1938 *Present :* **Soertsz J. and de Kretser A.J.**

PIYATISSA TERUNNANSE *v.* SARANAPALA TERUNNANSE.

331—D. C. Colombo, 244.

Buddhist ecclesiastical law—Right of incumbent to nominate his successor—Appointment by deed or will not essential.

The incumbent of a Buddhist temple is entitled to nominate his successor from among his pupils. There is no requirement that such nomination should be by will or deed only.

APPEAL from a judgment of the District Judge of Colombo.

H. V. Perera, K.C. (with him *Rajapakse*), for defendant, appellant.

Hayley, K.C. (with him *Wikremanayaka*), for plaintiff, respondent.

March 17, 1938. DE KRETSER A.J.—

This is an action regarding the incumbency of a Buddhist temple. The facts are as follows :—

The incumbent prior to 1919 was Piyaratana Terunnanse. He had three pupils, viz., Uduwela Sumana, Saranapala, the plaintiff, and Piyatissa, the defendant.

Of these, Uduwela was publicly "disowned" by his tutor, did not attend his tutor's funeral, and came to this temple only after a dispute arose in 1929 between plaintiff and defendant.

Piyatissa was appointed incumbent, or to use the correct expression, Adikari by D 16 in 1919.

The plaintiff resided in the temple and is still there and he attended to religious ceremonies in the temple. There is some evidence that he kept the key of the shrine room, which used to be closed each night. The defendant attended to the temporalities, in conjunction with the trustees.

In 1929 plaintiff attempted to prove his right to the incumbency and obtained D 25 from the Maha Nayake of their sect. The defendant promptly informed the Maha Nayake of the existence of D 16 and the Maha Nayake promptly revoked his earlier decision, which had been given purely on the evidence then before him, viz., that the plaintiff was the senior pupil of Piyaratana.

The plaintiff is the uncle of the defendant.

The succession to the incumbency is governed by the rules of Sisyana Sisya Paramparawa.

There are other facts in dispute which are not necessary for the decision of this case.

The learned District Judge held that Uduwela Sumana had lost his rights and that plaintiff thus became the senior priest and as regards D 16 he held that it was only a temporary appointment and that, even if it was not that, it was ineffective as a tutor could appoint one of his pupils to be his successor only by means of a deed or by a last will. He held that plaintiff's claim was not prescribed as he had continued to reside in the temple and "his right to perform the religious services and to attend to other matters connected with the services at the temple were at no time denied by the defendant".

As I understand the law a priest always has the right to nominate his successor from among his pupils. I need hardly quote all the cases on this point.

Prior to the time when trustees were appointed under the provisions of the Buddhist Temporalities Ordinance the Adikari was vested with the control of the temporalities and it therefore was common for a priest to convey to his successor these temporalities by deed or will, but the appointment to the incumbency rested on the selection or nomination and not on the form in which that selection or nomination was expressed. The authorities quoted by the learned Judge do not lay down that the appointment can be made by deed or will only. In those cases the appointment had been so made.

In *Henapolle Pansalla Samanyala Unnanse v. Henapolle Pansalla Subita Unnanse* [1] Dias J. said "The right of an incumbent last in possession to select one or more of his pupils to succeed him in the temple has been repeatedly upheld". Clarence expressed himself in language of similar import.

In *K. A. Terunnanse v. M. G. Terunnanse* [2] the question was whether a priest could select his successor from any but his pupils and even on this point the case is of little assistance.

The other cases cited do not establish the rule invoked by the District Judge.

The law on the point is recited in *Gunanande Unnanse v. Dewarakkita Unnanse* [3]. This case dealt with another point but all the authorities are collected together in it. The cases only insist on "nomination". Indeed this must be so for notarial documents would have been unknown in the times of the Sinhalese kings. The opinion expressed by Schneider A.J. in *Rewata Unnanse v. Ratanajoti Unnanse* [4] commends itself to me and I have always understood the law to be that a priest may nominate his successor from among his pupils. The more solemn the form in which he nominates the easier will be the proof of the nomination, but there is no particular form of nomination.

The learned Judge's opinion that D 16 was a temporary appointment is, in my opinion, erroneous. He gives no reason for his opinion but one may infer that he was influenced by the recital in D 16 that Piyaratana was ill and unable to look after the affairs of the temple. Illness was the reason for the appointment (as in *Gunaratana Unnanse v. Dharmananda Unnanse* [5]) but there is nothing limiting the appointment to Piyaratana's illness or to any period whatever. On the contrary Piyatissa is invested "hereafter" with all the powers vested in Piyaratana, and his rights are not limited to mere management. The best evidence as to what Piyaratana intended was furnished by himself in D 1 in which he refers to Piyatissa as Adikari. There is further the interpretation which the Maha Nayake placed on it when he revoked his earlier opinion that plaintiff was entitled to succeed.

The defendant is in my opinion the incumbent of the temple and plaintiff's action must be dismissed with costs.

[1] *5 S. C. C. 235.*
[2] *Matara Cases 236.*
[3] *26 N. L. R. 257.*
[4] *3 C. W. R. 193.*
[5] *22 N. L. R. 276.*

It is unnecessary to deal with the other points raised on the appeal but I shall touch on them briefly. It is doubtful whether Piyaratana could "disown" Sumana except by appointing Piyatissa (*vide* also *Gunaratana Unnanse v. Dharmanande*) but Sumana may have lost rights by deserting his tutor and the temple (*Dammaratane Unnanse v. Sumangala Unnanse et al.*[1]).

There is little doubt that plaintiff knew in 1922 that defendant claimed to be and was the Adikari and at least in 1929 he was well aware of the denial of his rights.

One of his witnesses Alpinis Dias, went so far as to say "the plaintiff ceased to be incumbent 4 or 5 years ago. When plaintiff ceased to be incumbent defendant became incumbent". Plaintiff's cause of action arose then and plaintiff's claim seems to be prescribed. It is not correct to argue that he resided in the temple and performed certain religious duties and therefore did not lose his rights. As a pupil of Piyaratana he had the right to do these things. He knew his claim to the office of Adikari was challenged and it was being challenged in the most effective way possible.

I allow the appeal with costs.

SOERTSZ J.—I agree.

Appeal allowed.