

## FULL BENCH (CIVIL).

*Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Das and Mr. Justice Maung Ba.*

U NANDA

v.

U GANDA.\*

1930

Dec. 16.

*Buddhist Ecclesiastical Law—Eviction from a Saughika Kyaung—Failure to furnish a list of persons resident in the kyaung whether sufficient ground for eviction—Authority of a presiding monk of a Saughika Kyaung.*

*Held*, that the refusal to furnish a list of lay residents in the *kyaung*, when called upon to do so by the presiding monk of a *sanghika kyaung* in the circumstances of the case was not such misconduct in a monk as would render him liable to ejection from the *kyaung*.

The plaintiff-respondent as the presiding monk of *Pyatthat Kyaung-daik* in Rangoon, of which the *Waso Taik Kyaung* in Suit forms part, sued to eject the defendant-respondent from the *Waso Taik Kyaung*. The plaintiff claimed that the defendant's occupation was by his permission and that the defendant was a licensee, the license being revoked on the defendant refusing to submit to the admonitions of and the discipline laid down by the plaintiff.

The trial Judge (Mr. Justice Ormiston) held that the defendant was a licensee of the plaintiff in respect of his occupation of the *Kyaung* so long as he followed the advice lawfully given by the plaintiff; that the rules of conduct drawn up by the plaintiff, so far as they were relevant to the suit were advice lawfully given by the plaintiff to the defendant; and that the defendant had not committed any breach of the rules except that which required the defendant to furnish a list of lay residents, male and female, in the *Waso*

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\* Civil First Appeal No. 84 of 1930 from the judgment of this Court on the Original Side in Civil Regular No. 465 of 1929.

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Taik *Kyaung*. The learned Judge decreed the plaintiff's suit. The defendant appealed.

*Sein Tun Aung*, for the appellant. The *Kyaung* in suit is a *Sanghika Kyaung* and the respondent cannot exercise personal ownership over the *Kyaung*. The appellant is a member of the *Sangha* and is not a bare licensee. All members of the *Sangha* are entitled to occupy a *Sanghika Kyaung*. The appellant can be evicted only on his being proved guilty of a default which has the effect of reverting him into the laity. There is no allegation of such a default as coming within the rules of the *Paragika Dhamma*, see 3 Ran. 193.

*Ba Han* for the respondent. Civil Regular No. 444 of 1927 ended with the Arbitrator's award under which Defendant-Appellant is bound to live under Plaintiff-Respondent's rule and discipline. The award has been filed and it has not been impeached.

Defendant-Appellant is therefore in the position of a licensee. He has not only refused Plaintiff-Respondent's discipline but is determined to persist in his refusal. Plaintiff's suit has been filed on account of this refusal. The case is therefore to be determined not by the rules of the *Vinaya* but by the terms of the award. Since Defendant-Appellant has failed to abide by the condition under which he is allowed to live in the *suit-kyauing* Plaintiff-Respondent is entitled to eject him.

Even assuming that the rules of the *Vinaya* apply Plaintiff-Respondent can eject Defendant-Appellant. The *suit-kyauing* is *Aramika-Sanghika*, and it belongs to the clergy of the locality. But Plaintiff-Respondent as the presiding monk of the *Kyaungdaik* of which the *suit-kyauing* forms a part represents the clergy of the *kyauing-daik* and he can as such exercise acts of ownership (May Oung's *Buddhist Law*, 2nd Edition,

pp. 193, 194, *Manukye* Book VIII, Chapter 3 ; (*U.B.R.* 1892-96, Vol. II, pp. 72, 76 and 7 *Ran.* p. 245.)

The basic principle is the preservation of peace and order in the religious community. No community can stand, if the authority of the head is allowed to be defied.

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PAGE, C.J., DAS and MAUNG BA, JJ.—This appeal must be allowed.

The suit was brought by the presiding monk of a *kyaung-daik* to eject the defendant, who is the presiding monk of one of the *kyaungs* within the *kyaungdaik*. The property is *Sanghika* property, and the material facts lie within a narrow compass.

In 1927 the plaintiff brought a suit for the purpose of ejecting the defendant and certain other monks from this *kyaung*. On the 5th September 1928, by an award to which the parties submitted, the suit was withdrawn and settled. In the award it was provided *inter alia* that " it has been agreed between the two parties that defendant U Nanda will abide by the advice lawfully given by the plaintiff U Ganda : consequently the case, *viz.* Civil Regular Suit No. 444 of 1927 is withdrawn and settled."

On the 24th of April, 1929, certain rules were drawn up by the plaintiff purporting to be in pursuance of the terms of the award, and were given to the defendant. We have carefully considered the form in which these rules were made, and in our opinion none of the rules can be said to be contrary to the spirit of the *Vinaya*.

Now, the learned trial Judge in the course of his judgment, observes : " I am unable to hold, on the materials before me, that there has been a breach by the defendant of his obligations under the rules, except as regards the furnishing of the list."

Under the first rule the occupants of the defendant's *kyaung* were ordered to give a list of names, and to

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produce the following persons before the plaintiff :  
 " U Nanda and Rahans, probationers for the priesthood:  
 lay pupils of the monastery and men and women  
*kappiyas* now residing within the Pyattha *kyaung-daik*."  
 The defendant took the view that to call upon him to  
 give a list *inter alia* of any women *kappiyas* who might  
 be within his *kyaung* and to produce them before the  
 plaintiff was an insult to him as the presiding monk of  
 the *kyaung* ; and he failed to give the list or to produce  
 any of the persons named in the first rule before the  
 plaintiff.

The accuracy of the finding of the learned trial  
 Judge to which we have referred has not been chal-  
 lenged in this appeal, and it must be taken that the only  
 offence, which it can be pretended that the defendant  
 committed was that he failed to produce a list of the  
 persons as prescribed in condition 1 of the rules.

Under the award it is not provided that if the defen-  
 dant refused to follow the lawful advice given him by  
 the plaintiff the plaintiff might eject him. The defen-  
 dant, therefore, can only be ejected upon grounds  
 which could be justified in law. There is authority for  
 the view that where it is sought to eject a monk from  
 Sanghika property it must be proved to the satisfaction  
 of the general body of monks comprising the Sangha  
 that the monk is guilty of such conduct as in their  
 opinion would render him an unfit person to remain as  
 a member of the Sangha, and that unless the presiding  
 monk is armed with the opinion of the Sangha as a  
 whole to the effect that the monk is guilty of such mis-  
 conduct as would make it desirable that he should be  
 ejected the presiding monk is not entitled to eject him.  
 It is unnecessary to discuss this question more fully for  
 the purpose of disposing of this appeal, because whe-  
 ther the presiding monk was entitled to eject the defen-  
 dant for misconduct, or whether he could only do so if

the Sangha as a whole was of opinion that he had been guilty of such misconduct as would render him unfit to remain as a member of the Sangha—and it is the second view which as at present advised we are disposed to take—we are clearly of opinion upon the evidence adduced and in the circumstances obtaining in this case that it was not proved that at the time when the suit in ejectment was filed the defendant had been guilty of such misconduct as would render him liable to ejectment at the suit of the plaintiff.

In these circumstances, in our opinion, the appeal must be allowed, and the suit dismissed. There will be no order as to costs.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Maung Ba and Mr. Justice Dunkley.*

TIRI

v.

KING-EMPEROR.

1930  
 Jan. 9.

*Youth whether an extenuating circumstance in case of murder—Lesser penalty when justifiable.*

In cases of murder youth alone is not such an extenuating circumstance as would justify the imposition of the lesser penalty, but it should be taken into consideration with the other facts of the case.

*Chit Tha v. King-Emperor*, 9 L.B.R. 165; *Nga Ba Thin v. King Emperor*, Ch. Ct. Cr. App. 110 of 1922; *Nga Kan Hla v. King-Emperor* (1914-16) U.B.R. 28; *Nga Pyan v. Crown*, 1 L.B.R. 359; *Nga Tha Kin v. King-Emperor* (1910-13) U.B.R. 87—*referred to*.

*Mukerji* for the appellant.

*Gaunt* (Assistant Government Advocate) for the Crown.

MAUNG BA and DUNKLEY, JJ.—The appellant has been convicted of murder, under section 302 of the

\* Criminal Appeal No. 1329 of 1930 from the order of the Sessions Judge of Amherst in Sessions Trial No. 15 of 1930.