1930

Present: **Maartensz A.J. and Jayawardene A.J.**

GUNANANDA *v.* DEEPALANKARA.

142—*D. C. Galle*, 27,282.

Buddhist law—Succession to incumbency—Appointment of successor by last will—Disinherision of senior pupil—Revocation.

In 1924 the incumbent and chief priest of a vihare executed a last will, which provided as follows :—

"I do hereby convey unto my only pupil Kahawe Gunananda, Priest of the Sudharmarama Temple, who is very obedient to me, Sudharmaramaya . . . . and all the movables and immovables belonging thereto which have been conveyed to me for upkeep by my teacher Ratnasara, High Priest, deceased, and all the lands conveyed for the upkeep of the said premises and all other movables and immovable property now entitled to me and which shall become entitled to me thereafter in my charge and upkeep and all other sangika movable property wherever to be had and entitled to me and which shall become entitled to me hereafter. I do hereby at all means give up my pupil Deepalankara priest, who is disobediently and irreligiously spending him against me since a long period."

In 1926 the incumbent executed another document (D1) in the following terms :—

"I do hereby declare that as my pupil Deepalankara was disobedient to me some time back, I had to turn him out to make him obedient. That, at present, he is obedient to me. Therefore, I admit him as a pupil of mine."

Held, that the last will conferred the incumbency of the temple on Gunananda and that the document D1 did not amount to a revocation of the appointment.

THE plaintiff instituted this action for a declaration that he was entitled to the incumbency of a Buddhist temple called Suddharmaramaya Vihare of which the incumbent and chief resident was Welitara Seelananda. He had three pupils, Deepalankara, the defendant, the senior pupil, Sugunasara, and the plaintiff. On March 29, 1919, Seelananda published a notice in a newspaper in which he stated that he had dismissed his two pupils, Deepalankara and Sugunasara, as they were disobedient to him. On March 25, 1924, Seelananda executed a will, P1, which provided as follows :—I do hereby convey to my pupil, Kahawe Gunananda, priest of the said Sudharmarama temple, who is very obedient to me, Sudharmaramaya situated at Welikada and all the movables and immovables belonging thereto which have been conveyed to me for upkeep by me by my teacher Ratnasara, High Priest, deceased, and all the lands conveyed for the upkeep of the said premises, and all the other movables and immovable property now entitled to me and which shall become entitled to me thereafter, in my charge and upkeep, and all other sangika movable property wherever to be had and entitled to me and which shall become entitled to me hereafter. I do hereby, at all means, give up my pupil Deepalankara priest who is disobediently and irreligiously spending him against me since a long period".

In 1926, by a writing dated September 14, D1, Seelananda pardoned Deepalankara. This document was as follows :

"I, the undesigned, do hereby declare that as my pupil Elatota Deepalankara was disobedient to me some time back, I had to turn him out to make him obedient. That, at present, he is obedient to me, therefore, I admit him as a pupil of mine."

The plaintiff claimed the incumbency as the pupil nominated by Seelananda to succeed him. The defendant claimed it as the senior pupil. The learned District Judge gave judgment for the plaintiff.

De Zoysa, K.C. (with him *Rajapakse*), for defendant, appellant,—Admittedly, defendant is the most senior pupil of Seelananda and unless Seelananda has appointed another pupil to succeed

him, defendant is entitled to the incumbency according to the rules of *Sisyanusisya paramparawa.*[1] The alleged last will of Seelananda (P1) purports to convey to the plaintiff certain sangika immovable and movable property. This he has no right to convey, for the title to such property is now vested in the trustee, not the incumbent (section 20 of Ordinance No. 8 of 1905). Nowhere is there any reference appointing plaintiff to the *incumbency.* Deprivation of the legal rights of the defendant (to succeed as the senior pupil) must be by clear and specific terms to that effect.[2]

In P1, Seelananda purports to disown defendant as his pupil. Legally he cannot do that. Even if he could, such disowning was subsequently withdrawn and defendant received back as pupil by D1. P1 is therefore waste paper.

P1 may perhaps have been construed as an act of appointment before Ordinance No. 3 of 1889, but not after. Everyone is presumed to know the law.

The defendant has, moreover, been appointed incumbent by the dayakayas and by the Sangha Sabha.

Amerasekere, for plaintiff, respondent. —That Seelananda intended to appoint plaintiff to the incumbency can be gathered from the whole document and from the other evidence. P1 refers to plaintiff as the *only* pupil. This is the form generally used in acts of appointment. A similar construction was placed on a document like P1 in *Rewata Unanse v. Ratnajoti Unanse.*[3] It is binding.

D1 only admitted defendant back as a pupil of Seelananda, but that did not revoke the appointment in P1 or restore him to his right to succeed as the senior pupil.

De Zoysa, K.C., in reply.—Section 20 of Ordinance No. 8 of 1905 was not fully considered in *Rewata Unanse v. Ratnajoti Unanse* (*supra*) and the observations on the point are *obiter.*

[1] 20 *N. L. R.* 385. [2] *Maxwell p.* 501. [3] 3 *C. W. R.* 193.

October 17, 1930. MAARTENSZ A.J.—

The defendant in this action appeals from a decree of the District Court of Galle by which the plaintiff was declared entitled to the incumbency of the Buddhist Temple called Suddharmaramaya or Sudharmarama Vihare situated at Welitara in Balapitiya.

The facts are not in dispute and are as follows :—

One Welitara Seelananda was the incumbent and chief resident priest of the vihare in question. He had three pupils, Deepalankara, the defendant, the senior pupil, Sugunasara, and the plaintiff.

Seelananda on March 29, 1919, published a notice, P2, in a paper called the " Lakminipahana " in which he stated that he had dismissed his two pupils Deepalankara and Sugunasara as they were disobedient to him, which he repeated in a notice, P5, in the same paper on July 19, 1919, in which he also denied the truth of a notice by Deepalankara that his tutor had pardoned him.

He published a similar notice with regard to Deepalankara on December 3, 1919.

In the latter notices he added that Deepalankara " shall have no right whatever to the movables and immovables belonging to the temple or/and himself ".

On March 25, 1924, Seelananda executed a will, P1, which provided as follows :—

" I do hereby convey unto my only pupil Kahawe Gunananda priest of the said Sudharmarama Temple, who is very obedient to me, Sudharmaramaya situated at Welikada Mulla aforesaid, and all the movables and immovables belonging thereto which have been conveyed to me for upkeep by me by my teacher Ratnasara, High Priest, deceased, and all the lands, &c., conveyed for the upkeep of the said premises and all the other movables and immovable property now entitled to me and which shall become entitled to me thereafter in my charge

and upkeep and all other sangika movable property wherever to be had and entitled to me and which shall become entitled to me hereafter. I do hereby at all means give up my pupil Deepalankara priest who is disobediently and irreligiously spending him against me since a long period ".

In 1926 Seelananda by a writing dated September 14, D1, pardoned Deepalankara. This document runs as follows :—

" That I, the undersigned, do hereby declare that as my pupil Elatota Deepalankara was disobedient to me some time back I had to turn him out to make him obedient. That at present he is obedient to me, therefore I admit him as a pupil of mine.

(Sgd.) REV. SEELANANDA,

High Priest, the incumbent of Sudharmaramaya Temple at Welikada Mulla in Welitara."

Witnesses.

In May according to the plaintiff, in March according to the defendant, a dispute arose between the plaintiff and defendant and this action is the result.

The plaintiff claimed the incumbency as the pupil nominated by Seelananda to succeed him.

The appellant claimed it as senior pupil of Seelananda.

The appellant produced at the trial two letters of appointment from the dayakayas and Sanga Sabha respectively, and it was suggested in appeal that they gave him a preferent right to the incumbency in any event.

I am not prepared to accept this suggestion which was not made at the trial nor raised in the issues.

The law is that in Ceylon every vihare is presumed to be dedicated in pupillary succession unless the contrary is proved (*Ratnapala Unanse v. Kewitigala Unanse*[1]) This case was referred to by Bertram C.J. without dissent in the case of *Saranankara Unanse v. Indajoti Unanse*,[1] in which the whole question of pupillage was very fully discussed.

The defendant has not rebutted this presumption and I hold that the vihare in question was dedicated in pupillary succession.

It was conceded by the respondent that according to the rules of pupillary succession the appellant was entitled to succeed Seelananda as incumbent of the temple unless Seelananda had appointed another pupil to succeed him.

The respondent alleges that Seelananda appointed him his successor by the will P1 which has been admitted to probate.

The two questions we have to decide are :—

(1) Whether the will P1 is or amounts to an appointment by Seelananda of the respondent as his successor.

(2) Whether, if the first question is answered in the affirmative, the appointment was revoked by the declaration D1.

These questions are not free from difficulty, as neither the will P1 nor the declaration D1 give clear expression to the effect attributed to them.

It was argued on behalf of the appellant that the will purported to convey the vihare and its temporalities to the respondent, that Seelananda had no title to convey, and that however appropriate in form it might have been before the passing of the Buddhist Temporalities Ordinance, No. 3 of 1889, it was not since the passing of that Ordinance effective either as a bequest of the vihare and its temporalities to the respondent or as an appointment of the respondent to the incumbency.

This argument necessitates an examination of the position of an incumbent of a vihare before and after the enactment of the Buddhist Temporalities Ordinances, Nos. 3 of 1889 and 8 of 1905.

[1] (1879) 2 *S. C. C.* 26.

[1] (1918) 20 *N. L. R.* 385.

The rights of an incumbent prior to the passing of the Ordinance were discussed in the case of *Ratnapala Unanse v. Kewitigala Unanse* (*supra*) which was argued before a bench of three Judges. The issue was " what was the rule of succession to the property belonging to a vihare on the death of the incumbent ".

Phear C.J. who delivered the judgment of the Court said : " As bearing on the issue, which is thus presented, it is important to remember that the incumbent of a vihare or pansala in this Island is not a body corporate with perpetual succession, as is the case with the parson (persona) of an English Parish, where, though the individual changes, and is designated from time to time, as need may be, by some outside nominating authority, yet, so far as concerns the property of the corporation, the parson never ceases to be, and continues for ever without any break. Neither does the vihare or pansala cover any legal entity resembling the deity of a Hindu family or temple, in which case the dedicated property belongs by law to the deity, who is recognized in the Civil Courts as a perpetual corporation, and of whom the human *sebaiat* is only the stewards or agent with very limited powers of dealing with the property.

In this Island, on the other hand, the property dedicated to the vihare or pansala appears to be the property of the individual priest, who is the incumbent of the foundation, for the purposes of his office, including his own support and the maintenance of the temple and its services, and on his death it passes by inheritance to an heir who is ascertained by a peculiar rule of succession or special law of inheritance, and is not generally the person, who would be by general law the deceased priest's heir in respect to secular property ".

The scope of the incumbent's authority to encumber or alienate property was defined in the case of *Heneya v. Ratnapala Unanse* [1], which was also argued before three Judges.

Phear C.J. said in that case : " I think it is well settled that although the incumbent of a vihare is in a sense the personal owner of the vihare property, yet he is limited in the exercise of the rights of property to the purposes and benefit of the vihare, and he can only alienate or encumber the property when the necessities of the vihare compel him to do so or justify him in doing so. And it is also incumbent upon any one who is interested in upholding any such alienation or incumbrance, when it is impeached, to prove that, at the time it was effected, either, that the necessity did actually exist for dealing with the property in the manner in which it was in fact dealt with, or that it was made to appear to the alienee or incumbrancer, as the result of reasonable inquiry on his part when negotiating the contract, that there was such necessity ".

Clarence J. said : " it is no doubt the law that the incumbent of a vihare can encumber the temple property only in order to provide means of meeting some necessity of the vihare and not for his own mere private purposes ".

The effect of these decisions is that an incumbent priest was sole owner of the vihare property, but he could not alienate or encumber it except for the benefit of the vihare and on his death it passed to his sacerdotal heir.

The sacerdotal heir is determined by the rule of succession which applies to the vihare.

If pupillary or *sisyanusisya paramparawa* rule of succession applies the sacerdotal heir is the incumbent's pupil. When there are several pupils, if the incumbent does not nominate his successor, the right to succeed is determined by seniority. Bertram C.J. observed in the case of *Saranankara Unanse et al. v. Indajoti Unanse et al.* (*ubi sup*) at page 397

[1] (1879) 2 *S. C. C.* 38.

that it would appear from the evidence recorded in the case of *Dammaratna Unanse v. Sumangala Unanse et al.*,[1] that the right attaching to seniority is not so unqualified as some of the decisions suggest. But, as I have said before, the respondent in this case did not challenge the right attaching to seniority.

The right of an incumbent to appoint a successor from among his pupils was upheld in D. C., Kurunegala, 15,057 (*Van der Straaten's Appendix F*), *Sumangala Unanse v. Sobita Unanse*,[2] and *Dhamma Joti v. Sobita*[3] In the second case it was also held that a deed of appointment may be revoked by the incumbent and a fresh appointment made by him.

In the case of *Sumangala Unanse v. Sobita Unanse* (*supra*) the deeds of appointment assured the lands to the donees or donee " Habendum in Sisyanusisya paramparawa ".

In the last case the deed P1 was described as an endowment or trust and the person in whose favour it was made was described as the fittest person to manage the affairs of the temple.

With regard to P1, Pereira J. said : " In times anterior to the passing of the Buddhist Temporalities Ordinance, the succession was not only to the status in a purely religious point of view of the incumbent, but to his power over the temple property as well, and apparently deed P1 was framed in imitation of the deeds written in times when the management and control of the temporalities or revenues of the temple went hand in hand with the incumbency of the temple. However that may be, it is clear that it is a part of the defendant's case that by deed P1 was appointed the successors in the incumbency to Kirti Sri Sumangala Terunnanse ".

As the defendant accepted deed P1 as a deed by which the incumbent appointed his successors, the case is not an authority as to the form of a deed of appointment.

Nor was the form of appointment in question in the earlier cases referred to.

The Buddhist Temporalities Ordinance, No. 3 of 1889, in the Provinces, districts, and sub-districts in which it came into operation divested the incumbents of vihares of their title to the temporalities of their vihares and vested them in the trustees of the temples.

Section 20 of the Ordinance enacted :—

> " All property, movable and immovable, belonging or in anywise appertaining to or appropriated to the use of any temple, together with all the issues, rents, and profits of the same, and all offerings made for the use of such temple other than the pudgalika offerings which are offered for the exclusive personal use of any individual priest, shall vest in the trustee of such temple, subject, however, to any leases and other tenancies, charges, and incumbrances affecting any such immovable property ; and such issues, rents, profits, and offerings shall be appropriated by such trustee for the following purposes . . . . "

The list of purposes need not be quoted.

This section is re-enacted as section 20 in the Ordinance No. 8 of 1905 now in force.

But the old form of appointment in the nature of a conveyance to the pupil was followed after these Ordinances were enacted.

The form of the appointment fell for decision in the case of *Rewata Unanse v. Ratnajoti Unanse*,[1] where the plaintiff alleging he was the senior pupil of Medankara Unanse, the late incumbent of Puhulpitiya Vihare, sued the defendant, a co-pupil, to be declared entitled to the incumbency of the vihare, and to reside therein. The defendant pleaded (1) that the action was barred by prescription ; (2) that Medankara Unanse by deed of

[1] (1910) 14 *N. L. R.* 400.
[2] (1883) 5 *S. C. C.* 235.
[3] (1913) 16 *N. L. R.* 408.

[1] 3 *C. W. R.* 193.

March 22, 1899, had appointed him his successor to the incumbency of the vihare.

This deed (marked D5) which I have called for and examined is numbered 8,994 and headed :—

This testament written and granted at Gampola on the 22nd day of March 1899, *is of the following purport, to wit.*

It runs as follows :—

" I being seized and possessed of the following, under and by virtue of a deed in my favour herewith delivered, bearing No. 19,904 dated May 10, 1860, and attested by Karallage Don Andiris Johan Appuhamy, Notary Public, to wit :—

" Puhulpitiya Vihare and the Pansala situate at Puhulpitiya aforesaid and all the movables lying therein, 18 amunams of paddy land, 15 amunams of high land with all the buildings and plantations thereon, belonging to the aforesaid vihare. The vihare at Dimbula Metagama in Udupam korale of Kotmale, and 8 amunams 1 pela and 6 kurunies of high land and mud land belonging thereto.

" The vihare at Atabage, Pallegama in Kandukara Ihala korale of Udapalata and 7 amunams 1 pela and 8 kurunies of high land and mud land belonging thereto, and

" Uda Aludeniye Vihare situate at Uda Aludeniya in Gangapalata Udunuwara and 14 amunams of paddy fields and 40 amunams of high land belonging thereto, all appertaining to Puhulpitiya Vihare aforesaid;

" Do hereby give grant, set over, and assign the same unto Panabokke Samanera Punchi Unnanse presently of Puhulpitiya Vihare aforesaid.

" And the said Panabokke Samanera Punchi Unnanse being a minor, Panabokke Tikiribandara, Police Magistrate of Elpitiya Walauwa in Udapalata is hereby appointed guardian of the said minor. He shall take care of the said Punchi Unnanse, and if necessary robe another on his behalf and have him taught and trained as a priest. He shall have the said vihares improved, and, if any dispute or lawsuit shall arise with regard to the same, he shall warrant and defend the said premises and have all such disputes settled.

" Hereafter the said Panabokke Samanera Punchi Unnanse and any other person of the Panabokke Walauwe Peruwa, who robes himself and enters the priesthood shall improve the aforesaid premises and possess and enjoy the same in pupillary (Sisyanusisya) succession.

" My heirs, executors, and administrators shall not hereafter by word or deed raise any dispute with regard to this testament.

" In witness whereof this testament was caused to be written and I the said Medhankara Unnanse have put my mark in place of my signature hereto and to two others of the same tenor as these presents in the presence of Dawulagala Halumadana Walauwe Jayasundera Rajakaruna Senanayake Wasala Herat Mudiyanselage Punchibanda of Panabokke Walauwe in Kandupalata Udunuwara, Batale Arachchillagegedera Ukkuhami, late Arachi of Kahatpapitiya in Udapalata, Samayamantri Patabendigedera Appunaide of Puhulpitiya in Kotmale, Maha Brahma Hettige William Rodrigo of Gampola in Udapalata, and Samaratunga Gunawardhana Karallage Don Pemiyanu Appuhamy, also of Gampola, the subscribing witnesses hereto . . . . "

One of the issues tried was " Whether the document 8,994 dated March 22, 1899, is a deed or a testament and whether it passes any title to the defendant in respect of Puhulpitiya Vihare ".

The learned District Judge entered judgment for the plaintiff. He held (1) that the document P5 relied on by the defendant was " a deed of gift of valuable lands and unstamped as a deed and unaccepted by the donee and unregistered " ; (2) that if it was to be regarded as a testament, the defendant was not entitled to rely on it to deprive the plaintiff of his rights

ab intestato to succeed to the Ecclesiastical offices and emoluments of his master. He further held that the defendant could not rely on it as a will as it had not been proved.

I have examined this record and referred to the questions discussed regarding the document D5 to ascertain the scope of the decision in appeal.

The defendant's appeal was argued before Shaw A.C.J. and Schneider J. Shaw A.C.J. said with regard to the deed dated March 22, 1899 :—

" It is well established, that, although under the rule of succession known as the *Sisyanusisya paramparawa* if an incumbent dies intestate and without having made an appointment to the incumbency the succession devolves on all his pupils, yet it is within his power to appoint by deed or will any particular pupil as his successor, see D. C. Kurunegala, 15,057 (*Vander Straaten's Appendix F*) ; *Sumangala Unanse* (*supra*) ; *Dhamma Joti v. Sobita* (*supra*). Reference is made in most of the cases bearing on the subject to a ' deed or will ' and I need not discuss the question whether a deed within the meaning of our Common law or the English Common law is necessary for the purpose, or whether any such other formal or public recognition of a particular pupil as successor is sufficient because the document in the present case was executed with the formalities required for what are commonly called deeds here, it was signed in the presence of a notary and witnessed by five witnesses. It is true that it is called a ' testament ' by the maker and purports to transfer the temple property after the maker's death to the defendant. In view of the provisions of the Buddhist Temporalities Ordinance, 1905, it would be inoperative for this purpose.

" Whatever the documents may be called by the maker, it is in effect, the exercise by deed of a power of appointment vested in the maker and, it having been made with the requisite formalities of a deed, it is, in my opinion, a sufficient exercise of the power, although it may have been made somewhat in the form of a will and has not been admitted to probate ". —He also held that the plaintiff's claim was barred by prescription.

There can be no doubt however that he decided both the question of the validity of the document D5 as a deed of appointment as well as the question of prescription.

—Schneider J. said that there were only two issues of importance, whether the plaintiff was a pupil of Medankara? and whether his claim was barred by prescription? The question of prescription he decided against the respondent.

But before concluding he dealt with deed 8,894, D5, thus :—

" I do not agree with the learned District Judge that the instrument No. 8,994 is a last will. Instruments similar to this, if not almost identical with it, were pleaded by the plaintiff himself to establish title to succession in his own tutor Medankara and in that of his predecessors. This instrument cannot operate to pass title to immovable property. It cannot operate as a deed of donation or a conveyance *inter vivos* of title to immovable property because the property is not definitely described. It cannot operate as a will because it has none of the attributes or characteristics of a will. It appears to follow a form commonly used in days anterior to legislation as regards Buddhist temporalities when the succession was not only to the status, from a purely religious point of view, of the incumbent, but also to the management and control of the temporalities of the temple. I regard this instrument as only a pure act of appointment or nomination or selection to the succession of the incumbency. In this view the instrument may be in any form—as at present advised the act of appointment may be done even by word of mouth. It need not be in writing. This instrument, therefore, operated to

confer on the defendant the right to succeed to his tutor although he was only a junior pupil."

We have therefore the definite opinions of two Judges, whose opinions are, if I may say so, treated with great respect, that a deed which purports to transfer the temple property after the death of the maker to the defendant is, to quote the words of Shaw A.C.J., "in effect the exercise by deed of a power of appointment vested in the maker".

It was submitted that we should not follow this decision as it did not appear that the learned Judges had fully considered the effect of section 20 of the two Ordinances relating to Buddhist temporalities. It was argued that the right to appoint an incumbent was not incidental to the title to the temple and its temporalities and that therefore the transfer of title did not include the right to the incumbency.

It was urged that the transfer of a title by a grantor who had only the life interest, in which case the grantee would become entitled to at least the life interest, was not analogous to the case in question for the transfer of title did not *ipso facto* carry with it the right to the incumbency.

It was further argued that the exercise of a power of appointment to the incumbency could not be gathered from the terms of P1.

The extrinsic evidence is, in my opinion, in favour of the construction placed upon the will P1 by the respondent.

This will was executed in 1924 and I am bound to assume in the absence of evidence to the contrary that the priest Seelananda was well aware of the fact that the Buddhist Temporalities Ordinance, 1905, had divested him of all title to the temporalities of the vihare and that all he had the right to do as incumbent was to appoint a successor to the incumbency from among his pupils.

The appellant was his senior pupil and entitled as such to succeed him as incumbent of the vihare, and as long as the appellant continued in favour, no step was taken to deprive him of the right of succession. But after the senior pupil's dismissal he executed a document relating to the vihare in the nature of a testamentary disposition in favour of his third pupil in order of seniority.

If Seelananda thought that the notice P2 which referred to the two senior pupils was sufficient to deprive them of the right to the incumbency, there was no necessity for P1.—He must have been of opinion that it was not sufficient. Then with what object did he execute P1 ? There could have been only one, and that was to appoint his third pupil incumbent and deprive his senior pupils of the right of succession. That would account for his description of the respondent as his only pupil and his declaration that he gives up his pupil Deepalankara.

The notary whom Seelananda retained to draft the document wanted to give effect to this object and drew it in the form usually used when a priest exercised his right to appoint a pupil his successor as incumbent. This document did not in express terms appoint the respondent incumbent.

The grantor conveyed to his pupil the temple and all the movable and immovable property belonging thereto which had been conveyed to him for "upkeep" by his teacher Ratnasara High Priest, deceased ; he next conveyed for the upkeep of the said premises all property to which he was entitled and in his charge and upkeep ; he then conveyed all other sangika movable property wherever situated to which he was entitled and to which he shall become entitled.

The phraseology clearly does not much suggest a conveyance of personal property to the defendant personally.

Instruments similar in form have for generations been used by incumbents for the purpose of appointing a successor.

and I am not prepared to defeat the clear intention of the grantor of P1 by holding that it has not given effect to his intention, particularly as this form of appointment has been approved of by this Court in the case of *Rewata Unanse v. Ratnajoti Unanse* (*supra*). This decision has stood without being doubted for fourteen years as an authority as to the form of appointment, and to dissent from it now might affect the position of other incumbents, which is not at all desirable. I would not be surprised if I was told that the notary who drafted P1 acted on the authority of this decision in drawing it in the form it is.

I accordingly hold that Seelananda appointed the plaintiff to the incumbency in succession to himself by the will P1.

The next question is whether Seelananda by the document D1 revoked the appointment made by the will P1 and restored to the defendant his right of succession as senior pupil.

There is no extrinsic evidence as to the intentions of Seelananda, and the question must be decided on the evidence afforded by D1 alone.

The argument in support of the contention that P1 was revoked by D1 was that Seelananda having dismissed the appellant had by D1 reaccepted him as his pupil and restored to him his rights to succeed to the incumbency as senior pupil.

I am not prepared to accept this argument.

If Seelananda intended to restore the right of succession to the appellant he could quite easily have said so and added that he revoked the appointment made by P1 of the respondent as incumbent. He might even have said I admit him as my senior pupil. But there is nothing in D1 to indicate an implied revocation of P1 beyond the words " I admit him as a pupil ". I am unable to infer from these words a revocation of P1.

There might have been some force in the argument if the notice published by Seelananda had the effect of depriving the appellant of his right of succession as senior pupil. But it did not, or at all events Seelananda did not think, so otherwise he would not have executed the will P1. He was therefore bound to know that the document D1 by itself could not affect the appointment made by P1, as the appellant had never lost his rights as senior pupil and would have, except for D1, succeeded him as incumbent.

The inference I draw from the document D1 in the absence of any words expressly or impliedly revoking P1 is that Seelananda was prepared to forgive the appellant to the extent of having him as a pupil, but not to the extent of restoring to him his right to succeed to the incumbency.

I accordingly hold that the appointment of the respondent as incumbent was not revoked by the document D1.

I dismiss the appeal with costs.

JAYAWARDENE A.J.—

I am of the same opinion and have nothing to add.

Appeal dismissed.