compensation without a decision as to reinstatement. In the instant case payment of compensation has been ordered without a decision as to reinstatement. This the Judge had no power to do. Payment of compensation being an alternative to reinstatement the former cannot exist independently. It can only exist as an alternative to the latter. As it is a decision the Industrial Court had no power to make, it cannot be enforced nor does the person who fails to comply with it commit the offence created by section 40 which provides *inter alia* that any person who, being bound by an award of an industrial court, does any act in contravention of any of the terms of that award shall be guilty of an offence under the Act.

The conviction of the appellant is therefore quashed and he is acquitted.

ABEYESUNDERE, J.—I agree.

G. P. A. SILVA, J.—I agree.

Appeal allowed.

[IN THE PRIVY COUNCIL]

1963 *Present :* **Viscount Radcliffe, Lord Evershed, Lord Morris of Borth-y-Gest, Lord Devlin, and Sir Kenneth Gresson**

VENERABLE VAGISWARACHARYA MORONTUDUWE SRI NANESWARA DHAMMANANDA NAYAKA THERO, Appellant, *and* VENERABLE KALUKONDAYAWE PANNASEKERA NAYAKA THERO and others, Respondents

PRIVY COUNCIL APPEAL NO. 41 OF 1961

S. C. 26—D. C. Colombo, 2882/L

Buddhist law—"Sanghika property"—Applicability of term to property other than temple property—Succession to Sanghika property—Rule of Sisyanusisya Paramparawa *may be excluded by terms of dedication—Vidyodaya Pirivena (Maligakande)—Succession to office of Principal—Inapplicability of term "Temple" to a Buddhist educational establishment—"Parajika" conduct on the part of a Buddhist priest—Buddhist Temporalities Ordinance—Trusts Ordinance, s. 109 (a).*

Property given and dedicated as Sanghika property need not be or contain a temple.

Succession to Sanghika property (whether a temple or not) may be governed by the terms of the act of dedication to the exclusion of the Buddhist rules of succession.

By a deed executed in the year 1876 a small piece of land was dedicated to a Buddhist priest named Sri Sumangala for the establishment on it of a Pirivena for the teaching of the principles and precepts of the Buddhist faith "subject always to the protection and orders" of a certain Sabha. The deed further stated that Sri Sumangala as Principal of the Pirivena and on behalf of the succeeding Principal to be appointed by the Sabha "has agreed to accept this as a deed of trust subject to all the aforesaid directions, stipulations and conditions". The institution established upon the land in consequence of the deed provided at the time of the present action instruction for no less than 800 Buddhist priests and was known as the Vidyodaya Pirivena and also sometimes as the Maligakande Temple.

The plaintiff contended that the land and the institution subsisting upon it was vested in him as trustee upon the charitable and religious trusts created by the deed of 1876 and that the property and the trusts attributable thereto were accordingly governed by the provisions of the Trusts Ordinance. On the other hand it was the case of the 1st defendant-appellant that the property in question became after 1876 a Temple (as distinct from a Pirivena) and accordingly was subject to the Buddhist Temporalities Ordinance and therefore outside the scope of the Trusts Ordinance by virtue of section 109 (*a*) of the latter Ordinance. It was contended by the appellant that both the land and the buildings upon it were subject to the control and governance of a Viharadhipathy whose appointment, according to Buddhist law, should be governed by the rule of succession known as Sisyanusisya Paramparawa.

Both the District Court and the Supreme Court came to the clear conclusion that in fact the institution in suit was from its original foundation and has ever since remained essentially a Pirivena, an educational establishment.

Held, that the institution in suit was governed by the Trusts Ordinance and not by the Buddhist Temporalities Ordinance. The place of worship upon the property formed only a part of the educational establishment in the same way that a school or college chapel is a part and, it may be, an important part of the school or college establishment. The descriptions of the property assigned by the deed as Arama and Aramaya could not have the effect that the property was Temple property, that is to say, primarily and essentially a Temple to which the remaining parts of the institution were merely adjuncts.

Held further, that although the conduct of the 1st defendant-appellant, who was a Buddhist priest, in obstructing the performance by the plaintiff of his duties as trustee and Principal of the Pirivena justified the order made by the District Court and the Supreme Court for the appellant's ejectment from the institution and premises in suit, there was not implicit in the orders any finding that the appellant was guilty of "parajika" conduct for which he should be disrobed or otherwise disqualified from performing his duties as a Buddhist priest.

APPEAL from a judgment of the Supreme Court reported in (*1958*) *59 N. L. R. 412.*

E. F. N. Gratiaen, Q.C., with *Joseph Dean* and *V. E. Selvarajah*, for the 1st defendant-appellant.

Dingle Foot, Q.C., with *R. K. Handoo* and *H. A. Koattegoda*, for the plaintiff-respondent.

Cur. adv. vult.

June 27, 1963. [*Delivered by* LORD EVERSHED]—

This appeal has come before their Lordships from a judgment of the Supreme Court of Ceylon delivered on the 13th February, 1958, which dismissed the appeal of the first defendant in the action (the appellant before the Board) from a judgment of the District Court given on the 17th October, 1950. The proceedings had been started in the month of July 1943 and first came before the Court in 1944 upon certain issues treated as preliminary matters of law. The District Court had decided these issues adversely to the plaintiff and had dismissed his action; but the Supreme Court set that order aside. The plaintiff thereupon amended his plaint in certain important respects and the trial was eventually resumed in the month of May 1950. If to the very great length of time which has now elapsed since the litigation began is added the fact that the main contestants, namely, on the one hand, the original plaintiff and the plaintiff (the respondent to the appeal) who was substituted as such on the death of the original plaintiff and also, on the other hand, the appellant, were and are priests of high standing and acknowledged learning in the Buddhist religion and that the subject of the dispute is a small piece of land in Colombo which has been used for, and devoted to the purposes of, the Buddhist faith and doctrines for more than three-quarters of a century, it will be understood that their Lordships have felt the case to be, to say the least, gravely distressing. The institution established upon the land in question provides at the present time instruction for no less than 800 Buddhist monks. It has undoubtedly acquired a high reputation; and according to the evidence is locally known as the Vidyodaya Pirivena and also sometimes as the Maligakande Temple; and the real question in issue before the Board may fairly be said to depend upon which of these two names or titles is the more strictly and properly applicable to the institution and property. To determine that question required not only a close examination of the history of the institution and of the land on which it stands from as far back as the year 1873 but a careful consideration also of Buddhist observances and practices and Buddhist law. Their Lordships have had before them the full and careful judgments both of the District Court and of the Supreme Court which latter expressed the clear conclusion that in all material respects the views of the Acting District Judge were well founded and the inferences of fact justified which he drew. In such circumstances and upon such a subject-matter their Lordships, sitting so far away from the scene and having so much more slender a knowledge of Buddhist laws and customs than the Judges in Ceylon, should be inevitably and properly reluctant to disturb the concurrent views of the Ceylonese Courts—unless they were

satisfied by the argument for the appellant that there had been some error in the judgments or some real injustice done. Their Lordships feel it right to say at once that, with all respect to the argument presented to them on the appellant's behalf, they have not been so satisfied.

In the circumstances it will not be necessary for their Lordships to narrate in detail all the history of the case so fully related in the judgments under appeal. Their Lordships will confine themselves to such a statement of the facts as will suffice, as they hope, to justify the conclusion already intimated.

Prior to the year 1873 the greater part of the land on which the institution now stands belonged to one Lansage Andiris Perera. It is apparent from the earliest of the documents in the case, a deed poll of the 6th December, 1873, that it was the wish of Lansage Andiris Perera to establish upon his land a Pirivena, that is to say, a place for the teaching of the principles and the precepts of the Buddhist faith, essentially an educational establishment. For this purpose, according to the terms of the deed poll, a council or society to be known as the Vidyadhara Sabha was constituted with the duty of collecting a certain sum of money with which to acquire the land and erect thereon the necessary buildings. On the 31st March, 1876, a second deed was executed and, particularly since no one who was a party to that deed or who could give evidence in regard to the circumstances in which it was executed was living at the date of the trial, a great deal turned upon the proper effect to be given to, and the proper inferences to be drawn from, the terms of this second deed. Their Lordships must accordingly make some more detailed references to the deed. But it is convenient at once to note that the parties to it were (1) the above-mentioned Lansage Andiris Perera, (2) the then members of the Sabha earlier constituted, and (3) a Buddhist priest of high repute and great learning, the Venerable Sipkaduwe Sumangala Nayaka Thero (hereafter referred to as Sri Sumangala), who is described as the principal of the Vidyodaya Pirivena. It is also to be noted from the recitals in the deed that the intention of the benefactor Lansage Andiris Perera recorded in the deed poll of 1873 had not been achieved by reason of the failure to collect the greater part of the sum of rupees which had been therein specified.

The deed of 1876 recites that Lansage Andiris Perera with the approval of the Sabha had agreed to dedicate the land to Sri Sumangala " Principal of the Vidyodaya Pirivena and on his demise to the Sangha including the priests who succeed to the office of Principal of the said Pirivena as Sanghika property . . . . for the establishment of a Pirivena to impart knowledge " to Buddhists and members of other religions " subject always to the protection and orders " of the Sabha. It further recites that Sri Sumangala as Principal of the Pirivena and on behalf of the succeeding principals to be appointed by the Sabha " has agreed to accept this as a deed of trust subject to all the aforesaid directions, stipulations

and conditions". By the operative part of the deed Lansage Andiris Perera in consideration of the sum of rupees already collected gave and assigned the property to Sri Sumangala, once more described as the Principal of the Vidyodaya Pirivena, and his successors appointed as Principals to the Pirivena by the Sabha "as and by way of a dedication absolute and irrevocable and as Sanghika property". There follows a description of the property made up of two separate parts, the first stated as forming an Arama and the second as "the remaining whole Aramaya": the property to be held and possessed "chiefly by the said Principal of the Pirivena" so long as they properly conduct it. There follows an appointment of the Sabha as the executive committee empowered in consultation with the Principal of the Pirivena to make rules and regulations "for such continuance of the Privena" and authority is given to them with the approval of a Sangha Sabha to remove any Principal who fails to observe such rules and regulations.

It was proved in evidence that dedication of any land as Sanghika property was and is effected by a formal ceremony taking place on the land so dedicated. As already stated there was at the date of the trial no evidence available of the ceremony of dedication in the present case. It may however be assumed—as was indeed conceded—that the Deed of 1876 correctly recites the terms of the dedication by Lansage Andiris Perera so that for the purposes of this judgment the terms of the Deed of 1876 will be taken properly to record and represent the dedication of the land here in question.

It will at this stage be convenient to note that there was added to the property assigned by the deed of 1876 a further parcel of land in the year 1884. This further adjoining parcel was vested not in the name of Sri Sumangala but in that of another individual; but since it is not in doubt that all the land has ever since 1884 been occupied and administered as a single unit, it was agreed before their Lordships, as they understood, that no point turns upon the divergence in the title as regards this added land but that the whole property can and should be treated as though it had all been the subject of the 1876 deed and the gift thereby recorded.

The original plaintiff's claim as formulated in his amended plaint and the present plaintiff's claim is that the whole of the land and the institution subsisting upon it was and is now vested in him as trustee upon the charitable and religious trusts created or recorded by the deed of 1876, that is, for the purposes of a Pirivena upon the terms therein provided; and that the property and the trusts attributable thereto are now accordingly governed by the provisions of the Ceylon Trusts Ordinance (Cap. 72). This Ordinance came into effect in the year 1917 but prior thereto the English law relating to trusts (and particularly to charitable trusts) was applicable and would therefore have applied, with similar effect, to the property here in question. According to the plaintiff's

case the management and the conduct of the Pirivena pursuant to the provisions of the 1876 deed and the dedication therein recorded was committed to Sri Sumangala during his life. Sri Sumangala died in the year 1911 and thereafter, pursuant to the terms of the 1876 deed, the Vidyadhara Sabha has appointed his successors as Principals of the Pirivena. The names of the first two such successors may be briefly stated as Nanissara and Ratanasara. On the death of the latter the original plaintiff was duly appointed by the Vidyadhara Sabha as Pirivena-dhapathy or Principal of the Pirivena and, upon the death of the original plaintiff in 1960 the present plaintiff (the respondent before the Board) was similarly appointed in his place. This was the case sought to be established by the amended plaint and the defendants other than the first defendant (the appellant before the Board) were members of the Vidyadhara Sabha at the date of the plaint. As may well be supposed, several of these original defendants have since died, and in such cases their successors as members of the Vidyadhara Sabha have been from time to time added as defendants. As their Lordships understood, the defendants (other than the first defendant) have not in fact ever taken any independent part in the proceedings and they were not separately represented before their Lordships.

On the other side it has been the case of the appellant that the property in question was in 1873 or in 1876, or at any rate soon thereafter, became a Temple (as distinct from a Pirivena) and accordingly was subject to the Buddhist Temporalities Ordinance of 1931 (Cap. 222) and therefore outside the scope of the Trusts Ordinance by virtue of section 109 (*a*) of the latter Ordinance. Upon this view the property, that is, both the land and the buildings upon it, were and are subject to the control and governance of a high priest called the Viharadhapathy. So it was contended on the appellant's part that Sri Sumangala though designated in the deed of 1876 as Principal of the Pirivena held also and continued to hold until his death the office of Viharadhapathy when, according to the Buddhist Temporalities Ordinance and Buddhist ecclesiastical law, the succession to the office of Viharadhapathy would be governed by what is known as Sisyanusisya Paramparawa, that is to say, would pass to his senior pupil. According to the appellant's case the senior pupil of Sri Sumangala was one Jinaratana, and although this assertion was disputed the Acting District Judge found as a fact that Jinaratana was the senior pupil of Sri Sumangala. The appellant claimed on his part to have been the senior pupil of Jinaratana and so to have succeeded him in any event in the office of Viharadhapathy on Jinaratana's death in 1960; and he also produced a document dated in 1941 and executed by Jinaratana appointing the appellant to the office of Viharadhapathy. It should be stated that since Jinaratana made this last-mentioned appointment in his lifetime (and indeed, as already appears, Jinaratana was still living at the date of the trial) the appellant conceded that according to Buddhist law and doctrine the document should not be treated as at any rate an

immediately effective appointment of the appellant; but it was the appellant's case (and for the purposes of this appeal it was not disputed) that according to Buddhist law and particularly to the rule of succession known as Sisyanusisya Paramparawa the appellant would now be entitled since Jinaratana's death to the office of Viharadhapathy of the Temple.

In support of his case the appellant placed, very naturally, great emphasis upon the dedication and gift of the property recorded in the deed of 1876 to the Sangha and as Sanghika property; for, as their Lordships have understood, such a dedication means a dedication to the entire Buddhist priesthood. The terms are not used in fact in the Buddhist Temporalities Ordinance but there seems no doubt that where a Temple and the property, including buildings appurtenant to the Temple, are so dedicated simpliciter then the Temple and property would thereafter be free from any lay control, would be subject to the terms of the Buddhist Temporalities Ordinance and the succession to the office of high priest or Viharadhapathy of such Temple and property would be in accordance with the rule invoked by the appellant.

Both the courts below, however, carefully reviewed the relevant Ceylonese authorities as regards Sanghika property founded upon a judgment in 1879 of Phear, C.J. reported in 2 S. C. C. and concluded, first, that property given and dedicated as Sanghika property need not be or contain a temple; and, second, that the succession to Sanghika property (whether a temple or not) may be governed by the terms of the act of dedication to the exclusion of the Buddhist rules of succession; and indeed, as their Lordships understood, Mr. Gratiaen conceded these propositions. But he made the point that in the present case the deed and act of dedication therein recorded though expressly providing for the succession to the headship of the Pirivena, that is, of the educational establishment, was silent as to the succession to the office of Viharadhapathy; and upon the footing that the premises did and do constitute a Temple with land appurtenant thereto such office must subsist in regard to it so that in relation to that office the rule of succession by way of Sisyanusisya Paramparawa must apply.

It is clear that the first and vital question for the decision of the courts was whether in truth the property here in suit was and is essentially a Temple so as to bring it within the scope of the Buddhist Temporalities Ordinance. The definition of the word "temple" in the Ordinance is undoubtedly wide and includes "any place of worship"; but their Lordships do not think it necessary to recite the relevant language of the Ordinance or to go at length into all the circumstances so fully considered by the courts in Ceylon for, as indicated at the beginning of this judgment, both courts came to the clear conclusion that in fact the institution here in suit was from its original foundation and has ever since remained essentially a Pirivena, an educational establishment, and therefore now governed by the Trusts Ordinance and not by the

Buddhist Temporalities Ordinance. No doubt there was and is upon the property a place of worship, but that fact is by no means decisive. The place of worship may well (and in this case, as the Courts in Ceylon held, did) form a part of the educational establishment in the same way (as was pointed out in the Courts below) that a school or college chapel is a part and, it may be, an important part of the school or college establishment. Indeed it would appear to their Lordships that if the question is to governed or at least primarily governed by the terms of the deed of 1876, the relevant language of which has been above set out, the conclusion would be clear—unless the natural sense and effect of the instrument is, so to say, wholly translated by the reference to the Sangha; and for reasons already stated both courts below were clear (and their Lordships see no ground for differing from them) that such references do not have any such decisive effect. Their Lordships do not forget that Mr. Gratiaen also relied upon the descriptions of the property assigned by the deed as Arama and Aramaya. Again, however, the meaning of these words was discussed and carefully considered in the Ceylonese courts and their Lordships are fully content to accept their conclusion that the use of such words cannot have the effect that the property given by the deed was Temple property, that is to say, primarily and essentially a Temple to which the remaining parts of the institution were merely adjuncts.

On the other hand their Lordships have noted certain other points taken in the courts below as strongly tending to support their conclusions, namely, (1) that Sri Sumangala, who was acknowledged to have been a Buddhist priest of outstanding learning, would never have accepted a gift to him in the terms in which it was made in the deed of 1876 including the conditions as to succession if the property given in truth being or intended to be Temple property should properly according to Buddhist law or Buddhist principles have devolved according to Sisyanusisya Paramparawa: (2) that though Sri Sumangala was in certain addresses made to him described as Viharadhapathy and certainly in one letter so described himself, yet when giving evidence in an important case reported in 11 N.L.R. described himself as "the Chief Priest of Adam's Peak and Principal of the Vidyodaya Pirivena": and (3) that the appellant himself had written numerous letters to the Vidyadhara Sabha and also to the original plaintiff seeking reappointment as a tutor and did not in any of these communications claim that the institution was subject to the control of a Viharadhapathy or that he himself held that office.

Their Lordships add that the Acting District Judge, though he found Jinaratana to have been, as already noted, the senior pupil of Sri Sumangala, came also clearly to the conclusion which the Supreme Court thought wholly justified that Jinaratana never was in fact Viharadhapathy of the institution here in question and never purported to

officiate as such. Indeed, as their Lordships understand the conclusions concurrently reached by both Ceylonese courts, there never was and is not such an office in relation to the institution and property here in question.

It follows that upon the main question involved in this appeal the appellant has, in the view of their Lordships, wholly failed. There remains the question of the remedy which the plaintiffs sought and obtained, namely, an order for the appellant's ejectment from the institution and premises in suit. There is no doubt from the findings of the Acting District Judge—nor was it disputed before their Lordships—that when the unhappy contest arose between the original plaintiff and the appellant the latter by way of assertion and demonstration of his right and authority as Viharadhapathy proceeded to occupy certain premises intended for the instruction of students in the Pirivena and to set up in part of the premises a school of his own. The appellant did other acts recited in the judgment of the Acting District Judge clearly aimed at challenging the plaintiff's authority as Pirivenadhapathy and such as to obstruct the due execution by the plaintiff of his duties as trustee under the deed of 1876 and as the principal officer of the institution. The appellant could not claim to be entitled to do what he did either as a tutor or as a student in the Pirivena. In the judgment of the Supreme Court the appellant's conduct was described as "parajika", namely, (according to Mr. Gratiaen) conduct of the kind for which a Buddhist priest could be disrobed. Mr. Gratiaen contended that it lay exclusively with the Buddhist ecclesiastical courts to examine and determine allegations of "parajika" conduct on the part of a Buddhist priest and he further contended (as their Lordships think with justification) that a claim that the appellant had been guilty of conduct of this character had not been pleaded in the plaint and was not an issue in the action.

In the circumstances of the case their Lordships are of opinion that the order for ejectment was one properly made by the District Court; but in fairness to the appellant who is, as has already been stated, a Buddhist priest of high standing and repute being now the High Priest of Adam's Peak, their Lordships base their conclusion solely upon the actions of the appellant in assertion of his claim thereby obstructing the performance by the plaintiff of his duties as trustee and principal of the Pirivena. Their Lordships do not regard the order of ejectment as having any further implications—in particular they do not regard as implicit in it any finding that the appellant should be disrobed or is otherwise disqualified from performing his duties as a Buddhist priest; and in spite of certain of the language used in their judgment they do not think that the Supreme Court could have so intended.

Their Lordships repeat in conclusion that the dispute is one which appears to them to be unhappy and distressing but for the reasons which they have given they will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the appeal to the Board.

Appeal dismissed.

1962 *Present :* Weerasooriya, S.P.J., and H. N. G. Fernando, J.

MUTHUKUDA, Appellant, *and* SUMANAWATHIE, Respondent

S. C. 556—D. C. Kalutara, 31758

Breach of promise of marriage—Promise in writing—Sufficiency of nekath *paper—Acceptance of promise—Writing not necessary*—Injuria *suffered by plaintiff—Right of plaintiff to sue* ex delicto—*Marriage Registration Ordinance, s. 19 (3).*

The proviso to section 19 (3) of the Marriage Registration Ordinance reads as follows :—

> " No action shall lie for the recovery of damages for breach of promise of marriage, unless such promise of marriage shall have been made in writing. "

Held, that proof of writing is necessary only in respect of the promise of marriage and not in respect of the acceptance of the promise. Acceptance may be made by the conduct of the parties and by a definite understanding between them that a marriage is to take place.

Plaintiff sued the defendant for the recovery of damages on two causes of action. The first cause of action was based on a breach of promise to marry. The second cause of action was based on *injuria* suffered by the plaintiff by reason of the failure of the defendant to attend the *poruwa* ceremony when the plaintiff and a large number of guests were awaiting the arrival of the defendant.

The only document relied on by the plaintiff as constituting a promise of marriage in writing was the *nekath* paper which was a memorandum of the astrologically auspicious times associated with the wedding fixed to take place on a fixed day between the plaintiff and the defendant. It was written in the first person, the defendant being mentioned by name as the author of it.

Held, (i) that the *nekath* paper constituted a promise in writing by the defendant to the plaintiff.

(ii) that it was not necessary to prove that the promise was accepted in writing by the plaintiff. Acceptance could be inferred from the conduct of the parties.

(iii) that the *injuria* suffered by the plaintiff gave rise to a cause of action *ex delicto* even had there been no breach of promise and the defendant continued thereafter to be ready to marry the plaintiff