

**DUWEGAMA INDAJOTHI STHAVIRA AND OTHERS
V.
PARAGASTOTA REWATHA STHAVIRA**

COURT OF APPEAL

C. A. 602/80 (F), D. C. KALUTARA 2573 L.

DHEERARATNE J. (PRESIDENT C/A) & PALAKIDNAR J.

OCTOBER 03, 1988

Buddhist Ecclesiastical Law — Can any Viharadhipathi other than the 'Original Viharadhipathi' or the 'founder priest' appoint by deed several of his pupils to succeed him one after the other?

Held

The original Malwatta opinion that such right was confined to the 'Original Viharadhipathi' or 'founder priest', has not been modified to extend it to any Viharadhipathi.

Cases referred to:

1. *Amarawansa Thero vs. Amaragnana Thero* (1985) Vol. 2 S.L.L.R. 275.
2. *Kamburugamuwe Piyananda Therunnanse vs. Uyangoda Sumanajothi Therunnanse* (1963) 66 N.L.R. 178.

3. *Gunananda Unnanse vs. Dewarakkitha Unnanse* (1924) 26 N.L.R. 257
4. *Devendra Unnanse vs. Sumangala Unnanse* (1927) 29 N.L.R. 415.
5. *Piyaratne Unnanse vs. Medankara Unnanse* (1931) 32 N.L.R. 271.
6. *Ereminne Unnanse vs. Sonabowe and Parakumbure Unnanse; Agent's Court Kurunegala No. 336; Vanderstraaten's Reports (1869-1871) XL i Appendix 'D'*
7. *Sirinivasa vs. Sarananda* (1921) 22 NLR 318.
8. *Dammojothi Unnanse vs. Parantale* (1881) 4 S C C 121.

APPEAL from judgment of Court of Appeal.

Dr. H. W. Jayewardene Q. C. with *Miss. T. Keenawinna* for defendant-appellants.

Plaintiff-respondent absent and unrepresented.

Cur. adv. vult.

December 16, 1988

DHEERARATNE J.

Plaintiff filed this action, seeking a declaration that he is the lawful viharadhipathi of Uggalboda Malasne Rajamaha vihara and claiming damages from the defendants, who are said to be in unlawful possession of its temporalities. The learned trial judge gave judgment for the plaintiff and the defendants have appealed.

The origin of this temple is steeped in antiquity and as the evidence in the case discloses and the name of the temple suggests, the institution has had its birth during the time of the Sinhala Kings. It is common ground that over hundred years ago, the viharadhipathi of the temple had been Kalutara Wimalasara, who was succeeded in his office by his pupil Dodangoda Dhammananda. Dhammananda was succeeded by his pupil Dediawala Dewananda. Dewananda by deed D4 of 1956 purported to appoint his pupils;

- (1) Kummanthuduwe Pannasara.
- (2) Karannagoda Indasara, (who since gave up robes)
- (3) Duwegama Indrajothi, (1st defendant)

- (4) Kotapitiye Seevali, (2nd defendant)
- (5) Panthiye Gurasiri, (3rd defendant)
- (6) Halthota Gnanathileke, (4th defendant)
- (7) Duwegama Indrasumana, (5th defendant)
- and

(8) Dediawala Hemasiri, to succeed to incumbency, one after the other in that order. After the death of Dediawala Dewananda, Kummanthuduwe Pannasara succeeded to the incumbency and the dispute arose after Pannasara's death in 1970. Plaintiff Paragasthota Rewatha, the senior pupil of Pannasara, claims the incumbency, on the basis that deed D4 only serves to appoint Pannasara to the incumbency and that Dediawala Dewananda's purported act of appointing all his pupils to succeed to the incumbency, one after the other, is repugnant to the rule of *sisyanu sisya paramparawa* and therefore invalid in law. In other words, the contention is that the principle of succession being from tutor to pupil, an incumbent cannot divert the succession, so as to enable one co-pupil to succeed another, thus depriving the rights of the first pupil's pupil for succession.

There is no doubt that the original incumbent's or the founder priest's right to appoint several of his pupils to succeed him one after the other, forms part of the rule of *Sisyanu Sisya Paramparawa*, but the crucial question is whether such right has been subsequently extended to any *de jure* incumbent coming down the line of succession, and that too forms part of the rule of *Sisyanu Sisya Paramparawa*. This vexed question does not appear to have **directly** surfaced for judicial decision in the long line of decided cases on Buddhist temporalities, except in the recent case of *Amarawansa Thero vs Amaragnana Thero*; (1) It may be observed that in all probability the reference to "original viharadhipathi" agreed upon by the parties in that case, as referred to by Moonamale J. in his narration of facts, is no reference to the founder incumbent, but to the "original viharadhipathi" as far as the line of succession could possibly be traced backwards. Moonamale J. expressed himself at page 287

in that case as follows:—

"On a consideration of all these judicial decisions, I am of the view that the original rule laid down in the Malwatta opinion, that it is the original proprietor priest who could appoint several of his pupils to succeed him in rotation has been modified and extended to any lawful incumbent. I thus hold that any lawful incumbent of a Buddhist temple or a vihara may appoint several of his pupils to succeed him as viharadhipathi in rotation after his demise and I also hold that this mode of succession is consistent with the rule of *Sisyanu Sisya Paramparawa*."

What judicial decisions did Moonamale J. rely upon to reach the above conclusion? For the consideration of the soundness of that opinion one has necessarily to examine the judicial decisions which Moonamale J. states he relies upon and as far as I can discern from his judgment they are:—

- (1) The judgment of Thambiah J. in *Kamburugamuwe Piyananda Therunnanse vs Uyangoda Sumanajothi Therunnanse* (2)
- (2) The judgment of Jayewardene A. J. in *Gunaranda Unnanse vs Dewarakkitha Unnanse* (3)
- (3) The judgment of Lyall Grant J. in *Devendra Unnanse vs. Sumangala Therunnanse* (4) and
- (4) The judgment of Dalton J. in *Piyarathna Unnanse vs. Medankara Unnanse* (5)

Thambiah J. in *Kamburugamuwe Piyananda Therunnanse vs. Uyangoda Sumanajothi Therunnanse* (*supra*) at pages 180 and 181 stated:—

"Although the original rule as postulated by the Malwatta priest, is that only the founder priest of a vihara who could appoint a number of pupils to succeed him, this right appears to have been extended to any incumbent."

Thambiah J. thereafter proceeded to quote as authority rule (f) of the summary of rules given by Jayewardene A. J. in *Gunananda Unnanse vs. Dewarakkitha Unnanse* (supra) to which I shall refer to in detail later. Thambiah J. also added parenthetically "vide also *Piyaratne Unnanse vs. Medankara Therunnanse*", this being Dalton J's judgment in 32 NLR 271. It is useful to bear in mind the circumstances under which Thambiah J. was constrained to make that observation. It was common ground between the parties in that case that the 'original viharadhipathi' was Ahangama Dhammananda, who by his Last Will of 1838, devised his property to six of his pupils. The plaintiff claimed the incumbency on some nebulous theory of precedence he received as being the most senior by Uppasampada Ordination, out of the pupils of Dhammananda's pupils. On the other hand the defendant claimed the incumbency on the rule of Sisyanu Sisya Paramparawa, as a pupil of the last pupil of Dhammananda to succeed to the incumbency. The effect of the Last Will and the resultant claims to succession of all Dhammananda's pupils were never contentious matters. However, an examination of that Last Will, revealed that Dhammananda devised to his pupils movable and immovable property **which he got from his tutor** and by his own exertions; this receiving property from his tutor suggesting that Dhammananda was probably no 'original viharadhipathi' or 'founder priest' as was visualized in the original Malwatta opinion. Thambiah J. as well as Moonemale J. interpreted the judgment of Jayewardene A. J. as suggesting that the original Malwatta principle had been extended to cover any viharadhipathi. Whether Jayewardene A. J. in fact ventured to make such a suggestion has to be closely examined.

Before examining the judgment of Jayewardene A. J., it would be convenient set out in full the relevant Malwatta opinion as appearing in *Eriminne Unnanse vs. Sonabowe and Parakumbure Unnanse; Agents Court of Kurunegala No. 336* (6). That reads:

"The lands viharas, ect. belonging to a Bhikku or (upasampada priest) will; although he had (so many as) five pupils, devolve solely to that pupil to whom an absolute gift was made thereof, and that pupil alone of the said donee will

afterwards succeed there to, who received a regular gift of the same from him. The uninterrupted succession of pupils in this manner is termed *sisya paramparawa*.

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 benefits. This order having subsisted the last survivor will enjoy the benefit and have the power to make a gift in favour of any other person. But the original proprietor priest may transfer his rights to any other person he may choose, passing by his own pupils. In the event of the original proprietor dying intestate, the priests who happened to be assembled at his death, become entitled in common. Things which belonged equally to two priests devolve wholly to the survivor."

I may digress here to mention that having access to Appendix D of the Vanderstraaton Report (1869-1871) proved no easy task, the copy of that report belonging to the Judges' Library being missing, and the relevant pages of the Law Library copy and of few other copies as I could obtain from other sources being in tatters. To my despair, I found a copy of that report not available at the National Archives. However, I was fortunate in obtaining the copy which belonged to the late Chief Justice H. H. Basnayake, with the relevant pages intact, from his son Mr. Varuna Basnayake, to whom I am grateful. For the sake of providing easy access to that invaluable document — the Appendix D, I would venture to make it an appendix to this judgment.

In the case of *Gunananda Unnanse vs. Dewarakkitha Unnanse (supra)* the question for decision was whether when an incumbent of a vihara dies leaving a pupil and a co-pupil of his own, which had the prior right to succeed and whether the decision in *Siriniwasa vs. Sarananda* (7) had been correctly decided. It is in this context that the Malwatta opinion set out in the appendix D of Vanderstraaten's Reports came to be

examined by both Bertram C. J. and Jayewardene A. J. Both respected judges having referred to the Malwatta opinion, sought to formulate the propositions spelt out in that opinion in their own words. It may well be remembered that as I have mentioned earlier in this judgment, the Malwatta opinion confined the right to make a bequest in common to all pupils to only "the original proprietor". There appears to be no controversy regarding that.

Yet, Jayewardene A.J., in formulating the propositions of the Malwatta opinion omitted from his formulation No. 2, the words "original proprietor" and he expressed the relevant Malwatta proposition in the following terms:—

"2. if the priest declares his bequest common to all his pupils, they will all become entitled thereto — one of them being elected to the superiority the others only participating in the benefits. When the superior dies the one next in rank will succeed to the superiority, and the superiority will devolve in this way until the last survivor, who will have power to make a gift in favour of any other person."

It is obvious that Bertram C.J. had the benefit of reading the judgment of Jayewardene A.J. before he wrote his, for, he sets down the Malwatta propositions himself after the following introductory remarks:— (page 261)

"With this preface, let us now analyse the propositions of the Malwatta opinion. It appears to me that those propositions are the following and **I state them in a somewhat different form from that adopted by my brother Jayewardene.**" (emphasis added)

Bertram C. J. thereafter proceeded to formulate the relevant Malwatta propositions as follows:—

"Where vihara with lands, ect. attached is vested in a priest as the "**original proprietor**", he may take any of the following courses."

"(2) The **original proprietor** may make a bequest common to all his five pupils. In that case all five succeed to the benefits of the vihara, but one is elected to the superiority and his office passes in succession to all of the five to whom the bequest has been made. The last survivor may then make a gift in favour of any other person."

If Jayewardene A.J. was seeking to set down the Malwatta opinion as claimed by him, there appears to be little justification on his part to have omitted the words "original proprietor" in formulating his proposition No. 2, as then it would fail to be a faithful reproduction of the Malwatta opinion. It is significant to note that there, Jayewardene A.J. was certainly not referring to any subsequent modification of the original Malwatta opinion, but to that opinion itself. Reference to Bertram C.J.'s formulation of the same proposition makes it further clear to my mind that Jayewardene A.J.'s omission of the words "original proprietor" in formulating his proposition No. 2 is not deliberate and intentional.

I find it difficult to draw the same inference that Moonemale J. did, from the omission of the words 'original proprietor' in Jayewardene A.J.'s restatement of the Malwatta opinion, in his formulation No 2; not even in conjunction with the following statement of Jayewardene A.J. at page 267 of his judgment, which Moonamale J. thought is of supportive value to the opinion he formed:—

"The opinion is not complete or exhaustive and some of the propositions have been considerably modified by judicial decisions. For instance, **the third proposition** which says that the original proprietor may transfer his right to any other person passing by his own pupils would apply where a priest found a temple and becomes the incumbent without defining the mode of succession to it. It can have no application to a temple the succession to which is regulated by the Sisyanu Sisya Paramparawa."

However, the opinion of Thambiah J. as well as Moonamale J. appears to have been mainly influenced by another passage in

the judgment of Jayewardene A.J. and that is the rule (f) Jayewardene A.J. formulated at page 275. This is one of the series of rules which Jayewardene A.J. formulated at the end of his judgment which together with his prefatory remarks reads as follows:—

“It may perhaps be useful to summarize the rules regulating the succession to temples and viharas **as laid down in the authorities:—**” (emphasis added)

“(f) He can appoint by will or deed more than one pupil to succeed him; in such a case these pupils, although called jointly, succeed singly in rotation according to seniority. The pupil who succeeds last can appoint one of his pupils, and in the absence of such an appointment, his senior pupil will succeed him to the exclusion of the pupils of the previous incumbents.”

Did any authority lay down such a rule? It is not without significance to note that Jayewardene A.J. most meticulously makes reference to the decided authorities illustrative of every rule summarized by him, with the singular exception in the case of rule (f). I can hardly imagine that a single decided authority on rule (f), if any, could have escaped the studious attention of Jayewardene A.J., Nor has learned Queen's Counsel for the appellants been able to cite any such authority which Jayewardene A.J. could possibly have had in mind. The obvious conclusion one can arrive at, therefore, is that omission of the words “original proprietor” in Jayewardene A.J.'s own formulation of proposition No. 2 of the Malwatta opinion, got reflected itself in his summary of rule (f). For the above reasons, with extreme respect to Thambiah J. and Moonamale J., I am unable to agree with the view that Jayewardene A.J.'s judgment is suggestive of the proposition that the original Malwatta opinion, that only the founder priest of a vihara who could appoint a number of pupils to succeed him, has been extended to embrace any viharadhipathi. From an examination of that entire judgment, it appears to me that Jayewardene A.J.'s attention was neither invited nor directed to such a proposition.

There remains for me to consider the other two cases which Moonamale J. appears to rely on, to base his opinion. The case of *Dewendra Unnanse vs. Sumangala Therunnanse* (supra), seems to me to be no authority for the proposition that the original Malwatta opinion has been extended, but the judgment is a decision on the principle that incumbency may be held by two priests officiating in alternate years. I am unable to say that, even inferentially, that decision lends support to the view taken by Moonamale J. The case of *Piyaratne Unnanse vs. Medankara Unnanse* (supra) which even Thambiah J. briefly referred to by title in his judgment, is nothing more than a reiteration of the principle that the right of incumbency could be exercised by several pupils singly and in rotation and not altogether. I cannot trace any shadow of a suggestion in that judgment granting the sanction of court for any enlargement of the original Malwatta opinion.

Perhaps, it may not be irrelevant to remind ourselves of the emphatic words of Dias J. in *Dhammajothi Unnanse vs. Paranthale* (8); when he stated at page 123 as follows:—

"The vihare in question was founded by a Sinhalese king, and sannas on which it was founded is a document of the usual kind, and the tenure created thereby is the wellknown tenure of **Sisyanusisya Paramparawa**, which means "pupillary succession" or "succession from pupil to pupil." The second word "Anu" means "each by each" or "orderly" and the effect of that word seems to me limit the succession to the descending line, to the exclusion of both ascending and collateral lines. Thus we see that, according to the strict grammatical meaning of the words "**Sisyanusisya Paramparawa**" the line of succession is limited to the descending line."

I am of the view that any interpretation of the Buddhist Ecclesiastical Law by court, should be conducive to ensure stability, and continuity of the numerous Buddhist places of worship in the country. Perhaps, I can find traces of the same view expressed in the words of Jayewardene A.J. in the very case of *Gunananda Unnanse vs. Dewarakkithe Unnanse* (supra) when

he stated at page 273 as follows:—

"The decision in *Siriniwasa vs. Sarananda* (supra), therefore, stands by itself and no authority can be cited in support of the rule enunciated in it. It is contrary to the meaning of the real name given to the rule as explained by Dias J. in *Dammajothi Unnanse vs. Paranthale* (supra). The adoption of such a rule would, in my opinion, lead to confusion, for it may be asked who is to succeed on the death of the last of the co-pupils? Is the incumbent to be chosen from all the pupils of the co-pupils or only from the pupils of the last incumbent? In cases where several persons are appointed by deed, there is an established rule that the pupils of the last incumbent succeed but there is no such rule applicable to cases where succession is not by appointment. While, on the other hand, the rule requiring transmission of the incumbency from senior pupil to senior pupil produces certainty and creates a sort of "primogeniture" which is easily understood and applied. In my opinion the judgments of the court since 1874 have clearly recognized the right of a pupil to succeed to the incumbency, although there may be co-pupil of the last incumbent, and the right is so well established that the incumbent cannot take it away by nominating one of his co-pupils."

For the above reasons I am of the view that there has been no modification of the relevant original Malwatta opinion, and I dismiss the appeal without costs.

PALAKIDNAR J. — I agree
Appeal dismissed

APPENDIX D. (Vanderstraeten Reports 1869-1871).

Extract from the proceedings of the Board of Commissioners held at Kandy, February 7th, 1832.

From the Agent's Court at Kornegalle.
No. 366.

In the case of Eriminne Unnanse . . . Plaintiff and Respdt.

vs.

Senabowe Unnanse, and Parekumbure Unnanse . . .
Defendants and Appellants

Originally heard by the Agent of Government at Kurnegalle, but left undecided on account of a difference in opinion between the Agent and the Assessors, and being referred to the Court of the Judicial Commissioners in Kandy was decided therein. The first and third members of the Board having severally read and duly considered proceedings had in this case, as well before the Court of the Agent of Government of Kurnegalle, as before the Court of the Judicial Commissioners in Kandy the first member concurs in the decree of the Judicial Commissioners. It appears to the third member to be material for the decision of this case that it should be ascertained whether the succession to the incumbency is regulated by the Siwooroo or the Sissya Paramparawe. If it is the former he would concur in his decision. If the latter he would question the legality of a bequest in trust, the child not being admitted into the priesthood at the period of the bequest. In reply to the observations of the third member, the Judicial Commissioner begs leave to explain for the information of the Right Hon'ble the Governor what the nature of Siwooroo and Sissya Paramparawa is, and to show that this case can only be decided on it's own merits and without reference to those rules.

In trying the case of Dantura Unnanse) Decided in favour
vs.) of plaintiff, 4th

The Government of Ceylon, for the) June, 1828. Decision affirmed
Wihara of Malaganey in seven Korales.) 8th August, 1829.

the parties of the two Wiharas were called on to define the terms Sissya Paramparawe and Siwooroo Paramparawe, which they did in writing. The following are translations of the respective statements, "**written and submitted by the undersigned Priests of Malawatta Wihara.** It does not appear to us that the statement in the paper writing exhibited to us, respecting the Siwooroo Paramparawe and Sissya Paramparawe is correct, for according to the religion the nature of the Sissya Paramparawe and of the Siwooroo Paramparawe are as follows.—

SISSYA PARAMPARAWE:— The lands Wiharas, &c., belonging to Bhikshoo (or Uspasampade Priest) will, although he had (so many as) five pupils, devolve solely to that pupil to whom an absolute gift was made thereof, and that pupil

alone of the said donee will afterwards succeed thereto, who received a regular gift of the same from him. The uninterrupted succession of pupils in this manner is termed Sissya Paramparawe.

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 benefits. This order having subsisted, the last survivor will enjoy the benefit and have the power to make a gift in favour of any other person. But the original proprietor priest may transfer his right to any other person he may choose, passing by his own pupils. In the event of the original proprietor dying intestate, the priests who happened to be assembled at his death become entitled in common. Things which belonged equally to two priests devolve wholly to the survivor.

SIWOOROO PARAMPARAWE — The priest who was the original proprietor, ordaining a relation to the priesthood and bestowing his property on him, and the latter in like manner ordaining a relation and making a gift in his favour, the ordaining of relations for the succession in this manner is termed Siwooroo Paramparawe. However, the practice has also subsisted in this Island of a priest who had himself failed to appoint a relation to the succession, authorizing another to ordain a relation to the priesthood and to deliver up the property to him.

(Signed) Kandeygadere Mahanaike Unnanse and nine other priests of the Malwatte.

**Explanation of the terms Sissya Paramparawe
and Siwooroo Paramparawe**

Written and submitted by the priests of Assgirage Wihare.

"Whereas a King or King's Minister, or other person in authority, or any other donor erected a Wihare, and by a inscription upon a rock, or upon a plate of copper, or other substance recorded the dedication thereof, stating that for the purpose of the sacred offices being performed thereat, the superiority has been vested in such a priest and his pupils, and subpupils in successive generations, accordingly such rights being uninterruptedly maintained by the Maha Teroonnanse mentioned in the record and by his pupils and by their pupils in succession, this is termed Sissya Paramparawe. This succession ceases when in

consequence of a priest in possession, having forfeited his right by treason, by infringement of the Doctrine, or by other fault, or by leaving no pupils to succeed him, another priest obtains the gift, this is the nature of Sissya Paramparawe; the practice has also subsisted for any priest in such a station to ordain a relation to the priesthood, and having duly qualified him thereto, to bestow on him, as his pupil, according to the rules of Buddhist Religion, the Wihare, &c., which had been in his possession. When this order of succession existed some time, the term Siwoora Paramparawe is applied thereto by some people; but still it is in fact the Sissya Paramparawe. This succession all ceases in the event of a duly qualified person not being in existence (at the demise of the incumbent) or some other cause occurring to interrupt the succession.

Paramparawe signifies uninterrupted succession, like the links of a chain — when interruption and vacancy occur there is no succession."

In the present case Eeraminne Lokoo Unnanse appears to be acknowledged on all hands to have been the proprietor of the Wihare in question. Eeraminne Kuda Unnanse was the pupil, and so was also Wewagadara Unnanse, as some of the witnesses have stated, though others have declared that he was Bambakelle Unnanse's pupil, and had only been appointed by the said Eeraminne Lokoo Unnanse to be the guardian of Eeraminne Kuda Unnanse. At all events Eeraminne Kuda Unnanse and Wewagedera Unnanse appear to have had joint possession of the Wihare, either as Guardian and Ward or as fellow pupils. When the former was dying he enjoined Wewagadara Unnanse to ordain the plaintiff, then a little child, when he attained a sufficient age and then to install him in the incumbency. However, Wewagedera Unnanse neglected to do; but after the latter was dead, a contest arose amongst his pupils, of whom 1st Defendant was one, the villagers interposed and had plaintiff robed and installed him, they deeming him the rightful heir of the Incumbency.

Whatever may have been the rights of Wewagadara Unnanse it is remarkable that his only pupil who has been made a party in this case, viz. The 1st Defendant should have waived his claim, though he now denies it.

But, allowing that Wewagedera Unnanse had a right to transfer or bequeath the Temple contrary to the injunction of Eeraminne Kuda Unnanse, and that he had so bequeathed or transferred the same to Wellawatta Naiké Unnanse, neither, of which are proved, still it does not appear by what right the 2nd Defendant has interposed his claim in this case, for he has proved no gift from Wellawatta Naiké Unnanse and his dispossessing the plaintiff was unwarranted. The 2nd Defendant Parakumbura Unnanse, is one of the senior priests of the Malwatta Wihara and Guardian to Welawatta Tikare Unnanse, the heir to the late Welawatta Naiké Unnanse, and perhaps acts only in the capacity of Guardian or Proctor for Tikare Unnanse — but this is not explicitly stated in proceedings.

The proceedings were forwarded to the right Hon'ble the Governor, who desired The Board of Commissioners to take a convenient opportunity of calling a full assembly of the principal chiefs, and having submitted the case to them as it stands and also the observations of the 2nd and 3rd members of the Board, request their opinion on the same.

The meeting was held in the Hall of Audience at Kandy on the 5th day of May, 1832.

Present.

Colonel Miller Clifford, C. B.

Commanding the Troops in the Interior.

Henry Wright, Esq.

Judicial Commissioner.

George Turnour Esq.

Revenue Commissioner.

Molligoda, First Adekar.

Mulligame, Sayapattuwa Maha Nilame.

Moladande, Disave of Pahaladolos Pattoo.

Dunuwile, Disave of Udapalata.

Wattarantenne, Nanayakkara Lekam.

Gonigode, Basnayake Nilame.

Mampiteye, Basnayake Nilame.

Augammane, Basnayake Nilame.

Halangode, late Lekam.

Moladande, late Lekam.

Kotuwegedera, Walaawe Banda.

Dehigame, Banda.

The letter of the Deputy Secretary, under date the 12th March last, and the proceedings of the case to which it alludes having being read to the chiefs now in attendance, the points for consideration appear to be whether the decision of this case is to be regulated with reference to the rules Siwaroo or Sissya Paramparawe or otherwise; that is to say 1st What is the general rule for regulating the succession to Temples, whether both in the Siwaroo and Sissya Paramparawe, the succession can be conferred upon a layman or whether it is to be confined to the Siwaroo Paramparawe only — 2nd whether there are any peculiar circumstances in this particular case that should justify decision without reference to those rules.

The chiefs are unanimously of opinion that the rule as laid down in the proceedings by the Malwatte priests is more correct than that which has been expressed by the priests of the Asgire Wihare; viz., that it is necessary to be a priest to succeed to a Temple under the Sissya Paramparawe, and there is only under the Siwaroo Paramparawe that a laymen can succeed to a Temple on

condition of afterwards becoming a priest

From the circumstance of the Temple in this case having been given to a lay person, and that too by a priest of the Upasampada order, who must have known the impropriety of so doing unless it was a Siwaroo Paramparawe, the Assessors infer that it must have been regulated by the rule of Siwaroo Paramparawa, they therefore consider the gift to the plaintiff valid, and the interposition of the village people having been exercised in support of that gift, they consider it as an additional proof of its authenticity

The exceptions to those rules are those Temples which are in the gift of Government or of private individuals.

In the present case it does not appear that the villagers had any inherent right or authority for their interference in obtaining the appointment of the plaintiff, it was merely made use of in support of the appointment made by the incumbent priest, viz. Ereminne Kuda Unnanse. The villagers having made a final dedication, lose all power or right in and over the Temple given. The chiefs however think that it would be advisable to examine further evidence for the purpose of clearing up any doubts as to whether the Temple in question should be considered as coming under the Siwaroo or Sissya Paramparawa by ascertaining if possible the terms upon which it was originally dedicated to Weliweta Sanga Raja, which must have been about in 70 years ago, and whether the succession from him down to Ereminne Kuda Unnanse was regulated by the Siwaroo Sissya Paramparawe. Under these circumstances the Board considers it expedient to order the further evidence suggested to be heard before the Judicial Court in Kandy, before returning the proceedings to Government "

On 20th June, 1832, the Commissioners of the Judicial Court at Kandy associated with Assessors heard further evidence, and decided as follows: "the Assessors are unanimously of opinion that the succession to the Temple in question is and should be regulated agreeably to the law of Sissya Paramparawa, in which opinion the Judicial Commissioner now concurs, and therefore the gift which Ereminne Kuda Unnanse made to plaintiff was irregular and cannot be held as a valid one."

In July 1832, the 1st and 3rd Member of the Board having read and considered all the proceedings concurred with the Judicial Commissioner's decision — "The Sissya Paramparawa being the general rule of succession to Wihares and the Siwooroo, the exception to the general rule, the burden of proof vested on the plaintiff who pleaded the exception — and this he had failed in establishing.

In appeal, the Supreme Court, on the 21st October 1833, affirmed the decision of the court, of the Judicial Commissioner at Kandy, dated the

20th June, 1832. "This case has undergone much discussion and consultation as to the distinction between the Sissya and Siwooroo Paramparawa and great pains have been employed to ascertain the law by which the succession to this Temple should be governed. There seems no doubt that this succession ought to go by pupils until the stock is exhausted. The supposed gift, therefore, to the plaintiff could by no possibility be valid, since he was a mere boy and a layman at the time of that gift. But it is very doubtful whether Kudah Unnanse was even entitled to make this grant even in the line of pupils. The evidence is not very clear as to the stage at which Kudah had possession. But the plaintiff's own witnesses, on the second occasion, state that Kudah, and Wevagederah possessed together, that Wevagederah was the elder, that Kuda died first and that he left Wevagederah in possession. According to the plaintiff's evidence therefore Kudah could have no right to make the grant even to a pupil.
