1939 *Present :* **Hearne S.P.J. and Keuneman J.**

DHAMMADARA THERO *v.* SEDERANHAMY *et al.*

115—D. C. Matara, 3,898.

***Buddhist Temporalities Ordinance** (Cap. 222), s. 23—Money due to Buddhist priest on insurance policy—Property acquired for exclusive personal use—Property of temple.*

Money due on a policy of insurance taken by a Buddhist priest is property acquired for his exclusive personal use within the meaning of section 23 of the Budhist Temporalities Ordinance and vests in the temple on the death of the priest unless it has been alienated in his lifetime.

[1] *(1918) 20 N. L. R. 385.*

[2] *(1924) 26 N. L. R. 257.*

APPEAL from a judgment of the District Judge of Matara.

N. E. Weerasooria, K.C. (with him *E. B. Wikremanayake* and *C. E. S. Perera*), for respondents, appellants.

H. V. Perera, K.C. (with him *C. V. Ranawake, H. A. Koattegoda,* and *C. J. Ranatunga*), for petitioner, respondent.

Cur. adv. vult.

July 27, 1939. KEUNEMAN J.—

This is a testamentary proceeding in respect of the estate of Rev. Somananda Unnanse, deceased, who was the incumbent of the Arambegoda Temple. The deceased died on May 9, 1935, leaving an Insurance Policy, P 1, valued at Rs. 4,167.40. The original petitioner as incumbent of the said temple claimed letters of administration to the estate of the deceased. The first respondent (appellant) as guardian *ad litem* of the second and third respondents (appellants) objected to letters of administration being issued to the petitioner. The second and third respondents claim to be the lay heirs of the deceased.

At one stage, proceedings were stayed until the appointment of a trustee for the said temple had been made. Thereafter the respondent to this appeal was duly appointed as trustee. The original petitioner withdrew his application and the contest for the letters was continued between the appellants and the respondent, who was referred to as the petitioner.

At the inquiry the following issues were framed:—

1. Is the policy of insurance which the deceased priest had taken acquired property within the meaning of section 23 of the Buddhist Temporalities Ordinance, No. 19 of 1931? (It is admitted by the parties that the deceased priest did not alienate the money that would have fallen due on the maturity of the policy.)
2. As the priest died without alienating or otherwise encumbering the money due on the policy, is the money due on the policy the property of the temple to which the deceased priest belonged?
3. If issues Nos. 1 and 2 are answered in the affirmative, who is entitled to letters of administration, is it Galahitiya Dhammadara Thero, Mr. G. M. de Silva's client, or the respondents represented by Mr. Wijetunga?

The learned District Judge held in favour of the respondent and held that he was entitled to letters of administration. The appellants appeal.

The claim of the respondent is based on section 23 of the Buddhist Temporalities Ordinance of 1931, which runs as follows:—

> "23. All pudgalika property that is acquired by any individual bhikkhu for his exclusive personal use, shall, if not alienated by such bhikkhu during his lifetime, be deemed to be the property of the temple to which such bhikkhu belonged unless such property had been inherited by such bhikkhu".

In the Court below it was established that the premiums in respect of the policy were paid by the deceased priest out of this inherited property

and it was argued that the section did not apply on that account. The District Judge rejected that argument, and it has not been revived before us, and I do not think that the argument is good.

Before us it was argued in the first place that the property involved was money due under the policy, and that this money could not be alienated during the lifetime of the deceased, and accordingly that it was not the class of property contemplated by the section. It was further urged that the right to claim this money only came into being on the death of the deceased.

If we examine the policy P 1, we find that the Insurance Company agreed, on receipt of satisfactory proofs of the death of the assured, to pay Rs. 5,000 to his executors, administrators or assigns. Further, if the assured was living and the policy in force on August 20, 1944, the Company agreed to pay to the assured or his assigns the sum of Rs. 5,000 with any bonus then declared.

The policy accordingly was not one only to take effect on the death of the assured. Further, it was a contract between the Company and the assured, whereby the assured obtained rights in the policy, which were capable of being assigned. I think these rights may be described as the property of the assured, and that the executors or administrators, in the absence of assignment, are parties who can now enforce rights which accrued to the assured previously, when he entered into the contract.

I do not think we can accept the interpretation contended for by the appellants.

The next point urged for the appellants is that this was not property acquired by the deceased for his exclusive personal use. It was contended that the word "use" was equivalent to "user", and that the property referred to was such as was needed for his personal enjoyment, or to put it in another way, that it was property which the priest himself used or intended to use for himself. Counsel for the appellants suggested that it may mean "the necessaries of life", and argued that under Buddhist law a Buddhist priest can only possess four necessaries, namely, clothing, medicines, furniture, and food. Reference was made to the case of *Ratnapala Unnanse v. Appuhamy*[1]. Though there is a reference to these four necessaries in the judgment of the District Judge in that case, the Supreme Court itself has not dealt with that point, but decided that case on other considerations.

But whatever the position may be under the Buddhist law, our duty now is to construe the words of our Ordinance. The first point we have to consider is that section 23 excepts from the class of pudgalika property acquired by an individual bhikkhu for his exclusive personal use, property which has been inherited by that bhikkhu. It is clear therefore that inherited property may be "property acquired for the exclusive personal use" of the bhikkhu. I think this exception cannot be reconciled with the argument for the appellants. It is difficult to understand how inherited property can be regarded as property intended for the personal enjoyment of the bhikkhu, in the sense contended for by the appellants. In fact inherited property comes to the bhikkhu apart from any intention on

[1] *4 N. L. R. 167.*

his own part to use it, or enjoy it. Nor do I think that we are driven to give to the word "use" the meaning of "user" or "enjoyment". The word "use" also bears the meaning of "benefit", and I think this is the more natural meaning to assign to it in this section.

The further argument is that we must give a meaning to every word in the section, and that the phrase "pudgalika property that is acquired by any bhikkhu for his exclusive personal use" must mean something more than property acquired by the priest for his own benefit, and that the words "exclusive" and "personal" are redundant. "Pudgalika", it is said, means "that which belongs to one person, personal property" (Clough's Dictionary), and the words "acquired for his exclusive personal use" must refer to user or enjoyment.

I note, however, that in Codrington's Glossary the word "Pudgalika" is defined as follows:—"Property belonging to individual monks, as opposed to Sangika or belonging to the priesthood". If we examine the words of section 20, we see a distinction drawn between offerings for the use of the temple, and pudgalika offerings for the exclusive personal use of the individual bhikkhu. This appears to bring out the same point. It is possible that what the draftsman had in mind was a sharp difference between what was for the temple and what was for the individual monk, and that the phraseology "for his exclusive personal use" merely brought out that distinction emphatically. But even if that argument cannot be sustained, I think that the words "exclusive personal use" in section 23 cannot be regarded as tautology. In employing the words "personal use" I think the draftsman meant "for his own use". The further employment of the words "exclusive" brings in the meaning "and not for the benefit of someone else". I think it is not unreasonable to suppose that the draftsman had in his mind the fact that the bhikkhu may have property with which he is vested, but which he holds either as trustee or in some fiduciary capacity and not for himself alone, and intended that the temple should not succeed to such property. In that case the use of both words "exclusive" and "personal" was not unnecessary.

So far I have discussed this case apart from authorities, but I think some light is thrown on this by the case of *Reilly v. Booth*[1]. In that case by lease and release M and others conveyed to W, a piece of freehold ground with a messuage thereon adjoining a covered gateway "together with the exclusive use of the said gateway". It was held that the conveyance to W passed the ownership of the gateway, and not merely an easement. Cotton L.J. said: "We must consider this as intended to be not only 'exclusive', that is excluding others, but a right to use this passage . . . . for any purpose which the law will allow, and which does not interfere with the rights of their neighbours . . . . My view is that it is a conveyance really of the property in that passage which is as described". Lindley L.J. said: "It is said that we ought to construe the use of the gateway as the use of a way, and that it is a mere easement. That, to my mind, is to limit without sufficient warrant or justification the words used in the grant". Lopes L.J. said: "The

[1] *Court of Appeal (1890) 44 Ch. D. 12 : 62 Law Times 378.*

exclusive use of the said gateway was given. The exclusive or unrestricted use of a piece of land, I take it, beyond all question passes the property or ownership in that land".

I think, in view of this judgment, it is only a small step for us to hold that, where the Ordinance employs the phrase "acquired for his exclusive personal use" in relationship to property, these words merely relate to the kind of title obtained by the person in the property, namely, a title for his own benefit and not for the benefit of any other person, and have no reference to the purpose for which the property is acquired, or to the manner in which the property is to be enjoyed, by the person acquiring it. "Use" may include "user" or "enjoyment", but it has a wider significance, namely, "benefit", and as I pointed out previously, the words "exclusive" and "personal" are not unnecessary or redundant. I think significance can be given to each word in the section.

I am of opinion that the argument for the appellants cannot be sustained. The appeal is dismissed with costs.

HEARNE S.P.J.—I agree.

Appeal dismissed.