of the Court to grant declaratory decrees has not been enlarged by Statute; and he referred to Order 25, Rule 5 of the Rules of the Supreme Court (England).

I therefore entertain some doubts on the question whether the District Court had jurisdiction to grant the declaration and to make the order prayed for in the present case. The point, however, was not strenuously argued for the respondent in this appeal, and I have not been convinced that the District Court lacks the requisite jurisdiction. Agreeing as I do so completely with my brother as to the merits of the plaintiff's case, I feel disposed only to express some hesitation in concurring with the order proposed by him allowing the appeal.

Appeal allowed.

[1] *(1890) 63 L. T. (N. S.) 767.* [2] *(1892) 67 L. T. (N. S.) 412.*

(1951) 53 N. L. R. 169 at 176.