Present: Bertram C.J. and De Sampayo J.

1918.

SARANANKARA UNNANSE *et al.* *v.* INDAJOTI UNNANSE *et al.*

187—D. C. Kandy, 24,967.

Buddhist ecclesiastical law—What is necessary to constitute pupillage?—Different kinds of pupils—Presentation for ordination—Robing—Instruction—Disrobement of tutor does not affect pupil—Claim to a share of an incumbency.

According to the ecclesiastical law observed among the Buddhists of Ceylon, presentation for ordination, apart from robing, is in itself sufficient to constitute pupillage. These functions may validly be performed by delegation

Semble, a priest presented for ordination by a priest other than the robing priest in his own name will be the pupil of both.

It is not essential that the pupil should have received instruction from the tutor whom he claims to succeed.

The disrobement of the tutor does not affect the status and rights of the pupil.

Per BERTRAM C.J.—According to the original theory of its institution, a vihare is dedicated to the whole *Sangha*. This has been modified by the religious custom known as "pupillary succession," under which a vihare is specially dedicated to a particular priest and his pupils. By virtue of this dedication the priest and his pupils have a preferential right of residence and maintenance at the vihare—but this appears to be subject to the general dedication to the *Sangha* as a whole, inasmuch as on the failure of the succession the vihare reverts to the *Sangha*. In Ceylon every vihare is presumed to be dedicated in pupillary succession, unless the contrary is proved.

A vihare cannot be portioned out in shares, whether divided or undivided.

The office of "incumbent" is a single office, and cannot be held jointly, and consequently a claim to a "share" of an incumbency cannot be sustained.

I and R were fellow-pupils of P. I was the senior pupil, and became "incumbent" of the vihare in question. R purported to convey his half share of the incumbency to his pupil, S, and thereafter disrobed himself. The plaintiffs, as pupils of S, claimed "a share on the incumbency" and a declaration that they were entitled to the incumbency jointly with I.

Held, that the plaintiffs were not entitled to such a declaration.

Per BERTRAM C.J.—The first defendant, I, was the incumbent, and R had nothing but a right of residence and maintenance. The deed cannot be treated as conveying this interest to S, as the interest is not a transmissible interest. Moreover, S was entitled

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to it without any transfer. Similarly, the plaintiffs, the pupils of S, were entitled, like, S, to a right of residence and maintenance at the vihare, and this is all they can at present be entitled to. As pupils of the pupils of S, they may in due course eventually be entitled to succeed to the incumbency. Whether either of them ever will, in fact, becomes so entitled must depend upon the development of events.

The various forms of pupillage under Buddhist ecclesiastical law discussed and explained.

Observations by De Sampayo J. on the importance in matters of ecclesiastical administration of ascertaining by evidence the customs actually in force among the Buddhist priesthood in Ceylon as distinguished from the ancient canons enunciated in the Buddhist scriptures. " Doctrine and belief are, of course, immutable, but discipline and administration are naturally subject to modifications."

THE facts are set out in the judgment.

Bartholomeusz, for appellant.

G. Koch, for respondent.

Cur. adv. vult.

November 13, 1918. BERTRAM C.J.—

This is a case in which the third plaintiff, a Buddhist priest, and the fourth plaintiff, another Buddhist priest, as his pupil, claimed to be entitled, jointly with the defendants, to the incumbency of a vihare, to the right of residence in the vihare, and to the right of maintenance out of the revenues of the vihare derived from the endowments attached thereto. Various other contentions were advanced in the pleadings, but these were not insisted upon at the trial, and in the result, the only question the Court had to determine was whether the third plaintiff was in the line of pupillary succession from one Pinguwa Unnanse, who was at one time the incumbent of the vihare, and, if so, what rights belong to him by virtue of this fact.

The third plaintiff claimed through one Ratnapala Unnanse. The first defendant and Ratnapala Unnanse were fellow-pupils of Pinguwa Unnanse. Indajoti Unnanse was the senior pupil, and as such is now what is known as the incumbent of the vihare. Ratnapala Unnanse, his fellow-pupil, disrobed himself about thirty years ago. Before he left the priesthood, however, he had a pupil, Sri Sumana Unnanse, to whom he purported to convey certain rights by deed. The third plaintiff, Sumangala Unnanse, claims to be the pupil of Sri Sumana Unnanse; and by virtue of being his pupil he claims to be entitled to " a share " in the incumbency, and to be declared " the joint incumbent " with Indajoti Unnanse.

The defendant, however, challenges his claim altogether. He asserts that Sri Sumana Unnanse was not the pupil of Ratnapala Unnanse, and that the third plaintiff was not the pupil of Sri Sumana

Unnanse. The first question which the Court has to determine, therefore, is as to this alleged line of pupillage, and the second is, what constitutes pupillage for the purpose of pupillary succession.

First, let us take the case of Sri Sumana Unnanse. Was he the pupil of Ratnapala Unnanse? According to the evidence of Ratnapala, Sri Sumana, though not actually robed by Ratnapala, was robed by another *bhikkhu*, Giddawa, "at his instance." Ratnapala adds that he "taught" Sri Sumana for about fifteen years, and that Sri Sumana was "obedient" to him. The records of the Asgiriya Vihare show that Sri Sumana Unnanse was presented for ordination by Ratnapala and this other *bhikkhu*, Giddawa, and his robing tutors are recorded as having been Ratnapala and Giddawa. The record is thus entirely consistent with the evidence of Ratnapala; there is no reason to think it inaccurate or fraudulent. It must be accepted; and it must be taken that Sri Sumana was robed by Giddawa at the instance of Ratnapala, and was ordained on the presentation of Ratnapala and Giddawa. Mr. Bartholomeusz contends that, even accepting these facts, Sri Sumana was not a pupil of Ratnapala to the extent necessary to establish pupillary succession. He contends, first of all, that actual robing by the tutor, from whom the succession is traced, is essential.

Next, as to the third and fourth plaintiffs, were they the pupils of Sri Sumana? The evidence shows that they were both robed by Dhammakanda, and presented for ordination by Sri Sumana, who is described as their "second tutor." It is also said that both the third and the fourth plaintiffs were "obedient" to Sri Sumana. On this Mr. Bartholomeusz contends, firstly, that neither of them is a pupil of Sri Sumana, as neither was robed by him; and in the second place, that, even assuming that ordination, coupled with obedience, is sufficient to constitute pupillage (which Mr. Bartholomeusz contests), there is a third requisite to pupillage, namely, instruction, which I understand him to contend is "in all cases essential"; and there is no evidence that either of these *bhikkhus* was instructed by Sri Sumana. He contends, therefore, that neither of them can be considered his pupil for the purpose of pupillary succession. He bases his contention on his interpretation of the judgment of Pereira J. in *Dhammajoti v. Sobita*.[1]

For the purpose of determining these contentions, I will examine, first of all, the local authorities on the subject; and secondly, the general principles as laid down in such religious authorities as are accessible to us.

The local authorities on the subject are extraordinarily meagre. They consists, in effect, of three cases only: *Dhammajoti Unnanse v. Paranatale*,[2] *Dhammajoti v. Sobita*,[1] and *Dammaratana Unnanse v. Sumangala Unnanse*.[3] In the first of these cases, the only question to be determined was whether mere instruction without robing or

[1] *(1913) 16 N. L. R. 408.*
[2] *(1910) 14 N. L. R. 400.*
[3] *(1881) 4 S. C. C. 121.*

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presentation for ordination was sufficient to create pupillage for the purpose of pupillary succession. This question was determined in the negative. There were two *obiter dicta:* one by Cayley C.J., who says that he had always understood that it was robing that constituted pupillage for the purpose of succession to a tutor's incumbency; and that he was not previously aware that ordination might also be considered sufficient for this purpose, as stated by the High Priest of Adam's Peak in that case. The Chief Justice, it will be observed, did not himself express any opinion. Dias, J., however, went further and said: "In my opinion robing is the only essential requirement to constitute pupillage, and that presentation for ordination is not of itself sufficient for that purpose." This observation was, of course, purely *obiter*, and has no authority, except as being the opinion of a Judge of eminence and experience. With regard to the second case, *Dhammajoti v. Sobita*,[1] Pereira J., for the purposes of the case, simply adopted the evidence of the High Priest called by the plaintiff. He said: "The High Priest called by the plaintiff says that robing, obedience, and ordination, or any two of them, would be sufficient to constitute pupillage. He mentions instruction also as one of the essentials." In the third case, *Dhammaratana Unnanse v. Sumangala Unnanse*,[2] which was prior in date to *Dhammajoti v. Sobita*,[1] the Supreme Court propounded a series of questions, some of which went to the very point here in issue. Evidence was taken on these questions, and that evidence was intended to be "a source of information for future reference on the points inquired about." Unfortunately that evidence was not printed as an appendix to the report, and it does not appear to have been made use of in the judgment of the subsequent case of *Dhammajoti v. Sobita*.[1] It is desirable, in my opinion, that that evidence should now be printed and published.[3]

It may be convenient at this point to summarize that evidence with reference to the points under discussion. The material questions are as follows:—

(i.) How is the right of pupillary succession obtained?

(ii.) Can a pupil obtain the right of pupillary succession to his tutor if he is not robed by him?

(iii.) Does every pupil obtain the right of pupillary succession to his tutor; if so, in what order; if not, which pupil obtains the right?

Seven Mahanayakas were examined in pursuance of the direction of the Supreme Court. All agree that robing is, ordinarily speaking, essential to pupillary succession. Six of them also hold that ordination without robing is sufficient to qualify for pupillary succession. One Mahanayaka of eminence declares that in order to entitle a pupil, who only claims by ordination, to succeed to his ordaining

[1] *(1913) 16 N. L. R. 408.* [2] *(1910) 14 N. L. R. 400.*

[3] *See Appendix to this Volume.*

tutor, it is necessary that the ordination should have taken place with that intention; another of the witnesses declares that that intention must have been publicly declared before the chapter. One states that a pupil by ordination will only succeed his ordaining tutor, if that ordaining tutor has no other pupils whom he has himself robed.

The above appears to be the sum of the local authorities on the subject. Mr. Bartholomeusz's contention is based, in the first place, upon the *obiter dictum* of Dias J. in *Dhammajoti Unnanse v. Paranatale*;[1] and, in the second place, upon the judgment of Pereira J. in *Dhammajoti v. Sobita.*[2] With regard to the latter, he contends that it must in all cases be affirmatively proved that the pupil received instruction from the tutor whom he is to succeed. The observations of Pereira J. were based upon the evidence of the High Priest called in the case. It is therefore necessary to see what that priest actually said. The material portion of his evidence is as follows: "Robing, obedience, and ordination, or any two of them, would be sufficient to constitute pupillage. Robing alone is not sufficient. Instruction is another matter....." (*Cross-examined*): "There is a pupil by robing; a pupil by instruction; a pupil by adoption; a pupil by ordination. Ordinarily, the pupil by robing is also ordained by his tutor priest. He succeeds the tutor. If a priest has no such pupil, any pupil he has instructed and ordained would succeed him."

As this theory of the system of a combination of two out of three or four requisites enunciated by the witness in that case has greatly affected the subsequent discussion of the matter, it may, perhaps, be advisable to discuss the nature and varieties of pupillage in the Buddhist religious system. The leading authorities on this subject are the *Vinaya*, which is accessible to us in the form of a translation, and the commentary by the great commentator, Buddhaghosa, which is unfortunately not yet so accessible. According to Buddhaghosa, whose commentary would appear to be practically of the same authority as the *Vinaya* itself, there are four classes of pupils, or *antevasika* :—

(i.) *Pabbajjantevasika.*
(ii.) *Upasampadantevasika.*
(iii.) *Nissayantevasika.*
(iv.) *Dhammantevasika.*

These may be roughly translated as—

(i.) Pupil by robing.
(ii.) Pupil by ordination.
(iii.) Pupil by "obedience" (or dependence).
(iv.) Pupil by instruction.

[1] *(1881) 4 S. C. C. 121.*

[2] *(1913) 6 N. L. R. 408.*

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The word *antevasika* (or pupil) is equivalent to the Sinhalese *sissiya*. It occurs in the *Vinaya* more particularly in connection with the third variety of pupillage; but it appears to be synonymous, or practically synonymous, with the other word for pupil, *akariya*. (See Dr. Rhys Davids' note on the *Mahavagga 1, 38, 1*.)

(i.) *Pabbajjantevasika* is a pupil who has been admitted by robing to the *pabbajja* (or *samanera*) ordination by his preceptor, or *upagghaya*. From Mr. Woodhouse's pamphlet (page 13) it would appear that the candidate must undergo a period of three years' preliminary training under the preceptor. The duty of every young *bhikkhu* to submit himself to a preceptor is ordained in these terms: "I prescribe, O *bhikkhus*, an *upagghaya*" (*Mahavagga 1, 25, 6*). At first no *bhikkhu* could ordain more than one novice (*Mahavagga 1, 52*); but afterwards this rule was enlarged (*Mahavagga 1, 55*). "I allow, O *bhikkhus*, a learned, competent *bhikkhu* to ordain two novices, or to ordain as many novices as he is able to administer exhortation and instruction to."

(ii.) With regard to the second class of pupil, *Upasampadantevasika*, this is a pupil who receives the *upasampada* ordination from his preceptor. No person under twenty years of age can receive this ordination (*Mahavagga 1, 46*), and it can only be conferred by a full priest of ten years' standing (*Mahavagga 1, 32, 1*): "I prescribe, O *bhikkhus*, that only a learned, competent *bhikkhu*, who has completed ten years, or more than ten years, may confer the *upasampada* ordination." It is essential that there should be present at this ordination a priest who holds the position of preceptor, or *upagghaya*, to the person to be ordained; and it must take place before a chapter of ten priests by a formal act of the order. The ordinance of the Buddha for this purpose is as follows (*Mahavagga 1, 28, 4*) :—

"And you ought, O *bhikkhus*, to confer the *upasampada* ordination in this way: Let a learned, competent *bhikkhu* proclaim the follwoing *ñatti* (resolution) before the *Sangha* : 'Let the *Sangha*, reverend sirs, hear me. This person, N. N., desires to receive the *upasampada* ordination from the venerable N. N. (*i.e.*, with the venerable N. N. as his *upagghaya*). If the *Sangha* is ready, let the *Sangha* confer on N. N. the *upasampada* ordination with N. N. as *upagghaya*. This is the *ñatti*.'"

It is nowhere said that the priest who confers the *upasampada* ordination as *upagghaya* should be the same priest who admitted the person ordained to the *pabbajja* ordination; but it is customary in the records of ordination to record the name of the robing preceptor as well as that of the ordaining preceptor.

(iii.) The third class of pupil is the *Nissayantevasika*. The principles of this institution are described in the *Mahavagga 1, 32, 1*. After the *upasampada* ordination, every priest so ordained must undergo a period of dependence or *nissaya*. This period was at

first ten years (*Mahavagga 1, 32, 1*): "I prescribe, O *bhikkhus*, that you live ten years in dependence; he who has completed his tenth year may give a *nissaya* himself." This was afterwards reduced to five years (*Mahavagga 1, 53, 4*) in the case of "learned, competent *bhikkhus*." *Nissaya* is explained by Dr. Rhys Davids as follows: "*Nissaya* (*i.e.*, dependence) is the relation between *akariya* and *antevasika*. The *antevasika* lives *nissaya* with regard to the *akariya*, *i.e.*, dependent on him; the *akariya* gives his *nissaya* to the *antevasika*, *i.e.*, he receives him into his protection and care." The rules governing the relations between an ordained priest and his preceptor are precisely the same as those governing the relations between a pupil before ordination and his *upagghaya*. The *upagghaya*, however, appears to have a higher relation to the pupil than the *akariya*, who has given him a *nissaya*. Thus, when the *akariya* and the *upagghaya* have come together at the same place, the dependence of the pupil upon the *akariya ipso facto* ceases (*Mahavagga 1, 36, 1*). It is this state of dependence which appears to be referred to by the witnesses in several cases under the name of "obedience."

(iv.) The fourth class of pupillage is *Dhammantevasika*. I have not been able to find any special institution of this class of pupillage but the necessity for learning and instruction is everywhere implied in the *Vinaya*, as, for example, in such language as "Let no ignorant, unlearned *bhikkhu*, O *bhikkhus*, confer the *upasampada* ordination" (*Mahavagga 1, 31, 8*); and "Let no ignorant, unlearned *bhikkhu*, O *bhikkhus*, give a *nissaya*" (*Mahavagga 1, 35, 2*). I understand that there is nothing to prevent a priest choosing for his instructor a priest other than those who have robed or ordained him, or given him a *nissaya*. Indeed, this fact is visible to all from the existence of such institutions as the Vidyodaya College and similar institutions in our midst.

All the four classes of pupils are alike pupils under the Buddhist sacred law, *i.e.*, they rank as pupils of the priests who have robed, ordained, instructed them, or given them a *nissaya*. But, for purposes of the pupillary succession, unless a distinction has been made in the instrument of dedication, I understand that the first two forms of pupillage are alone regarded. This is natural, as these establish a permanent relationship; whereas the last two imply only a temporay and transient relationship.

We are now in a position to apply the principles to the local authorities summarized above. To take the first case of *Dhammajoti v. Sobita*.[1] It is now plain that the witness whose evidence was adopted by the Court in that case did not mean to say that it was essential that the pupil should have received instruction from the preceptor whom he claims to succeed. The witness was clearly referring to Buddhaghosa's classification of pupils. By a "pupil

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by adoption " he probably means a pupil by *nissaya*. His view appears to be that robing alone is not sufficient to qualify a priest for succession. (Here he appears to be in conflict with certain decided cases in this Court, but in harmony with the general ecclesiastical view.) Ordinarily, in the view of this witness, to entitle a priest to succession, he should be both robed and ordained by his preceptor, but if he has either not been robed or not ordained by him, the deficiency in either case may be made good by showing that he was the *Nissayantevasika* or *Dhammantevasika* of the priest whom he claims to succeed. This appears to be an individual view, and is not supported by any other evidence that has been laid before our Courts. At any rate, it is not material to the present case, because it appears from the evidence, firstly, with regard to Sri Sumana, that he was robed " at the instance of " Ratnapala and ordained by Ratnapala, and that in the record of his ordination Ratnapala appears as one of his robing and one of his ordaining tutors; and secondly, with regard to the third and fourth plaintiffs, that they were ordained by Sri Sumana, and were " obedient " to him.

With regard to Sri Sumana, the evidence, it is true, is to the effect that he was not actually robed by Ratnapala, but as " at his instance," Ratnapala not having completed the ten years necessary to qualify him for the purpose of conferring an *upasampada* ordination. Robing by delegation is justified by a very high precedent in the *Vinaya* itself, namely, the case of the robing of Prince Rahula, the son of the Buddha himself. It is recorded that he approached the Buddha and asked for his inheritence. " Then the Blessed One said to the venerable Sariputta: ' Well, Sariputta, confer the *pabbajja* ordination on young Rahula.' " It appears that the word translated " confer " is a casual verb, and means more exactly " cause to confer " the *pabbajja* ordination on young Rahula. And it is explained by Buddhaghosa, in his commentary on the *Vinaya*, that Sariputta did not himself confer the ordination, but that it was conferred by Moggallana at the instance of Sariputta. Rahula, nevertheless, ranks as the pupil of Sariputta.

It might possibly be questioned whether a priest who had not completed the ten years necessary to qualify for the conferment of an ordination is entitled even to ordain him indirectly through the medium of another. We have no ecclesiastical authority on this point, but even if this were so, I think it is clear from the evidence in the case of *Dhammajoti v. Sobita* [1] that ordination itself is sufficient to entitle a pupil to succession. It is true that one of the witnesses in that case expressed the opinion that the ordination must have taken place with that intention, and another that the intention must have been publicly declared before the chapter. But no record is made of any such declaration in the records of

[1] *(1913) 16 N. L. R. 408.*

ordinations as they are at present kept; and as the other witnesses did not endorse this opinion, it would probably be best to consider that any such ordination should be deemed to have taken place with the required intention, unless the contrary is proved. It appears to me, therefore, that there can be no question that Sri Sumana was the pupil of Ratnapala, and that the third and fourth plaintiffs were the pupils of Sumangala for the purposes of pupillary success.

Accepting the position, therefore, that the third and fourth plaintiffs are in the line of pupillary succession from Ratnapala, what is it they ask for on the basis of this finding? They demand that they should be declared entitled, not only to the right of residence in the said vihare and to the right of maintenance from the revenues derived from the endowments attached thereto, but also that they may be declared entitled jointly with the defendants to the incumbency; and the District Judge has given a decree in this form. This claim to a "share" in an incumbency (in the sense in which the word is used in the case) cannot, in my opinion, be sustained. The claim to a "share" is raised in its baldest form; and the extent to which this theory of a "share" in an incumbency has been carried is shown by the fact that the priests on both sides of the case have purported to dispose of "shares" in this incumbency as though they were dealing with ordinary interests in immovable property. Thus, it is pleaded in the plaint that Ratnapala Unnanse by deed dated June 25, 1884, gifted his "half share" to his pupil Sri Sumana Unnanse. This deed is on record in the case, and is a bare gift of "an exact half share of land, pansala, vihare, plantations, and everything there on out of Viharawatta belonging to Karalliyadda Vihare," &c., and purports to declare that "from this day the produce of the said lands and everything thereon shall be possessed and enjoyed by the said Sri Sumana Unnanse." Similarly, it is stated that the third and fourth plaintiffs, by a deed of November 30, 1915, "gifted their said half share to the first and second plaintiffs, and put and placed them in possession thereof," though the claim of the first and second plaintiffs appears not to be insisted on. Again, it is said that the first defendant, the actual incumbent in possession, Indajoti Unnanse, by a deed of gift executed in or about the month of September, 1915, purported to convey to his pupils, the second and third defendants, "the entirety of the said Karalliyadda Vihare and its endowments." This deed is less crude in form than Ratnapala's deed. It conveys the vihares, pansalas, and endowments to the three pupils of Indajothi Unnanse, "to be held and possessed by them in common, in order that they may carry out the rites and ceremonies of our Buddhists religion and officiate in the said vihares, and posses the endowments thereof, taking to their own use and benefits the produce and profits of the said lands for the daily," &c.;

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and it authorizes and empowers the "senior pupil to exercise full power and authority over the said temples, vihares, and pansalas and also over my said junior pupils."

Later, in paragraph 8 of the plaint, the conception of a "share" it still further developed, and the "share" is spoken of as a "half share of the vihare and its endowments," it being alleged that the plaintiff and their predecessors in title have been in the undisturbed and uninterrupted possession of the said vihare and its endowments for over ten years by a title adverse to and independant of the defendant and all others. The plaint contains a schedule enumerating the various immovable properties said to be the endowments of the vihare.

In the view I take of the subject, as the result of such imperfect studies I have been able to make, all these claims and transactions are misconceived, and are expressed in terms contrary to the fundamental institutions of the Buddhist religion. In regard to matters of personal property, these Courts have been compelled to accord to Buddhists priests rights which are inconsistent with their own ecclesiastical law. We have thus recognized their right to acquire, dispose of, and transmit property which, according to their religious law, they are incapable of possessing (see the cases cited by Mr. Woodhouse on pages 23 and 24 of his pamphlet); although in the Kandyan Province we still recognize this principle of the Buddhist law to this extent, that we refuse to a Buddhist priest the ordinary rights of inheritance in intestacy (see *Sawers 7* and *Marshall 337, section 77*). But when we are dealing with ecclesiastical property, a region in which we are enforcing simply the ecclesiastical law based upon the original authoritative texts developed by religious customs, we ought not to recognize claims and transactions which are in their terms or in their nature inconsistent with the fundamental principles of those texts and those customs.

Let us, therefore, in the first place, consider the essential nature of a vihare and the rights of the Buddhist clergy in connection therewith according to the principles laid down in the *Vinaya*, and afterwards consider how those principles have been affected by the religious customs known as pupillary succession.

A vihare, the dedication of which was sanctioned by the Buddha in the *Kulavagga 6, 1, 5*, is conceived of as being dedicated to the whole order of the *Sangha*, present and future, throughout the world, in all directions, north, south, east, and west:—

"I have had, Lord, these sixty dwelling-places made for the sake of merit, and for the sake of heaven. What am I to do, Lord, with respect to them?

"Then, O householder, dedicate these sixty dwelling-places to the *Sangha* of the four directions, whether now present or hereafter to arrive.

Even so, Lord! said the Setthi of Rajagaha, in assent to the Blessed One, and he dedicated those sixty dwelling-places to the use of the *Sangha* of the four directions, whether present or to come."

Dr. Rhys Davids explains that this formula of dedication has been constantly found in rock inscriptions in Ceylon.

In the nature of things a vihare is untransferable and unapportionable. This is laid down in chapter 15 of the *6th Khandaka* of the *Kulavagga*. Certain *bhikkhus*, to avoid being worried to provide sleeping accommodation for travelling *bhikkhus* who came in from country places, transferred the sleeping accommodation of their residence to one of their number and used them as belonging to him. The ruling of the Buddha on this case was as follows:—

> These five things are untransferable, and are not to be disposed of either by the *Sangha*, or by a company of two or three *bhikkhus* (*a gana*), or by a single individual. And what are the five? A monastery (*arama*), or the site for a monastery. This is the first untransferable thing that cannot be disposed of by the *Sangha*, or by a *gana*, or by an individual. If it be disposed of, such disposal is void; and whosoever has disposed of it is guilty of a *thullakkaya* (serious transgression). A vihare, or the site for a vihare. This is the second untransferable thing that cannot be disposed of by the *Sangha*, or by a *gana*, or by an individual. If it be disposed of, such disposal is void; and whosoever has disposed of it is guilty of a *thullakkaya* . . . . . "

Similarly, a vihare is unapportionable (see *Kulavagga 6, 16, 2*):—

> "These five things, O *bhikkhus*, are unapportionable, and are not to be divided either by the *Sangha*, or by a *gana*, or by an individual. If divided, the division is void; and whosoever does so, shall be guilty of a *thullakkaya*. And what are the five? A monastery (*arama*) or the site for a monastery. This is the first . . . . . A vihare, or the site for a vihare. This is the second . . . . . "

There are numerous passages which illustrate the same principle. Thus, the allotment of permanent lodging places is prohibited (*Kulavagga 6, 11, 3*); and the allotment of a plurality of lodging places is also prohibited (*Kulavagga 6, 12, 1*). To speak of a "share" in a vihare is thus a contradiction in terms. Every vihare belongs to the whole *Sangha* to the full extent of the accommodation which it affords, and cannot be portioned out in shares, whether divided or undivided.

Subject, therefore, to the effect of the principle of pupillary succession, the beneficial interest of every vihare and its endowments is in the *Sangha* as a whole. This principle is not affected by the Buddhist Temporalities Ordinance, No. 8 of 1905, which vests the legal title to temple endowments in a trustee, and commits

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to him the management and administration of these endowments. The beneficial interest still remains in the persons who are the object of the original trust. This general principle of the dedication of every vihare to the *Sangha* as a whole is affected by the religious custom under which temples have been from time to time dedicated for the use of a particular priest and his pupils and the pupils of those pupils in perpetual succession. Strictly speaking, the right of pupillary succession should be proved and determined by the original instrument of dedication; but it is only in exceptional cases, such as that of the Kelaniya Vihare, that we are in possession of this original instrument (see Mr. Woodhouse's pamphlet, footnote to page 12). But our Courts have, in effect, held that in Ceylon every vihare is presumed to be dedicated in pupillary succession unless the contrary is proved (*Ratnapala Unnanse v. Kewitigala Unnanse* [1]).

The history of this custom is obscure, and has not yet received adequate investigation, but it has been suggested to me by a very high authority that its origin is to be traced to certain passages in the *Vinaya*, which sanction "a gift by determination" (*adissa deti*) (or, as it is put in Rhys Davids' translation, "a gift to a specified number"). The passages in question occur in the *Civara Khandaka*, *i.e.*, the *Robing Khandaka* of the *Mahavagga*, *No. VIII.* A gift of robes was, strictly speaking, made to the whole order. "No *bhikkhu* had a separate personal ownership over his robes; though nominally given to him for his own use, and really his own, subject to the rules, they were, technically speaking, the property of his *Sangha*" (Rhys Davids' *Vinaya Texts*, *vol. I.*, *p. 18*). Modifications of the rule appear to have been developed, and section 32 of the *8th Khandaka* of the *Mahavagga* enumerates eight methods in which a gift of robes can be made. The eighth of these is "when he gives it to a specified number." (*Cf.* also *VIII.*, *30*, *4-6.*) On this passage Buddhaghosa makes the following comment: "If a householder were to offer, saying 'This is for you and your pupils,' it so reaches the *Thera* and the pupils." The Pali text is as follows: "*Sace pana idham tumkaham ca tumhakam antivasikanam ca dammiti enam vadati; therassa ca antevasikanam ca papunati.*"

The passage in the text relates to a gift of robes only, but Buddhaghosa's comment is understood to be of general application, and as embracing a gift of any property capable of being given to the *Sangha*, including, therefore, a vihare. It is clear, however, that this special form of dedication is, in the case of a vihare, subject to the general dedication to the whole *Sangha*, inasmuch as it is recognized that the vihare reverts to the *Sangha* upon the pupillary succession being exhausted. (See *Sumana Terunnanse v. Kandappuhamy.*[2])

[1] (*1879*) *2 S. C. C. 2C.*

[2] (*1893*) *3 C. L. R. 14.*

If I rightly understand the principle, pupillary succession affects the matter in two ways: firstly, in giving a special right of residence and maintenance to the pupils of the original priest; and secondly, in establishing a special office in connection with the vihare—that of a presiding officer—and in regulating the succession to this office.

It would, perhaps, be more convenient that we should consider the question of this special office first. It is an office unknown to the *Vinaya*. The *Vinaya* makes provision for the appointment of a great number of special officers of vihares. Among the special officers provided for are those of "regulator of lodging places," "apportioner of rations," "superintendent of building operations," "overseer of stores," "receiver of robes," and many others (See *Kulavagga 4, 4; 6, 5; 6, 11; and 6, 21.*) The "superintendent of building operations" by virtue of his office was entitled to special accommodation, but this and the duration of his office was rigidly limited. There is nothing in the *Vinaya* which provides for the appointment of a general presiding or superintending officer. Buddhaghosa refers in one passage in the *Dhammapadatthakatha*, to which my attention has been drawn, to the *Mahathera* (or chief elder) of a vihare. "*Bhikkhus* who frequent a cemetery for purposes of meditation must notify the dwelling in the cemetery to the cemetery keeper, the chief elder of the vihare (*Mahathera*), and the officer in charge of the village." This may possibly be the origin of the officer referred to in Ceylon as the "incumbent."

All the special officers above referred to are officers of the *Sangha* itself, appointed by a formal resolution (*ñatti*), in accordance with the procedure prescribed for formal acts of the Order, at a meeting of the *Sangha* called for the purpose, at which the attendance of four priests constitutes a quorum (see *Mahavagga, 9th Khandaka*). The officer who in Ceylon decisions and ordinances is referred to as the "incumbent," is an officer of a different nature. The term by which he is described is "*adikhari*" ("a person in authority")—a word derived from the Sanskrit word "*adikara*," meaning authority. Where there are several persons in the line of pupillary succession, the *adikhari* is appointed from among these persons, either by nomination of his predecessor or by selection of these persons. This selection, in such cases, is not made by a formal act of the *Sangha*, as in the case of the officers created by the *Vinaya;* but it is, nevertheless, the formal choice of the other persons entitled to the succession. By custom the right to succeed is determined by seniority (though it would appear from the evidence recorded in the case of *Dammaratana Unnanse v. Sumangala Unnanse* [1] that the right attaching to seniority is not so unqualified as some of our decisions appear to suggest. See *Sumana Terunnanse v. Kandappuhamy* [2]). When, therefore, in such cases, our Courts declare that any person is entitled to succeed to an "incumbency," what they, in

[1] *(1910) 14 N L. R. 400.*

[2] *(1893) 3 C. L. R. 14.*

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effect, decide is that the person in question, by virtue of seniority (or such other qualification as the Court may determine to govern the matter), is by custom entitled to be selected for the office by the other priests in the line of pupillary succession.

The office of *adikhari* is, however, single and indivisible. He is, indeed, *primus inter pares*, but his rule is monarchical. The office cannot be held jointly, and, consequently, there is no such thing as a "share in an incumbency." As was said by Pereira J. in *Dhammajoti v. Sobita*,[1] "the idea of a joint incumbency can hardly be entertained." An *adikhari* may, it is true, nominate all the pupils to succeed him, but they can only succeed one at a time. See the response of the priests of the Malwatta College in *Dantura Unnanse v. The Government of Ceylon*[2]:—

> "Should the priest, the original proprietor, declare his bequest common to all his five pupils, they will all become entitled thereto, and one of them being elected to the superiority, the other four may participate in the benefits. The said superior being dead, the next in rank will succeed to the superiority, and along with the rest (of the survivors) will enjoy the benefit and have the power to make a gift in favour of any other person ....."

I do not find any authority for the statement in Mr. Woodhouse's pamphlet that in such a case there would be a sort of committee of management (page 30). Similarly, if the *adikhari* makes no nomination, they would all succeed him, but they would succeed him singly in rotation.

I am disposed to think that a certain confusion has been introduced into the subject by the adoption of a somewhat unfortunate word as the equivalent for the word *adikhari;* the term in use for this purpose is the English word "incumbent." In one sense all the resident priests of a vihare under pupillary succession may be described as "incumbents," in that they are entitled to reside at the vihare and to be maintained out of its endowments. The phrase "joint incumbent" appears to have been used in some of the previous cases, but this is probably due to a confusion between the right of presidency and the right of maintenance. That this is so is indicated by the fact that very often the phrase used is "chief incumbent." If we used the word "incumbent" as the equivalent of the Sinhalese word *adikhari*, then, in my opinion, there could no more be a joint incumbency of a vihare than there could be a joint incumbency of an English living.

This brings us to the second way in which the right of pupillary succession affects the general principle that all vihares are vested in the *Sangha* as a whole. It would apppear that priests who are in the line of pupillary succession of a vihare have, by religious

[1] *(1913) 16 N. L. R. 408.*

[2] *Vand. App. D. p xli.*

custom, a special right to reside at the vihare and to be maintained out of its endowments. This special right may be due either to the original dedication, where such dedication left the temple to a particular priest and his pupils and the pupils of those pupils in perpetual succession, or it may be due to the fact that each of these pupils has a *spes successionis* to the incumbency. I understand that, as regards other members of the *Sangha* who do not belong to the pupillary succession of the vihare, this right is not an exclusive right, but a preferential right, accorded, as I say, by religious custom. It is not a right to a determined share, nor is it transmissible by deed. The question as to the order in which persons belonging to the pupillary succession may be eventually entitled to succeed to the incumbency is an extremely obscure one. It has not yet been properly elucidated; I doubt myself whether it is capable of full elucidation. The question, however, does not arise here; it is sufficient to say that the pupils of an *adikhari* and the pupils of those pupils are entitled to maintenance and residence at the vihare of which he is or was the *adikhari*.

It is hardly necessary to add that, while on the one hand the general right of the *Sangha* and the preferential right of those priests who are in the pupillary succession of a vihare must be limited by the extent of the revenue of the vihare, the right of enjoyment of these revenues on the part of any particular priest is strictly limited by the rigid rules of the *Vinaya* discipline. A Buddhist priest, out of the revenues of property dedicated to pious uses, is by the Buddhist religious law entitled to bare personal maintenance, and to bare personal maintenance alone. In saying this I do not mean to suggest that he is not entitled to use such revenues for the purpose of procuring books for study, for travelling expenses, or for other things incidental to his function as a priest, but only that he is not entitled to use them for personal luxuries, or indulgences, or for the support of members of his family.

Let us now apply these principles to the facts of the present case. Ratnapala purported to convey to Sri Sumana his half share of the incumbency. In the first place, he was not incumbent at all. The first defendant, Indajoti Unnanse, was the incumbent, and Ratnapala had nothing but a right of residence and maintenance. The deed cannot be treated as conveying this interest to Sri Sumana, as the interest is not a transmissible interest. Moreover, Sri Sumana was entitled to it without any transfer. Similarly, the third and fourth plaintiffs, the pupils of Sri Sumana, were entitled, like Sri Sumana, to a right of residence and maintenance at the vihare; and this is all they can at present be entitled to. As pupils of the pupils of Sri Sumana, they may in due course eventually be entitled to succeed to the incumbency. Whether either of them ever will, in fact, become so entitled must depend upon the development of events.

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I would, therefore, amend the decree of the learned District Judge by eliminating the declaration that "the third and fourth plaintiffs are entitled jointly with the first defendant to the incumbency of Karalliyadda Vihare," and would declare that the third and fourth plaintiffs are the pupils of Sri Sumana Unnanse, and that the said Sri Sumana Unnanse was the pupil of Ratnapala Unnanse, who was himself one of the pupils of Pinguwe Unnanse, some time incumbent of the Karalliyadda Vihare; and that the said third and fourth plaintiffs are entitled to the right of residence at the said vihare and of maintenance out of its endowments, together with such right of eventual succession to the incumbency of the said vihare as may accrue to them or either of them in course of law. As the appellants have failed on the substantial points contested, in spite of this amendment of the decree, I would direct that the costs of the respondents should be borne by the appellants. The order as to costs in the Court below should, in my opinion, stand.

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The claim of the first and second plaintiffs on the strength of the deed of gift granted in their favour by the third and fourth plaintiffs was not pressed at the trial, for the sufficient reason that they are not in the line of sacerdotal pupils of Ratnapala Unnanse, and the gift is therefore repugnant to the *sisyanusisya* rule of succession. D. C., Kurunegala, 19,413; [1] Agent's Court, Kurunegala, 366; [2] *Dhammajothi v. Paranatale,* [3] *Sumangala Unnanse v. Sobita Unnanse.* [4] The case thus turns upon the rights of the third and fourth plaintiffs, and with regard to them, the questions for determination are (1) whether they are the pupils of Sri Sumana Unnanse, and (2) whether Sri Sumana Unnanse, to whom Ratnapala Unnanse gave a deed of gift, was a pupil of the latter. These deeds take the form of a transfer of the property belonging to the temple, and not of nomination of the grantor's pupil or pupils as his successor or successors. But no dispute has been raised on that score. Such deeds are not uncommon, as witness the deed of gift put forward by the defendants themselves. In most cases the defect is due to want of appreciation of the nature of the transaction or of professional skill on the part of the notary, and I think the deeds pleaded by the plaintiffs may be taken as being really intended to gift the right of succession. It is within the power of an incumbent to make such a gift to one or more of his pupils. Moreover, even if the deeds are considered to be invalid by reason of their form, the plaintiffs' action will not necessarily fail, because, independantly of the deeds, their claims may be maintained if the fact of pupillage is established.

[1] *Gren. Rep. (1874 D. C.) 66*
[2] *Vand. App. D.*
[3] *(1881) 4 S. C. C. 121.*
[4] *5 S. C. C. 255.*

What, then, constitutes pupillage? This depends on the law observed and practised among the Buddhist priesthood in Ceylon. The original source of that law is undoubtedly the Buddhist scriptures; but I doubt whether the law found in these scriptures in regard to such questions as arise in this case is applicable at the present day in its pristine rigour. In *Sumangala Unnanse v. Sobita Unnanse* (*supra*), Dias J., referring to certain expert evidence given by Buddhist priests, who had quoted from the *Pittakes* in support of their opinion, said: " These *Pittakes* ..... contain a large body of rules and regulations with reference to the conduct of the priesthood, succession to ecclesiastical property, and so forth, but the Buddhists of Ceylon have not adopted all these rules, and our Courts have only given effect to such rules as have been adopted in this country "; and again: " It is a mistake to suppose that all the Buddhist law which is to be found in the three *Pittakes* is in force in this country. They are of no more force than all the Muhammadan law which is to be found in the Koran." This view is confirmed by the number of departures from the strict Buddhist law and the creation of new precedents. For instance, notwithstanding the rule of absolute poverty, priests generally hold considerable private property which is at their own disposal, and on their death descends to their lay heirs, *Ratnapala Unnanse v. Abdul Cader*,[1] *Mahattayo v. Kumarihamy*.[2] This, I think, is the accepted custom, though there are passages in *Marshall's Judgments* and *Morgan's Digest* which reproduce the old Buddhist rule. Again, a priest may acquire property by special gift or bequest, and he may inherit his brother's or sister's estate, or if he be the only child, he has a right to his father's lands in preference to collaterals. *Kande v. Kiri Naide*.[3] He was also entitled, before the enactment of the Buddhist Temporalities Ordinance, to the savings out of the revenue of the temple. See *Ratnapala v. Abdul Cader* (*supra*) and the authorities therein cited. Another instance of modification is found in *Sumangala Unnanse v. Sobita Unnanse* (*supra*), where it has been held, notwithstanding the authority of the Buddhist scriptures to the contrary, that a deed of gift conferring the incumbency on a pupil may be revoked by the grantor and a new appointment made. Without referring to all the examples of this kind, I may mention that the jurisdiction exercised without any question by the Asgiriya and Malwatta Colleges in appointing incumbents to vacant temples where the line of succession has been broken, appears to have no support in the Buddhist scriptures, which confer that power upon the entire priesthood. Nor is there any warrant in the books for the distinction between the Siamese and the Amarapura sects, and for the incapacity of a priest of one sect to succeed to an incumbency held by a priest of the other sect. I wish, however, to make it clear that these changes should be regarded, not as lapses, but as necessary

[1] *5 S. C. C. 61.* [2] *7 S. C. C. 84.* [3] *Ram. (1843–1855) 51.*

developments in the course of centuries. Doctrine and belief are, of course, immutable, but discipline and administration are naturally subject to modifications. Accordingly, it becomes necessary, in matters of the latter kind, to look to actual practice and custom rather than to the ancient canons. I have been induced to make these remarks, because there is a tendency among learned priests who give expert evidence to content themselves with passages from the books and their own interpretation of them. To a civil court the question, What is the law governing a religious body? is a question of fact to be gathered from evidence, and I should value more highly any evidence which learned priests may be able to give from their experience and knowledge with regard to the actual custom, or even what may be called the " sense " of the Buddhist priesthood, though, of course, they are quite entitled, if there is no particular usage discoverable, to found themselves on texts from the sacred books. This tendency is not absent from the expert evidence recorded in D. C. Kandy, 18,982 (*Dammaratana v. Sumangala* [1]) and D. C. Matara, 5,605 (*Dhammajoti v. Sobita* [2]), to which we have been able to refer. In this connection it is interesting to note the evidence of Sri Sumana Gahagoda, the Nayaka Unnanse of Dambulla, who spoke of the right of the High Priest of Asgiriya or Malwatta to nominate an incumbent to a derelict temple. For he said: " What I have now stated does not appear in any books, but it is the custom handed down for ages. Buddha did not create *sisyansusisya paramparawa* succession, but the kings did, who in ancient times dedicated temples to the worship of Buddha by royal sannas." I think, however, that we may safely adopt such propositions as are supported by a consensus of opinion, or are approved by a majority of the learned and eminent priests whose evidence is available to us. The evidence in the Kandy case is the most important, because it was given, not in the interests of the parties concerned, but with a view of assisting this Court, which had formulated certain questions and had sent the record back for the purpose of answers from learned priests as experts.

It is only necessary to consider so much of the evidence above referred to as is relevant to the questions involved in the present case. It is the opinion of the witnesses, Heramitigala Dhirananda (member of the Chapter of Malwatta), Sri Dharmarama (High Priest of Colombo and Chilaw Districts and Principal of the Pali College at Peliyagoda), Sri Nanissara (Principal of the Vidyodaya College, Colombo), and Wataraka Ratnajoti (Anu Nayaka of Malwatta), that the right of pupillary succession is acquired by the act of robing or by the act of ordination, that is to say, either robing or presentation for ordination is sufficient to constitute the priest who is robed or ordained the pupil of the priest who so robes or presents. The witnesses to the contrary are Ratnajoti (the Nayaka Unnanse

[1] *(1910) 14 N. L. R. 400.*

[2] *(1913) 16 N. L. R. 408.*

of Mayangana Vihare of Bintenna), Saranankara (High Priest of Topawewa), and Sri Sumana (High Priest of Dambulla Vihare), according to whom robing is essential to pupillage. I have so far referred to the evidence in the Kandy case. The expert evidence in the Matara case is that of Bedigama Ratnapala, High Priest of the Southern Province, who said that pupillage was constituted by robing or by ordination. He also spoke of pupillage by adoption, and this is well recognized; but his further statement that pupillage may also be constituted by instruction receives no support from any source, and is contradicted by the decision in *Dhammajoti v. Paranatale* (*supra*). This brings me to the evidence in the case just mentioned. There the late Sri Sumangala, the distinguished scholar and High Priest of Adam's Peak, in his evidence stated that presentation for ordination without robing was sufficient to constitute pupillage, but that there must be either robing or presentation for ordination. The learned Judges who took part in the decision treated the opinion of the High Priest with respect, though the view at least of Dias J. was that robing was essential. But it was not necessary to decide the point, because in that case there had been neither robing nor ordination. The conclusion, then, to be drawn from the evidence of the most competent and authoritative witnesses is that, according to the ecclesiastical law observed among the Buddhists of Ceylon, presentation for ordination, apart from robing, is in itself sufficient to constitute pupillage. It may be added that these functions may validly be performed by delegation, and it would seem that a priest presented for ordination by a priest other than the robing priest in his own name will be the pupil of both. This probably is an instance of pupillage by adoption spoken of by the High Priest in the Matara case.

We are now in a position to consider the facts of this case. There is not much difficulty with regard to the status of Sri Sumana. The evidence with which the learned District Judge was satisfied is that Sri Sumana was robed by Giddawa Unnanse, but in the presence and at the request of Ratnapala, who explains that this arrangement was due to the fact that he, having himself been ordained less than ten years before, was not a senior priest. The *Lekammitiya*, or Register of Ordinations of Asgiriya, states that the tutors by whom Sri Sumana was robed and also presented for ordination were Welletota, Karalliyadda, and Giddawa. Welletota is another name for Ratnapala, and Karalliyadda is Dhammakanda of Karalliyadda Temple. It is not very clear how Karalliyadda's name came to be associated with those of Welletota and Giddawa. The reason probably was that Sri Sumana, as it appears, resided sometimes with Dhammakanda, and no doubt received instruction from him also. It is sufficient to note, however, that Welletota *alias* Ratnapala was one of the presentors for ordination. Consequently, according to the principles above stated, Sri Sumana

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must be considered the pupil of Ratnapala. There is one other fact which should be mentioned, namely, that after the date of the deed of gift in Sri Sumana's favour Ratnapala disrobed himself; but it is agreed on all hands that the disrobement of the tutor does not affect the status and rights of the pupil, but that the pupil would succeed at once, as if the tutor had died.

With regard to the third and fourth plaintiffs, Ratnapala's evidence is that they were presented for ordination by Karalliyadda Dhammakanda and Sri Sumana. This is borne out by the *Lekammitiya*, which describes Sri Sumana as " second tutor." Presentation for ordination being itself sufficient for purposes of pupillage, it follows that the third and fourth plaintiffs have established their claim to succeed as the pupils of Sri Sumana, who is now dead.

The present rights of the third and fourth plaintiffs in and to the temple are not so extensive as they appear to think. For instance, they ask, among other things, for a declaration that they are entitled jointly with the defendants to the incumbency of the temple. If by " incumbency " they mean a right to the presidency, it is clear that their claim is mistaken, because the first defendant, who is the pupil of the original incumbent Pinguwa, and is senior even to the first defendant's fellow-pupil Ratnapala, has legal right to such presidency. I therefore agree to the modification of the decree proposed by the Chief Justice.

Varied.