Present: Garvin A.C.J.

1926.

SUB-INSPECTOR OF POLICE, DEHIOWITA *v.* BOTEJU.

380—P. C. Avissawella, 11,368.

Buddhist Temple—Public place—Police Ordinance, No. 16 of 1865, s. 60 (2).

A Buddhist temple is not a public place within the meaning of section 60 (2) of the Police Ordinance.

PPEAL from a conviction by the Police Magistrate of Avissawella.

E. G. P. Jayatileke, for accused, appellant.

July 9, 1926. GARVIN A.C.J.—

In this case there is no appeal as of right except upon a matter of law certified in the petition of appeal. The point taken is that there is no evidence that the accused, who was convicted of behaving in a drunk and disorderly manner, did so on a public thoroughfare or in a public place. The general effect of the evidence is that the appellant, who was slightly the worse for liquor, was one of a large concourse of Buddhists who collected at a certain Buddhist temple. He appears to have behaved in a troublesome manner and was arrested by the Police Inspector. The Police Constable states that he saw him misbehaving and using abusive language at the turn to the temple. He was then standing on a path which led to the temple. The question arises whether a Buddhist temple is a public place within the meaning of section 60 (2) of Ordinance No. 16 of 1865. It is contended that a Buddhist temple is not a place to which the members of the public have access as of right; it is only Buddhists who can claim a right to enter a Buddhist temple, and that right can be exercised only for the purposes of worship. It is said that the members of the public who do not profess the Buddhist religion have no right to enter a Buddhist temple. Even in the case of Buddhists themselves, it is said, the temple authorities are vested with certain rights in the control and management which would entitle them to exclude from the premises persons whom for good reason, they think, should not be permitted to enter the premises. It is contended by Counsel that the principle on which Withers J. acted in the case of *Pietersz v. Wiggin*,[1] if applied to the case of a Buddhist temple leads to the conclusion that it is not a public place within the meaning of the provision under which the accused was

[1] *2 Cey. L. Rep. 111.*

1926.

GARVIN A.C.J.

Sub-Inspector of Police, Dehiowita v. Boteju

charged. There is no evidence that the path which led to the temple is a public path, or is a path in respect of which the public have such rights of user as would bring it within the category of a public thoroughfare, nor in the case of this temple that the conditions as regards ingress and egress as of right are such as would justify a Court of Law in holding that it was a public place within the meaning of this section.

The appeal must, therefore, be allowed, and the conviction set aside.

Set aside.