

## APPENDIX

### Buddhist Ecclesiastical Law.

*Evidence recorded in Dammaratna Unnanse v. Sumangala Unnanse, (1910) 14 N. L. R. 400.*

*(See also Saranankara Unnanse v. Indajoti Unnanse, (1918) 20 N. L. R. 385, at page 388.)*

D. C. Kandy, No. 18,982.

October 10, 1910.

*Mr. Beven*, for plaintiff.

*Advocate La Brooy* (with *Mr. van der Wall*), for first defendant.

The second defendant is absent.

*Vide* decree of Supreme Court dated March 23, 1910, and the nine questions propounded therein. (For questions see 14 N. L. R. 400.)

*Mr. Beven* calls—

*Heramitigala Dhirananda*, affirmed:—I am a member of the Chapter of Priests of Malwatta Vihare, and reside there. I was robed twenty-five years ago, and ordained a full priest fifteen years ago. I have made a special study of Buddhist literature, Pali and Sanscrit, and of the laws of succession of the Buddhist priesthood.

(1) Pupillary succession is obtained by the act of being robed, or, in the case of a pupil who is robed by his tutor being presented for ordination by another priest in his own name and in that of the tutor, such pupil will succeed the priest who presented him also if he die without a pupil of his own.

(2) A pupil can succeed his tutor, though not robed by him, if he be presented for ordination by that tutor, and the latter dies leaving no pupil whom he had robed.

(3) If a priest has several pupils whom he has robed, they will all succeed him, but the senior pupil becomes the incumbent, while the others will occupy a subordinate position in the vihare, and be entitled to live there and to be maintained out of its income. (See case reported in Vanderstraaten's Reports 224.) A priest can, however, select and nominate one of his pupils as his successor, irrespective of seniority, if the necessity arises.

(4) A pupil of one tutor may become the pupils of another, but that fact will not deprive him of his right to succeed his former tutor if he had been robed by him. He becomes the pupil of the second priest only if presented for ordination by him in his own name or in that of both tutors.

(5) If a pupil dies before his tutor, his pupil does not thereby lose his right to succeed his tutor's tutor.

(6) If a tutor disrobes himself for any cause, he loses all rights over the vihare, but he will be entitled to take away his personal belongings. The status of his pupils will in no way be affected by it, but they will succeed him as in the case of his death.

(7) If a tutor has two or more pupils, the senior pupil will succeed in the ordinary course, unless the tutor has appointed otherwise. (*Vide* answer to question 3.)

In illustration (1), both B and C will succeed A, but the senior of them will be the chief incumbent in the absence of a contrary selection.

In illustration (2), C will succeed A as the surviving co-pupil.

In illustration (8), C will succeed A as his surviving pupil, and become chief incumbent, while B's pupil E will also have the right to remain there and be maintained out of the income.

(8) If the chain of the pupillary succession to a vihare dedicated in *sisyanusisya paramparawa* is broken, the vihare will revert to the whole body of priests of the college to which it belongs and become *sanghika*. In such a case, according to the law laid down in the ancient books, a new incumbent will be appointed by the unanimous vote of the priests who assemble there for the purpose. This rule, however, has not been observed for the last two hundred years or more, and the right of appointments has been exercised by the Chapter of Priests of the college to which it belonged. At the time when the ancient books were written (more than one thousand years ago) these colleges and chapters did not exist.

(9) If the new incumbent is lawfully appointed to a vacancy, the right of succession to him will depend on the terms of his appointment. If his appointment be only for life, his successor will have to be appointed afresh by the person or body of persons who have the right to do so. If the appointment be unconditional, his pupil will succeed him, and a new chain of succession re-established.

The Mahanayaka of the college can make no such appointment without the concurrence of his Chapter of Priests.

(Vide, however, D. C. Kandy, No. 17,385, decided in appeal on January 20, 1910.)

F. R. DIAS, D. J.

For want of time further hearing is adjourned for to-morrow.

F. R. DIAS, D. J.

October 11, 1910.

Mr. Beven, for plaintiff.

Mr. van der Wall, for first defendant.

Second defendant absent.

Heramitigala Dhirananda, affirmed.

Examined.—The books I rely upon are *Vinayalankara* and the Pali *Mukthaka Vinaya*.

If a pupil is robed by one tutor and presented by another for ordination, he cannot become the pupil of the latter without the consent of the former, if alive. Such consent is expressed either by means of a letter addressed to the Chapter of Priests, or given personally in the presence of the Chapter at the time of ordination. He may be the pupil of both priests.

If a priest disrobes himself, he loses all rights as a priest. His disrobing will not affect the right of succession of his own pupil or of his co-pupil.

If plaintiff was the pupil of Tissa, who disrobed himself in the lifetime of his tutor Sonuttara, the plaintiff would succeed to the incumbency, if Sonuttara left no pupil of his own. The plaintiff would so succeed, even though he may have deserted Sonuttara in his lifetime.

If the chain of succession is broken, the vihare becomes *sanghika*, and vests in the whole body of priests. I cannot cite an instance where the community of priests has exercised the right of appointing a new incumbent, but I know of some instances, though I cannot recollect the names of the vihares. I have only been a member of the Malwatta Chapter for the last four years. The Mahanayaka has no right to make any appointment by himself without the sanction of the Chapter. I do not remember any instance where he made such an appointment. We have no rules for our guidance in these matters, but the custom is for the Mahanayaka to carry out the decisions of the majority of the Chapter, which are in accordance with the *Vinaya*.

F. R. DIAS, D. J.

*Ratanajoti*, affirmed:—I am the Nayaka Unnanse of Mayangane in Bintenne, but reside at Asgiriya Vihare. My age is fifty-five years, and I have been a priest for forty years. I have been a member of the Chapter of Priests of Asgiriya for the last thirty-one years, and am acquainted with the Buddhist laws of ecclesiastical succession.

(1) If a priest robes a pupil and has him ordained, that pupil thereby obtains the right of succession to his master. He may succeed even though not ordained at his instance.

(2) A pupil cannot succeed his tutor unless he has been robed by him, but a priest who has no pupil of his own may adopt the robed pupil of another priest, and make him his successor either verbally or by a deed of gift. (See, however, 4 S. C. C. 121.)

(3) If a priest has several pupils they all succeed him, but the pupil first ordained will be chief incumbent, and the others will have the right to remain in the vihare and be maintained out of the income.

(4) If the pupil of one tutor becomes the pupil of another tutor, he will not thereby lose his right to succeed his first tutor.

(5) If the pupil of a tutor dies before his tutor, his pupil will not lose his right to succeed his tutor's tutor.

(6) If a tutor disrobes himself, he forfeits all rights as a priest, but his pupil will in no way be affected thereby. He will succeed to the incumbency as if his master were dead.

(7) If a tutor has two or more pupils, they all succeed him in the order of seniority of their ordination.

In illustration (1), on the death of A, B and C will both succeed him in order of seniority.

In illustration (2), if B dies before his tutor, his co-pupil C will alone succeed.

In illustration (3), the surviving pupil C will succeed his master as chief incumbent, but E, the pupil of his co-pupil B, will also succeed, and occupy second place.

(8) If pupillary succession fails to an incumbency held in *sisyanusisya paramparava*, it will become *sanghiko*, and revert to the whole body of priests of the college to which it belongs. The right to appoint a new incumbent will lie entirely in the Chapter of Priests of that college.

(9) When such an appointment is made, a new chain of succession is started. I know of instances where that has occurred, viz., Nathegoda Vihare in Hariapattu and Meddegama in Sabaragamuwa. If the priest so appointed has a pupil, that pupil will succeed to the incumbency, which does not revert to us unless the chain is again broken.

*Examined.*—This will all depend on the nature of the appointment made by the Chapter. The appointment may be made for life, or during pleasure, or in perpetuity, the latter being the general rule.

The appointment to the Nathegoda Vihare was made long before my time, and I am only speaking from hearsay.

The Meddegama appointment was made in my time, after I became a member of the Chapter. The Chapter made the appointment, but the act of appointment was signed by the Mahanayaka alone.

I do not know of any case where the Mahanayaka alone made an appointment, which was subsequently acquiesced in by the Chapter. He would never think of doing such a thing, as he has no right.

If Sonuttara had a pupil, Tissa, who disrobed himself in Sonuttara's lifetime, but had the plaintiff as his pupil, the plaintiff would, in my opinion, succeed Sonuttara, even though he (plaintiff) had abandoned the vihare and gone elsewhere in Sonuttara's lifetime.

The right which he acquired by the fact of being robed cannot be lost to him by being absent from the vihare.

*Saranankara*, affirmed:—I am the High Priest of Topawewa, aged sixty years, and belong to the Asgiriya College.

I have been a member of its Chapter of Priests for thirty-five years.

(1) A pupil acquires the rights of succeeding his tutor by the fact of being robbed by him.

(2) A pupil cannot succeed his tutor unless he was robbed by him, and robbing is essential to make a person a pupil for purposes of succession.

(3) If a tutor has several pupils, they all succeed him, but one of them becomes chief. As a rule, the senior pupil, according to date of ordination, will become the chief, but if he be deficient in point of learning, &c., his junior may become the chief if so nominated by the tutor before his death, or he may be selected as chief by his brother pupils.

(4) If a pupil is robbed by one tutor, but presented for ordination by another, he may become the pupil of the latter also, but he does not thereby lose his right to succeed his first tutor.

(5) If a pupil dies before his tutor, leaving a pupil of his own, that pupil will succeed his tutor's tutor.

(6) If a priest disrobes himself, he will lose his own rights, but that will not affect the rights of his pupils. They will succeed as on their tutor's death.

(7) If a tutor has two or more pupils, they will all succeed their tutor, but one of them will be chief, as already stated by me.

In illustration (1), on A's death both B and C succeed him.

In illustration (2), if B dies before his tutor, C will alone succeed A.

In illustration (3), the surviving pupil C will succeed his tutor, but E, the pupil of his deceased co-pupil B, will also succeed, but take second place.

(8) If the incumbent of a vihare held in *sisyanusisya param-parawa* dies without a pupil, the right of appointing his successor is vested in the Chapter of Priests of the college to which it belongs.

(9) When such an appointment is made, the succession to it will depend on the nature of the appointment. It may be for life only, when the incumbency will revert to the Chapter again, or it may be in perpetuity, when a new line of pupillary succession will be started.

*Examined.*—If Sonuttara had a pupil, Tissa, who robbed and adopted the plaintiff as his pupil, and Tissa disrobed himself in Sonuttara's lifetime, and the plaintiff deserted the vihare and migrated elsewhere, in spite of such desertion, the plaintiff will be entitled to succeed Sonuttara.

The right acquired by robbing cannot be lost by a person's absence.

When an incumbency is vacant, it is filled up by the Chapter of Priests, and not by the Mahanayaka. He cannot act by himself, but he may do so at the joint request of the whole Chapter.

F. R. DIAS, D. J.

*Sri Sumana*, affirmed:—I am the High Priest of Dambulla Vihare, and reside at the Asgiriya Temple. My age is sixty years, and I have been a priest for forty-two years. For the last thirty years I have been a member of the Asgiriya Chapter.

(1) A person acquires the right of pupillary succession by the act of robbing.

(2) No one can succeed a tutor who did not robe him.

(3) If a person has several pupils robbed by him, they all succeed him. The pupil who is senior in point of ordination will take first place, unless otherwise ordered by the tutor in his lifetime.

(4) If the pupil of one tutor becomes the pupil of another, he does not lose his right to succeed the former, unless he disrobed himself before he joined the second tutor.

(5) If a pupil dies before his tutor, and leaves a pupil of his own, that pupil will succeed his tutor's tutor in *sisyanusisya paramparawa*.

(6) If a priest disrobes himself and leaves a pupil, the former will lose all his rights as a priest, but the rights of the pupil will in no way be affected thereby, even though the disrobement was in consequence of immorality.

(7) If a priest has two or more pupils, they will succeed jointly, but one of them will be chief.

In illustration (1), B and C will succeed A jointly.

In illustration (2), C succeeds A.

In illustration (3), the surviving pupil C will be the chief incumbent, but B's pupil E will be equally entitled to succeed, though occupying a subordinate position.

(8) If the line of pupillary succession is broken, the right to appoint a successor is in the Chapter of Priests of Malwatta or Asgiriya.

(9) When such an appointment is made, the line of pupillary succession is re-established, if the appointment is made in those terms. Such appointments are, however, rare. The usual rule is to appoint a priest for life only. The Mahanayaka cannot by himself make any such appointment.

*Examined.*—I gave evidence in the Halmillapitiya case (No. 17,385). That evidence was correct, and I adhere to it. I then stated that the Mahanayaka can act on his own initiative and make an appointment, but he must report it to the Chapter, who will acquiesce in his appointment.

*Re-examined.*—He has no right to make an appointment, but can only suggest it.

F. R. DIAS, D. J.

It is 5 P.M. now, and the further hearing is adjourned for to-morrow.

F. R. DIAS, D. J.

October 12, 1910.

Counsel present as yesterday.

Mr. van der Wall calls—

*Sri Dharmarama*, affirmed:—I am the High Priest of the Colombo and Chilaw Districts, and Principal of the Pali College at Peliyagoda. I belong to the Malwatta monastery, and my age is fifty-seven years. I have been in robes fifty years, and am well acquainted with Buddhist ecclesiastical law, and have frequently given expert evidence in temple cases before.

(1) The right of pupillary succession is obtained in two ways, viz., by being robed, or by being presented for ordination. In the latter case, the presenting priest must declare his intention before the Chapter to have the priest ordained as his successor.

(2) A person not robed by the priest who presents him for ordination will become his successor, if such an intention be declared by him at the ordination, either personally or by means of a letter.

(3) If a priest has several pupils, they will all succeed him on his death. As a rule, the priest in his lifetime selects the pupil who is to become his chief successor. If that be not done, the senior in date of ordination will become chief. If, however, he be unfit, or not learned enough, all the pupils will join in selecting their head.

(4) If the pupil of one tutor become the pupil of another tutor, he will have the right to succeed his first tutor, but only in case he joined the second tutor with the consent and approval of the first. If a pupil were to quarrel with his first tutor and leave him altogether and join another tutor, and never return to his first tutor, he will forfeit his rights to the latter.

(5) If the pupil of a tutor dies before his tutor, the pupil of the deceased pupil will succeed that tutor if he continue obedient to him and owe him allegiance. It does not matter where he resides.

(6) If a tutor disrobes himself for any cause, he loses all rights just as if he were dead, and the succession will pass to his pupils. They will in no way be affected by his disrobement.

(7) If a tutor has two or more pupils, they all succeed him, and take precedence according to the dates of their ordination.

In illustration (1), both B and C will succeed A, but B will be the chief if he be the first ordained.

In illustration (2), if B dies in A's lifetime, C will succeed A.

In illustration (3), on A's death C will succeed him, but E will also do so and take second place after C.

(8) If the chain of succession in *sisyanusisya paramparawa* is broken, the vihare will revert to the whole community of priests of the college to which it belongs.

If the vacant vihare be an important one, the appointment of an incumbent will be made by the Mahanayaka and his Chapter of Priests.

If the place be an unimportant one, the Mahanayaka will make the appointment by himself, and if it be a still smaller place, the High Priest of the district may make the appointment, with the approval of the other priests of the district.

(9) When such a new appointment is made, the question, whether pupillary succession would revive, depends on the terms of the appointment. If the appointment is only made for life, the pupil of the priest so appointed will not succeed him; but the appointment may be made with the right of pupillary succession, in which case the chain will be started afresh.

*Question.*—If Sonuttara had a pupil, Tissa, who disrobed himself during Sonuttara's lifetime, and left plaintiff as his pupil, and plaintiff deserted Sonuttara and the vihare and never went back, would the plaintiff have the right to succeed Sonuttara?

*Answer.*—That will depend on many circumstances. If he remained in obedience to Sonuttara, and adopted no other tutor, and Sonuttara expressed no contrary intention, the plaintiff would have the right to succeed even if he resided elsewhere, but with Sonuttara's approval. When Tissa disrobed himself, the plaintiff would stand in his shoes, and he ought to have remained under Sonuttara, just as Tissa should have remained. If he did not remain under such allegiance, he would forfeit all rights.

I gave evidence in the Halmillapitiya case (No. 17,385). There, too, I admitted the right of the Mahanayaka to appoint incumbents to small vihares.

*Examined.*—I belong to the low-country, and never held an incumbency in the Kandyan Provinces. All priests of the Siamese sect must belong to Malwatta or Asgiriya Colleges, and be ordained there. The Mahanayakas of those two colleges are the heads of the Buddhist Church in Ceylon. Each of them is assisted by an advisory board or Chapter of Priests. I am not a member of our Chapter, but am frequently called in as a referee.

Our books on ecclesiastical law were written more than a thousand years ago. The conditions of life then were different to what they are now. Priests then were not all mendicants. Many of them were very wealthy.

Priests were brought over here from Siam about 1753 A.D., in order to ordain the novices here. A large number of vihares existed even at that time. The two colleges and their Chapters started after that period.

There is no book which defines the rights of the Mahanayakas or their Chapters, but they are governed by customary rules.

A person may be the pupil of two tutors. One tutor may robe a pupil, and afterwards entrust him to another priest to educate him and have him ordained. In such a case the pupil is the pupil of both tutors, and can succeed both of them.

It is purely by a customary rule that a pupil inherits what his tutor possessed. The books are silent on the subject.

There must be robing plus obedience to entitle a pupil to succeed his tutor. The books do not state it in so many words, but they state that

a pupil must be obedient to his tutor. Hence, if he is disobedient, it is inconsistent with his being a pupil in the Buddhist sense.

If, in the case put, Sonuttara or Tissa had no other pupil, it may be proper that the plaintiff should succeed if he comes back to the vihare.

There are district High Priests in the Kandyan country also. I never heard the contrary. I am the High Priest of two districts, and was appointed by the Malwatta College.

Such appointments may be made verbally or in writing, in accordance with the importance of the place.

This is all based on custom.

*Re-examined.*—Members of the Chapter are elected by the Mahanayaka alone. If when plaintiff returned to the vihare it was empty, he would have the right to occupy it, just as any other priest would. He would not become entitled to it as the pupillary successor of Sonuttara, unless he took possession immediately after Sonuttara's death.

F. R. DIAS, D. J.

*M. Sri Gnanissara*, affirmed:—I am the Vice-Principal of the Vidya-daya Oriental College, Colombo. My age is forty-seven years, and I belong to the Malwatta fraternity. I am well acquainted with Buddhist ecclesiastical law, and have given expert evidence in two or three cases before.

(1) The right of pupillary succession is acquired by the act of robing or ordination.

(2) A pupil who has not been robed by a priest can become his successor, if presented for ordination by that priest with that intention.

(3) All pupils succeed their tutor, but he will be chief incumbent who is senior in point of ordination, or the pupil who is most intelligent and educated. This question is decided by the pupils themselves, unless a nomination was made by the tutor before his death.

(4) If a pupil leaves his tutor and joins another tutor, he will not lose his right to succeed his first tutor if he left with his approval and consent.

(5) If the pupil of a tutor dies before his tutor, that pupil's pupil will succeed his tutor's tutor.

(6) If a priest disrobes himself, he forfeits all rights, but his pupil will in no way be affected by it. He will succeed as if his tutor were dead.

(7) If a tutor has several pupils, they all succeed, as stated in answer No. 3.

In illustration (1), B and C both succeed, but B will be chief if he is the senior in ordination or in learning.

In illustration (2), C succeeds A.

In illustration (3), C will succeed A, and so will E, but E must take second place.

(8) If the line of pupillary succession fails, the vihare reverts to the whole body of priests of the college to which it belongs, and a new incumbent will be appointed by the Mahanayaka and his Chapter of Priests. This is the rule, but in practice the rule is relaxed, and the Mahanayaka alone makes the appointment, on the assumption that the Chapter will be with him. He only acts in that way in cases where there is no likelihood of any contest. If a contest does arise, the appointment will be cancelled, and the matter left in the hands of the Chapter.

(9) When such an appointment is made, it does not revive the line of pupillary succession. An incumbent can be appointed only for his life. As the vihare becomes *sanghika* when the line of succession fails, and belongs to the whole body of priests, my opinion is that the Mahanayaka and his Chapter cannot re-create a line of pupillary succession.

*Question.*—If Sonuttara had a pupil, Tissa, who had a pupil, the plaintiff, and Tissa disrobed himself in the lifetime of Sonuttara, and the plaintiff deserted the vihare and Sonuttara, would the plaintiff be entitled to succeed Sonuttara on his death?

*Answer.*—Yes, if the plaintiff continued to be a priest, and was in robes when he went away. His leaving without Sonuttara's consent cannot deprive him of his rights, nor it is necessary that Sonuttara should proclaim his recognition of the plaintiff as his successor.

I do not agree with Dharmarama on this point.

I also do not admit that the Mahanayaka can make an appointment to even a small vihare by himself, but in practice he does so, on the assumption that the Chapter will not go against him. I do not know of any instance where such an appointment has been questioned.

I gave evidence on behalf of the plaintiff in the Halmillapitiya case.

*Examined.*—I belong to the low-country, and held no incumbency in Kandy. I am of a member of the Chapter of Priests. My evidence about appointments being made by the Mahanayaka is only based on hearsay.

A person may be the pupil of two tutors, viz., of the tutor who robes him and of the tutor who gets him ordained. He can succeed to both incumbencies.

*Re-examined.*—He will succeed his first tutor even though he left him against his will.

F. R. DIAS, D. J.

Further hearing is adjourned for to-morrow.

F. R. DIAS, D. J.

October 18, 1910.

Counsel present as before.

Mr. van der Wall calls—

*Wataraka Ratanajoti*, affirmed:—I am the Anunayaka of the Malwatta Vihare, and have been so for thirty-one years. My age is eighty-five years, and I have been a fully ordained priest for sixty-four years. I have been for forty-five years a member of the Malwatta Chapter of Priests. I am fully conversant with the Buddhist ecclesiastical law relating to pupillary succession.

(1) The right of pupillary succession is obtained by being robed or presented for ordination by a tutor. The presentation for ordination is alone sufficient for the purpose.

(2) Yes, a pupil will succeed his tutor if ordained by him, though not robed by him.

(3) If a tutor has several pupils, they all succeed him, but the eldest or the cleverest becomes the chief. As a rule, the tutor nominates his chief successor, but if that is not done, the pupils themselves select their chief.

(4) If the pupil of one tutor becomes the pupil of another, he does not lose his right to succeed his first tutor, unless he deserted him without his consent.

(5) If the pupil of a tutor die before the tutor, that pupil's pupil will succeed his tutor's tutor if he continue in the vihare owing allegiance to him.

(6) If a tutor disrobes himself for any cause, he becomes a layman, and loses all rights as a priest. This disrobing in no way affects the rights of his pupil, who will at once succeed him, as if he had died.

(7) If a tutor has two or more pupils, they all succeed him, but the senior in point of ordination will become chief incumbent. If, however, he be deficient in learning or in any other respect, the pupils will elect their chief amongst themselves, unless their tutor had expressly nominated his chief successor.

In illustration (1), on A's death both B and C succeed.

In illustration (2), if B dies before his tutor, his co-pupil C will succeed, provided he continued as A's pupil.

In illustration (3), the surviving pupil C must succeed A, and E will also succeed, but occupy second place.



(8) If pupillary succession fails to a vihare dedicated in *ssyanu-sisya paramparawa*, the vihare becomes *sanghika*, or the common property of the whole priesthood. The right to make a new appointment vests in the Mahanayaka and Chapter of Priests of Malwatta or Asgiriya, as the case may be, except in the case of very small vihares, where the Mahanayaka acts by himself.

(9) When such an appointment is made, a new line of pupillary succession will be established, if the appointment was made on such terms, but not otherwise.

Those ordinations will confer the right of pupillage if it be declared at the time of ordination by the priest who makes the presentation that he intended that person to be his successor.

If a tutor has a pupil who disrobes himself in his tutor's lifetime, but leaves a pupil of his own, that pupil will succeed the original tutor, but only if he continue in the vihare owing allegiance to him. If he deserts the vihare, and the original tutor leaves no other pupil, the vihare will become *sanghika*.

I can give instances where the Mahanayaka has by himself made appointments to vacant incumbencies, viz., Wehigala Vihare, Halmilla-pitiya Vihare in the Matale District, and Kaudugama Vihare in the Four Korales. The Chapter was not consulted before those appointments were made, but they were notified of the fact afterwards. I do not know of single case where such an appointment has been questioned by the Chapter.

*Examined.*—They have the right to question it if they disapprove of it. When a vacancy occurs, it sometimes happens that there are several candidates, but when the Mahanayaka makes a choice, the Chapter will not think of going against him. In the case of a vacancy in an important vihare, applications may be made in writing to the Mahanayaka and his Chapter. The Chapter represents the whole priesthood.

If a pupil does not remain in a vihare and assist his deceased tutor's tutor, he cannot succeed him. It is not right that he should. If the vihare was deserted, and that pupil came back and got in, he cannot be turned out. That is because the vihare had become *sanghika*, and he as a priest can remain there. But he cannot become the incumbent of it if he has no appointment.

If a pupil leaves a vihare without any intention of returning to it, he would lose his rights altogether, even though he be the sole pupil of his tutor.

*Re-examined.*—It is an elementary rule that a pupil must remain permanently with his tutor if he is to obtain pupillary rights.

In remote districts new appointments to vacant incumbencies are made by the local Nayaka Unnanse, without any reference to Malwatta of Asgiriya.

F. R. DIAS, D. J.

The record will now be returned to the Supreme Court.

F. R. DIAS, D. J.