

1926.

Present : Garvin and Lyall Grant JJ.APPUHAMY *v.* APPUHAMY *et al.*

232—D. C. Kandy, 13,955.

Buddhist Temporalities—Office of Diyawadana Nilame—Temporary absence from the Island—Powers of District Committee.

The Buddhist Temporalities Ordinance contains no provision for the appointment of a person to act as Diyawadana Nilame during the temporary absence from the Island of the holder of the office.

THE plaintiff, who obtained the lease of a land called Pottilawatte from Hugh Nugawela (second defendant), sued the first defendant who claimed to be entitled to the possession and enjoyment of the land adversely to him. The land in question was the property of the Dalada Maligawa, and the second defendant when he granted the lease purported to do so as acting Diyawadana Nilame. It would seem that shortly before the lease was granted the Diyawadana Nilame left the Island temporarily and he suggested to the District Committee that the second defendant should act for him. The District Committee accepted the suggestion. It was contended by the first defendant that there was no provision in the Buddhist Temporalities Ordinance for the appointment of a person to act for the Diyawadana Nilame during his absence and that the second defendant was not entitled to grant the lease to the plaintiff. The learned District Judge upheld the contention and dismissed the plaintiff's action.

Soertsz, for plaintiff, appellant.

D. B. Jayatilleke, for defendant, respondent.

March 10, 1926. GARVIN J.—

The facts material to the question raised by this appeal are not in dispute. The appellant is a holder of a lease of land called Pottilawatte executed by one Walauwe Hugh Nugawela, and in this action sued the first defendant who claimed to be entitled to the possession and enjoyment of this land adversely to him. The second defendant is his lessor and has been added as a party defendant to this action because it is said that he refused to join the plaintiff as a party plaintiff.

The land in question is the property of the Dalada Maligawa, and the second defendant when he granted this lease purported to do so in his capacity of "acting Diyawadana Nilame." It would seem that shortly before this lease was granted the Diyawadana Nilame left the Island temporarily. When informing the District Committee of his intention to leave the Island, he suggested that the present second defendant be appointed to discharge the duties of his office during his absence. The District Committee

assented to his proposal. It is contended by the defendant that the Buddhist Temporalities Ordinance, No. 8 of 1905, does not contemplate the appointment of a person to act in the office of Diyawadana Nilame during the temporary absence of the permanent holder of the office from the Island, and that the second defendant was therefore not entitled at the time to grant this lease or to exercise any of the powers or perform the duties of that office. The learned District Judge has accepted the contention of the defendant, and has dismissed the plaintiff's action.

1926.
 GABVIN J.
 Appellant
 v.
 Appellee

In appealing, the same contention is pressed upon us by counsel for the appellant. The argument in brief is that a temporary departure of the Diyawadana Nilame from the Island occasions a temporary vacancy in that office, and that such a vacancy may be filled by a temporary appointment made by District Committee. For this proposition counsel relies on section 34 of the Ordinance, which he says empowers the District Committee to make temporary arrangements in a case such as this by the appointment of an acting Diyawadana Nilame. It seems to me that section 34 has been enacted for two definite purposes. It first declares that every vacancy in the office of a trustee shall be filled by election in the manner provided by the Ordinance. It specifies the cases which result in such a vacancy, and amongst these is the absence of the trustee from the Island. In the next place, it proceeds to provide for the appointment of some person to act in the office pending the election of a successor. The Diyawadana Nilame is a trustee. The question we have to consider is whether he is included in the term "trustee" as that term is used in section 34, and the answer, in my opinion, is that "trustee" as used in that section does not include the Diyawadana Nilame. Section 17 of the Ordinance contains all the provisions for the election of trustees, and makes special provision for the case of the Dalada Maligawa. The Diyawadana Nilame has to be elected by a special electoral college consisting of various priests and others specified in the section, and once elected he is to continue as trustee during his life, or "until and unless suspended or dismissed under section 16." In the event of his death, suspension, or dismissal special provision is made for the election of his successor by a special electoral body and not by the District Committee. If the contention of counsel for the appellant is to prevail then the office of Diyawadana Nilame is vacated on his departure from the Island. But here he is met by the provisions of the Ordinance which states that he shall continue to hold office until death or until he is suspended or dismissed under section 16. There is a further difficulty in giving effect to the argument of counsel for the appellant. The proviso to section 34 contemplates the making of provisional arrangements for the performance of the duties of the office of

1926.
 GARVIN J.
 Appiahany
 v.
 Appiahany

trustee " pending the election of a successor." It contemplates a vacancy and makes provision for the duties of the vacant office being carried on pending the election of a successor. It does not vest in the District Committee a general power to make temporary arrangements for carrying on the duties of a trustee whenever it was thought to be necessary or expedient to do so. The power may only be exercised when the office is vacant. Moreover, the section specifically deals with the departure from the Island of a trustee as a circumstance which determines his tenure of office and necessitates the election of a successor. The only view in which the contention that the District Committee has power to make an appointment in this case can be supported is that the office of Diyawadana Nilame is vacated when that officer departs from the Island. As has already been observed the Ordinance does not say that the office is to be deemed to be vacant on the departure from the Island of the holder. Indeed it seems to me that the provisions of section 17 indicates that departure from the Island was not intended to be followed by such a consequence. It may be that great inconvenience results in such a case as this. Whether in point of fact it is possible for the Diyawadana Nilame to continue to discharge the duties of his office, while he is temporarily absent from the Island is a matter on which it is not possible for us without further information to express an opinion. It is said by counsel for the appellant that for at least a short period the duties of the office can be efficiently discharged by a person who is thus temporarily absent. However this may be, the Ordinance does not contemplate or provide for the contingency. Whether it is an omission or whether it was intentional, the fact remains that no provision has been made for the appointment by the District Committee or by any other body of an acting Diyawadana Nilame during the absence from the Island of the holder of that office.

For these reasons I would dismiss the appeal with costs.

LYALL GRANT J.—

I agree with the judgment of my brother and for the reasons stated.

Appeal dismissed.

