1939 *Present :* **Nihill J.**

JAYASURIYA *v.* RATNAJOTI

In revision M. C. Colombo, 36,133

Buddhist Temporalities Ordinance, No. 19 of 1931, s. 42 (Cap.) *222—Charge of holding out as upasampada bhikku—Name not on the Registrar-General's register—Register contemplated is that under section 41.*

In a charge under section 42 of the Buddhist Temporalities Ordinance against a person, whose name does not appear on the register, of holding himself out as an *upasampada* bhikku.

Held, that the register referred to in the section is the register kept by the Registrar-General under section 41.

Mahanayaka Thero, Malwatte Vihare v. Registrar-General (*39 N. L. R. 186*) referred to.

THIS was an application to revise an order of acquittal made by the Magistrate of Colombo.

H. V. Perera, K.C., (with him *J. R. Jayawardana* and *V. F. Gooneratne*), in support.

R. L. Pereira, K.C. (with him *L. A. Rajapakse*), for accused, respondent.

October 25, 1939. NIHILL J.—

This is an application for revision in a case in which the accused-respondent was aquitted in the Magistrate's Court of Colombo, on a summons alleging him to be guilty of an offence under section 42 of the Buddhist Temporalities Ordinance (Cap. 222). The sanction of the Attorney-General for an appeal against the acquittal was sought and was refused.

The short point for my consideration is whether the register referred to in section 42 is the register of Buddhist priests kept by the Registrar-General pursuant to the provisions of the Ordinance or the registers kept by certain ecclesiastical heads also pursuant to the Ordinance. If it be the former, then the decision of the learned Magistrate was right, for on the date of the hearing of the summons the accused's name was on the Registrar-General's register, but if it be the latter, then the grounds for the acquittal were wrong because on the relevant date the accused's name was not on the register kept by the Mahanayaka Thero of the accused's Nikaya or Sect.

Now the learned Magistrate was fortified in the view he took by the judgment of Soertsz J. in the case of *Mahanayaka Thero, Malwatte Vihare v. the Registrar-General* [1].

That was an application for a Writ of Mandamus against the Registrar-General and the intervenient was the present accused-respondent. The application was for a writ requiring the Registrar-General to remove the intervenient's name from the register on the grounds that his name had been removed from the register kept by the Mahanayake Thero and that he was no longer an Upasampada Bhikku.

I need not go over in detail the various points argued before my brother. It is sufficient to note that, in the result, whilst my brother held that the Registrar-General was under a legal duty to remove a name from his register on receiving notice from the Mahanayaka that the priest in question had been expelled from the Order, he refused to issue the writ because he was not convinced of the propriety of the motives of the applicant.

Now it is clear from the concluding passages of my brother's judgment that he had in his mind that if he made the writ absolute he would be exposing the intervenient to a risk of a prosecution under section 42, and conversely that so long as the name remained on the Registrar-General's register the intervenient was safe.

[1] *39 N. L. R. 186.*

Under the special circumstances which were referred to fully in the judgment, my brother was loathe to place the intervenient in a position "of great disadvantage and even of great danger". It occurs to me that the disadvantage and danger would have been as imminent had the Registrar-General changed his mind, and in view of my brother's judgment, fulfilled his legal duty.

However for what reason I know not, the Registrar-General did not remove the name, hence the present proceedings.

Now in the light of the above-mentioned case, it is clear, and I think it is conceded, that the learned Magistrate had no option but to find as he did and to acquit the accused. Nevertheless as the view taken by my brother was *obiter* and not a ruling on a matter expressly argued before him, I am invited to say that the view is wrong and to hold that "register" in section 42 means the ecclesiastical and not the Registrar-General's register.

It has been impressed upon me and I can well believe it that the matter is of great moment to the Buddhist hierarchy and priesthood and certainly if I felt any real doubt as to the soundness of my brother's *obiter*, I would submit the point to fuller authority. But can there be a real doubt? I do not think so.

In considering the question it may be helpful to examine in detail the component parts of the machinery of registration set up by the Ordinance. The aim of this machinery is clearly the protection of the public against the imposter ; the rogue, who under cover of the yellow robe, might fatten on the good will and charity of the pious laity. So therefore, after the coming into force of the Ordinance every priest whether he was a fully ordained Upasampada or a Samanera was required to take certain steps.

In the case of the former he had to obtain Form A in the Schedule, fill it up and send it to the Registrar-General. In the case of the latter a like procedure on Form B had to be followed by the Viharadhipati of the temple in which the Samanera was resident.

Now the Registrar-General on receiving the forms which were sent to him in duplicate had to retain one copy and send the other to the Mahanayaka Thero or Nayaka Thero of the Nikaya or Sect concerned whose name appeared on the form. This being done, it was the duty of the Registrar-General and the ecclesiastical heads to file their respective copies and make registers.

Thus on the completion of all this there had come into existence a central register kept by the Registrar-General, and a number of sectional or sectarian registers scattered about in the various places, where the heads of sects and communities have their habitation.

It is true that after this, corrections, additions, and alterations to the registers flow from the sectional registers to the central register and that the latter should mirror the former.

But what is the position of the public ? That becomes apparent in the sixth sub-section of section 41 which is as follows :—"Such registers kept by the Registrar-General shall for the purposes of this Ordinance be

primâ facie evidence of the facts contained therein in all courts and for all purposes; and subject to the prescribed regulations, every such register may be searched and examined by any person claiming to be interested therein, and certified copies of or extracts from such registers may be obtained on payment of the prescribed fee".

It is the central register which is the public's protection. It would be no use for a person who might suspect the *bona fides* of an over-importunate priest to hunt for a sectional register for he might never find it, and his suspicions could not be finally allayed or confirmed until he had inspected every sectional register in existence. No, his proper course must be to go to the central register and there if the machinery has functioned he will find the true position.

It may be urged that in the present case the machinery did not function because the Registrar-General did not do his duty, but a failure to co-ordinate in one instance cannot alter the essential character of the central register which is clearly indicated in sub-section (6).

I regard it as significant also that the last sub-section of section 41 is penal and that this is followed immediately by section 42. The effect is surely this; the sixth sub-section of section 41 makes the Registrar-General's registers "for the purposes if this Ordinance" and those words are important, *primâ facie* evidence in all courts and for all purposes and gives the public a right of search. Sub-section (7) then makes it incumbent on every section of the priesthood, under pain of penalty to take the steps without which the Registrar-General's registers could never be initiated or maintained.

Finally comes section 42 which makes it an offence for any Upasampada Bhikku or Samanera to hold himself out as such if his name does not appear on "the register"; what can this mean but the register kept in the place where the public have the right to go and see for themselves?

Mr. Perera has argued that if the register in section 42 be the Registrar-General's register, then the anomalous position is reached that if there is a failure on the part of the Registrar-General to do his duty, then a name may appear on his register of a person who in fact has been disrobed by properly constituted ecclesiastical authority. That must be conceded, but I do not consider it a reason for altering the character of the offence set out in section 42. The purpose of this part of the Ordinance is clearly the protection of the public, not the maintenance of ecclesiastical discipline and as I have attempted to show, it is the Registrar-General's register which is the central cog of the machinery set up by the Ordinance for this purpose. This does not mean that the absence of a name from a sectional register could never be of any value as evidence in any proceedings.

There are a number of facts stated in Forms A and B and the Registrar-General's register is but *primâ facie* evidence of these facts.

Thus where the fact of expulsion from a Nikaya was the matter in issue, evidence that a name was no longer on the register of the Mahanayaka Thero might be conclusive in demonstrating that the name given in Item 14 of Form A was no longer correct. But holding as I do that the register

in section 42 is the Registrar-General's register and none other, then on a charge alleging an offence under section 42, the probative value of the Mahanayaka Thero's register is nil, for the Court need not look beyond the register of the Registrar-General.

True it is, if my view is correct, that it is possible for a priest who is no longer a priest (or is no longer permitted to function as a priest) to hold himself out as such and still not be guilty of an offence, but in such a case the ecclesiastical authorities are not without their remedy, for it does not follow that because this Court has refused a Writ of Mandamus on the Registrar-General in one case on the ground of improper motive, that it would not grant it in another case where such motive was not present.

Having reached the above conclusion on the meaning of the word "register" in section 42, there is nothing further for me to consider in this matter and I accordingly refuse the application for revision.

Application refused.