Present: Middleton J. and Wood Renton J. 1912

THE TRUSTEE OF MUTIYANGANA VIHARE *v.* BANDARA *et al.*

366—D. C. Badulla, 2,462.

Buddhist Temporalities—Reasonable notice must be given of meeting for electing a trustee—Ordinance No. 8 of 1905, s. 17.

Under section 17 of "The Buddhist Temporalities Ordinance, 1905," the District Committee summoning a special meeting for the election of a trustee is required by implication to give such notice of the intention to hold the meeting as will be reasonably sufficient to bring the fact that it is to be held to the knowledge of the general body of resident voters. No form of notice is prescribed by the section. It is not possible to lay down any general rule on the subject.

MIDDLETON J.—If a proper notice was published at the vihare for fourteen clear days before the meeting to be held for the purpose of electing a trustee under section 17, and notice was given by beat of tom-tom in the village or villages attached to the vihare asking the voters to attend the meeting at least two days before the holding of the meeting, such a notice would be sufficient.

THE facts are fully set out in the judgment.

Bawa, K.C., for appellant.

H. A. Jayewardene (with him *J. W. de Silva*), for respondents.

Cur. adv. vult.

January 31, 1912. MIDDLETON J.—

This is an action brought by a person calling himself the trustee of the Mutiyangana Vihare against two defendants, the first of whom is a former trustee, and the second the incumbent of the vihare or temple. The action was brought to recover all the property, movable and immovable, belonging to the vihare, which it was alleged had been handed over by the first defendant to the second defendant, and which it was alleged was retained by him. The plaintiff estimated the relief he sought at the value of Rs. 2,000. The answer of the first defendant was a denial of the due appointment of the plaintiff as trustee, an admission by him that his appointment had lapsed by effluxion of time; while the second defendant averred that the plaint disclosed no cause of action against him,

1912.

MIDDLETON J.

Trustee of Mutiyangana Vihare v. Bandara

and denied that the plaintiff was the duly appointed trustee of the Mutiyangana Vihare of Badulla. The issues settled were:—

(1) Whether the plaintiff was the duly appointed trustee of the Mutiyangana Vihare?

(2) Whether the plaintiff called upon the first defendant on April 22, 1910, to deliver up possession of the property of the vihare to him?

(3) If so, did the defendant decline to do so?

(4) Are the defendants wrongfully detaining the properties of the temple from the plaintiff?

The first issue was the one to which the attention of the Court was mainly directed, and which, of course, is vital to the plaintiff's rights. A very large body of evidence was called for both sides, and the District Judge has written a careful and well-reasoned judgment upon that evidence, in which he has held that the plaintiff was not the duly elected trustee of the vihare, on the ground that the notice given by the District Committee for the holding of an election of a trustee for the temple according to section 17 of the Buddhist Temporalities Ordinance, No. 8 of 1905, was insufficient. In that section there are no directions set out, or any terms laid down, as to how a meeting by the District Committee is to be held for the election of a trustee, but the section simply says that a trustee is to be elected for a term of three years by a majority of the voters resident in the villages to which the temple is attached at a meeting held by the District Committee specifically convened for that purpose. Under section 6 of the same Ordinance the mode of summoning a public meeting for the election of a District Committee is specifically laid down, and in that section it is enacted that at least thirty days before the time determined on for the meeting a written notice of it is to be affixed to some conspicuous part of each temple within the sub-district, and that due publicity of such notice shall be given by beat of tom-tom or otherwise on three consecutive days before the day fixed for the meeting. Now, an examination of the evidence shows, as the learned District Judge says in his judgment, that some 150 notices dated April 1 in the Sinhalese language were printed announcing an election on April 9 and issued for distribution: 50 in the sub-districts, 100 in the town and neighbourhood. The President of the District Committee said that 49 notices were actually delivered in the town by one person, and he distributed others himself. Notices were also, the President avers, affixed in the kachcheri and court notice boards, of which the District Judge is doubtful. But there is no evidence of any notice at the vihare itself—a serious omission—and tom-tom was beaten once through the town from Hinagoda to Kammanakada on the day of the meeting. As a result some 30 or 40 people attended the adjourned meeting. It would appear also that many of the

notabilities of the district attending the vihare in question were called, and asserted that they knew nothing of the proposed meeting. The Ratemahatmaya of the division, the Basnaike Nilame, and prominent Buddhist laymen, such as Messrs. Kotalawala, Don Pabilis Appuhamy, N. Marasinghe (the rejected candidate), the Town Arachchi, the Town Assessment Collector, the Kachcheri Arachchi, all bore testimony that they knew nothing of the meeting at all. The priest of the temple himself and the old trustee were not notified. There were hardly any voters of prominence at the meeting of April 11, and of headmen only two: one *ex* Ratemahatmaya, the plaintiff's father, and the Mylagastenne Arachchi, the President's son. It was also in evidence that early in the year it had been intimated to the District Committee by a petition by 53 persons believing themselves to be voters that they desired to support the candidature of the first defendant for re-election. It was proved also that a person named Marasinghe, the candidate for the office, had sent in an application to the District Committee that his name should be put forward for election as trustee of the vihare. It, therefore, must have been quite obvious to the President of the District Committee that a strong feeling existed in the district with regard to the election of a new trustee, and that there was at any rate one new candidate, together with the old trustee, ready to come forward for election to the office.

It was contended on behalf of the appellant that the notices of the meeting which had been proved were, in the circumstances of the case, amply sufficient. The Ordinance made no provision for any specific forms of notices, and it was contended on the authority of the cases of *Mercantile Investment and General Trust Company v. International Company of Mexico*, [1] reported in a footnote to the case of *Sneath v. Valley Gold, Limited*, that the notices were reasonably sufficient. In that case it was held that a notice given by an advertisement in the public newspapers for fourteen days before a meeting convened by the directors of a company for passing a resolution for an exchange of shares was a reasonable and sufficient one. It was argued that the election of a new trustee was an official act, as to which there was a presumption that everything was duly performed according to the requirements of the law, and that the burden of proof rested on the defendants to show that the election had not been duly held. In the absence of any provision relating to the formalities requisite for holding such an election as this, I am of opinion that it would be sufficient to give such a notice published in such a way and by such means as would be reasonably sufficient to enable the majority of the electors to attend the meeting convened. I am much impressed in this case by the fact that no notice of the meeting was published at the vihare, and the notice given by beat of tom-tom up a road mentioned in the evidence

[1] (1893) *Chancery* 484.

1912.

MIDDLETON J.

Trustee of Mutiyangana Vihare v. Bandara

does not seem to me to be a very effectual manner of conveying to the voters of the villages to which that particular vihare was attached that a meeting for the purpose of electing a trustee for it was to be held. According to the Buddhist religion, I understand that there are four *poya* days every month at the four phases of the moon, and it is not unreasonable to suppose that good Buddhists would attend their vihare at least on these occasions. Arguing by the analogy of proceedings in Christian communities, a notice given in a church or a chapel would ordinarily be deemed to have reached the ears of the worshippers of such church or chapel. Here it would seem to be argued that there is no notice board at any vihare, and no means of giving any information to the worshippers, and that the voters of the vihare would be, as a rule, in the majority women. I think, however, that notice at a vihare as required under section 6 of the Ordinance is particularly significant in view of any other meetings to be held for the purposes of the Ordinance. It is contended for the defendants that a certain section of the voters who supported the plaintiff in this case were desirous of obtaining his election behind the backs of a very large majority of the other voters, and it is suggested before us that the mode of notice adopted for the plaintiff was intended for the purpose of studiously leaving out those who were opposed to his candidature and obtaining the presence of those who supported him. There seems to be perhaps some ground for this contention, looking at the evidence. It is contended for the appellant also that in his case the number of voters present at the meeting were no less than the 40 who were present at the election of the previous trustee. This no doubt is the case, and it is open also to question, as the appellant urges, whether any election under the Ordinance has ever been conducted on the basis of a reasonable and sufficient notice. It is not within my province to lay down how long a notice should be given, or where it should be given, or in what way it should be given. But my own opinion is that, if a proper notice was published at the vihare for fourteen clear days before the meeting to be held for the purpose of electing a trustee under section 17, and notice was given by beat of tom-tom in the village or villages attached to the vihare asking the voters to attend the meeting at least two days before the holding of the meeting, such a notice would be sufficient.

There is one other point that was raised for the respondents, and that was that the Committee recognized the irregularity of the meeting in April for want of notice by announcing another meeting during August to be held in September. This, however, may have been done upon the suggestion of the District Court. In my opinion the judgment of the District Judge was right and should be affirmed, and I would dismiss the appeal with costs, which, I think under the circumstances, should very properly be paid by the appellant personally.

WOOD RENTON J.—

Under section 17 of "The Buddhist Temporalities Ordinance, 1905" (No. 8 of 1905), the District Committee summoning a special meeting for the election of a trustee is required by implication to give such notice of the intention to hold the meeting as will be reasonably sufficient to bring the fact that it is to be held to the knowledge of the general body of resident voters. No form of notice is prescribed by the section. It is not possible to lay down any general rule on the subject. The question whether the notice given is sufficient will in each case be one of fact. The learned District Judge in an admirable judgment has held that the notice given by the District Committee in the present case was insufficient, and I am certainly not prepared to say that his finding on this point was wrong. Admittedly no notice was affixed to the vihare, the place of worship of the principal Buddhists in the district. No notice of any kind reached a long series of influential Buddhists; Mr. Katugaha, the Ratemahatmaya of Yatikinda, though he lives in the town of Badulla, only three-fourths of a mile from the vihare, and worships there; Mr. Bandaranayaka, Basnaike Nilame of a neighbouring vihare, and a regular worshipper at the vihare here in question, resident within one-sixteenth of a mile of it; Mr. Kotalawala, also a regular worshipper at the vihare, and resident about one-eighth of a mile from it; Don Pabilis Appuhamy, a resident in Badulla, and a regular worshipper at the vihare, within the premises of which he has built an almshouse; Mr. Marasinghe, Recordkeeper of the kachcheri, and himself a rival of the appellant for the vacant trusteeship; Herat Appuhamy, Town Arachchi of Badulla, also a regular worshipper at the vihare, Appuhamy Arachchi; Ganetirala Arachchi; and Kade Ratuheneya. Counsel for the appellant said that it is not necessary that notices of the kind that we are here concerned with should be proved to have reached every prominent resident voter. That is quite right. But the fact that a large number of influential voters received no notice is evidence, and may be strong evidence, of the inadequacy of the notice actually given. In addition to the matters just mentioned, I think that the District Judge must be taken to have held, disbelieving the evidence of the President of the District Committee on that point, that notices were not proved to have been affixed to the notice boards of such frequented places as the court and the kachcheri. The appellant's counsel argued that the attendance at the meeting here in question was shown by the evidence to have been as large as that at other meetings of a similar character. But in the present case the facts are established (*a*) that while a new trustee ought to have been elected in the end of January, 1911, that election had not taken place, and the appellant had been irregularly appointed provisional trustee; and (*b*) that the District

1912.

WOOD RENTON J.

Trustee of Mutiyangana Vihare v. Bandara

Committee was in presence, early in the year 1911, of a petition signed by 53 persons, believing themselves to be voters, intimating their desire to support the candidature of the retiring trustee, the first defendant-respondent, for re-election. I agree with the District Judge that these circumstances made it doubly incumbent on the Committee to see that adequate notice of the special meeting for the election of a trustee was given, and it is difficult to believe that if that duty had been properly performed, the appellant's election would have been, as it was, unanimous. Accepting the contention of the appellant's counsel that the burden of proving the notice to have been insufficient was on the respondents, I think that that burden has been discharged. The counter evidence for the appellant as to tom-tom beating and the distribution of notices is unsatisfactory. The tom-tom beater himself admits that of his two tom-tom beatings, only one related to the calling of the meeting. None of the notices reached the prominent Buddhists above referred to. I see no reason to differ from the decision of the learned District Judge as to costs. I would dismiss the appeal with costs payable by the appellant personally.

Appeal dismissed