IN THE MATTER OF AN APPLICATION BY REV. SUMANA THERO TO BE ADMITTED AND ENROLLED AS AN ATTORNEY-AT-LAW

Supreme Court.
Samarakoon CJ.
Samarawickrama, J.
Walpita, J.
Gunasekera, J.
Wanasundara, J.
Enrolment Application No. A 6851.
March 17, 20, 21, 1978.

Admission-Enrolment as an Attorney-at-Law by a Buddhist Priest-Administration of Justice Law (AJL) No. 44 of 1973-Section 15(1)(e), Section 33 –Is there a rule of Vinaya Pitaka prohibiting a Bhikku from practicing the profession? – Are these rules purely of ecclesiastical nature?– Constitution –Section 6, 18(1)(d) - Is there incompatibility of the two vocations? - Is it morally reprehensible? - Does Section 6 override the effect of Section 33 (AJL) ?

Reverend Sumana Thero who had obtained the necessary qualifications to be admitted to the Bar made an application to be admitted and enrolled as an Attorney-at-Law to the Supreme Court. The question arose, whether he could be admitted and enrolled.

HELD : Samarakoon CJ, with Samarawickrama. J, Walpita. J. and Gunasekera, J. agreeing -

(1) The Vinaya Pitaka containing the rules and conduct of Bhikkus are of a purely ecclesiastical nature. This Court has constantly held that, such matters are outside the pale of the civil law and cannot be entertained as legal disputes in Civil Courts.

(2) Even if the Vinaya Rules have become and now have the force of customary law of the land and therefore enforceable, the

statements of the two Mahanayakas which is the only reliable evidence state that there is no such rule in the Vinaya. For a Rule to have a force of law by custom there must be certainty and on the material before Court such certainty is not shown.

Per Neville Samarakoon, CJ.

"To say that the rules laid down by the Buddha for the discipline and personal conduct of his disciples, is enforceable through Civil Courts by laymen as customary law, is abhorrent and should not rightly be entertained in any Court".

Per Neville Samarakoon, CJ.

"We must in no way be understood to condone the proposed action of the applicant. We in the civil Courts are only concerned with the civil rights and duties and I can see nothing in the civil law which disentitles the applicant to be admitted and enrolled as an Attorney of this Court and we are powerless to prevent it.

(3) Section 15(1)(e) of the AJL permits the Supreme Court with the concurrence of the Minister to make rules for the admission, enrolment, supervision and removal of Attorneys-at-Law. No Rule has been made under this section debarring a monk from applying to be enrolled as an Attorney-at-Law.

(4) How much protection should be afforded under Section 6 of the Constitution (1972) is a matter of policy for the State acting through the National State Assembly. In what manner and when are matters within the power of the State exercised through the enactment of legislation. Courts neither lay down policy or make Law. Courts function is only to interpret and administer laws made by the legislature not to make Law.

Wanasundara, J. (dissenting)

HELD:

1. That a monks life, as ordained by the Buddha, in its pure form, is incompatible with lay life would be apparent to anyone even having a little acquaintance with the Dhamma. The institution of the Sangha was established by the Buddha as a haven for those who wish to get away from lay life and who need the optimum conditions for pursuing the arduos life of virtuous meditation and wisdom demanded by the teaching. A person who enters the order should be mindful of the change of status and recall this difference as often as possible.

2. The application of Section 6 (1972 Constitution) arises this way, the State is enjoined to protect and foster Buddhism. When a monk is enrolled by us as an attorney, this determination by us as judges places a seal of approval on an act which is said to be violative of the Dhamma Vinaya. It is not necessary that some specific tenet of the Vinaya should be transgressed; even a significant deviation from the spirit of the religion may suffice if it could be said to endanger the teaching.

Per Wanasundara, J.

"In so far as the legal position is concerned it is my view that any determination or worsening of the prevailing state of affairs of any significance would attract the protective provisions of Section 6 of the Constitution.

3. The application must be refused on one or more of the following grounds :

   i. Ground of incompatibility of the two vocations

   ii. Monk has disturbed the moral sense of a section of the public

iii. Violating of the Vinaya Rules

iv. He has not satisfied Court that his confirming to lead the life of a Monk would be no impediment to his practicing as a lawyer.

v. Application of Section 6 of the Constitution (1972)

Cases Referred to :-

1. *Ratnapala Unnanse vs Appuhamy* 4 NLR 167 at 169
2. *Saranankara Unnanse vs. Ratnajothi Unnanse* 20 N.L.R. 383 at 401
3. *Sumanagatta Unnanse vs. Sobitha Unnanse* 3 SCC 253
4. *Marshall's Judgments* pages 657 and 658
5. *Aysa Umma vs. Sago Abdul Lebbe* 1863 and 240
6. *Perera v. Moonasinghe* 27 NLR 76 and 79
7. *In re S* 1969(2) W.L.R. 708
8. *A-G of Gambia v. N'Jie* (1961) 2 AER 504
9. *By petition from Antigua* 12 E.R. 504
10. *Julius vs. Bishop of Oxford* (1880) 5AC 214
11. *Ex Parte Inahoro* 1963 2 QB 455
12. *In Re Shuters* 1960 4 C.W.R. 370
13. *In re Moonasinghe* 1917 4 CWR 370
14. *In the Matter of an Application of Seneviratne to be admitted an advocate* 30 NLR 299
15. *In re Brito* 43 NLR 529
16. *In re Weare* (1893) 2 Q.B. 439
17. *Dharmavisudithi vs. Dhammadassi Thero* 57 NLR 469
18. *Dammaratna Unnanse vs. Sumangala Unnanse* 14 NLR 409
19. *Shelly vs. Kraemer* 334 U.S. 1

20. *Barrows vs. Jackson* 346 U.S. 249
21. *Aysa Oemma vs. Sago Abdul Lebbe* (1863-68)
22. *Davarakkita vs. Dharmaratana* 21 NLR 255
23. *Neisaemmah vs. Sinnathamby* 36 NLR 375
24. *Ceylon Workers' Congress vs. Superintendent Beragala Estate* 76 NLR 1
25. *Solicitor General vs. Jayawickrama* 53 NLR 320

Prince Gunasekera with *L.V.R. Fernando, S.S. Wijeratne, Parakrama Ranasinghe* and *Sarath Wijesinghe* for the appellant.

H.W. Jayawardane QC with *Nimal Senanayake, Desmond Fernando, Miss S.M. Senaratne* and N. *Jayamanne* for the Bar Association of Sri Lanka (on notice)

Eric Amerasinghe with *C.D.S. Siriwardane, N.S.A. Gunatilleke, M.B. Peramune* and *Miss. K.D. Meddagoda* for the Colombo YMBA.

Dr. K.D.P. Wickremasinghe with *D.H. Balachandra* and *Jayatissa Herath* for the ACBC and Buddhist Theosophical Society.

Shiva Pasupathi Hon. Attorney General with *K.M.M.B. Kulatunga Additional SC* and *D.C. Jayasuriya* SC for the State.

P.R. Wickremasinghe – Member Buddhist Advisory Board, Ministry of Cultural Affairs.

D.S.R. Rajapakse with *K.M.P. Rajaratna* and *Stanley Rajapakse* for 7th party noticed.

WANASUNDARA, J. *(dissenting)*

12th July, 1978

SAMARAKOON, C. J.

Reverend Nakulugamuwa Sumana Thero, a member of the Sri Kalyanawansa Maha Nikaya has made an application to this Court to be admitted and enrolled as an Attorney-at-Law of the Supreme Court, an unprecedented event in the history of Sri Lanka. In doing so he has roused a store of protests. Lay Buddhists have lodged objection, an unprecedented event in this court. Reverend Sumana's application was received by the Registrar of this Court on 23-02-1978. The papers submitted by him disclose that he is a graduate of the University of Sri Lanka being a Bachelor of Laws. He has obtained the necessary academic qualifications to be admitted to the Bar. To his application are annexed two certificates from Senior Attorneys-at-Law testifying to the fact that he is a person of good character. He therefore claims that he has satisfied the provisions of section 33 of the Administration of Justice Law No. 44 of 1973 which reads as follows: -

"The Supreme Court may admit and enrol as attorneys-at-law persons of good repute and of competent knowledge and ability."

In view of the importance of the matter, the spate of protests both within and without this Court, and the fact that this was the first of its kind in the annals of our Courts, I referred this for decision by a Bench comprising five Judges of the Supreme Court. I also caused notice to issue to all who filed objections, to the Bar Association of Sri Lanka and to the Attorney-General. The Bar Association and the Attorney-General very kindly appeared and assisted this court. At the commencement of the hearing on 17th March, Counsel for the Colombo Young Men's Buddhist Association (hereinafter referred to as the Colombo Y.M.B.A.) Counsel for the All Ceylon Buddhist Congress (hereinafter referred to as the A.C.B.C.) and the Buddhist Theosophical Society (hereinafter referred to as the B.T.S.) and P.B. Wickramasuriya (objector) all stated that they do not contest the facts set out in documents filed for the purposes of section

33 of the Administration of Justice Law, No. 44 of 1973 and accepted the fact that the applicant was competent, qualified and that he was of good repute. On the second day of hearing one D.M. Guneratne, another objector, presented himself in Court and Counsel appearing for him maintained *inter alia* that the applicant was not of good repute for reasons which I shall refer to later. The applicant filed an affidavit together with other documents three of which were affidavits – one sworn to by the Reverend Rangoda Dhammasena Maha Nayaka Thero Mahanayaka of the Amarapura Nikaya, another sworn to by the Reverend Devinuwara Amarasiri Mahanayaka of the Sri Kalyanawansa Maha Nikaya (the Nikaya to which the applicant belongs) and a third sworn to by Dr. W. S. Karunaratne Professor of Buddhist Philosophy of the University of Sri Lanka. All three of them testify to the fact that a Bikkhu who is admitted, enrolled, and who practices the profession of an Attorney-at-Law does not contravene any of the Disciplinary Codes of the Vinaya Pitaka. The objections were of a four fold nature and are as follows : -

1. That the applicant was not a person of good repute and therefore not a fit and proper person to be admitted and enrolled.

2. That the applicant was acting in contravention of the Vinaya Pitaka and therefore, in the larger interests of Buddhism, this court in the exercise of its discretion, should refuse to admit and enrol him.

3. That the rules of the Vinaya Pitaka had acquired the force of customary law and therefore this court could not admit and enrol the applicant.

4. That by reason of the fact that by section 6 of the Constitution of Sri Lanka the Republic had undertaken to protect and foster Buddhism this court cannot admit and enrol the applicant .

I shall deal with each of these points but at the outset I desire to state that in view of the opinion I have formed on other matters it is not

necessary to consider the learned arguments addressed to us as to whether the word "May" in section 33 quoted above is indicative of a discretion or whether it is equivalent to "shall" and therefore obligatory, other things being equal, for this court to admit and enrol the applicant. Section 15(1)(e) of the Administration of Justice law permits this court with the concurrence of the Minister to make rules for "the admission, enrolment, suspension and removal of Attorneys-at-Law". They must be published in the Gazette (section 15(2)) and placed before the National State Assembly for approval. If not so approved they shall be deemed to be rescinded (section 15(3)). Some rules have been made under this section and published in Gazette No. 115/4 of 12-02-1974 and Gazette No. 95/5 of 23-01-1974. But these do not contain rules relevant to matters now under consideration. Suffice it to say that no rule has been made under this section debarring a monk from applying to be enrolled as an Attorney-at-Law.

Counsel for D. M. Gunaratne (objector) seething with indignation, submitted that the applicant was not a person of "good repute", because at the time he robed himself he represented to the Buddhists that he has renounced the world and would live "according to a certain code of ethics", but he was now deceiving the people by his conduct. Counsel went so far as to say that the Vinaya Pitaka does not permit a monk to "follow legal studies". The burden of his song was that the applicant while being a monk was seeking to have the best of both worlds and was thereby living a lie. Such a person was not of good repute within the meaning of section 33 of the Administration of Justice Law. Counsel did not refer us to any particular rule of the Vinaya which prohibited the study of law or the practice of it. Indeed those whose opinion matters, and who have the power to examine the conduct of the Bikku concerned, have said that he is doing nothing wrong in applying to be a lawyer. Further it is only if an applicant's reputation is such that he could be said to be guilty of moral turpitude, that he could be refused admission. I trust that the applicant will as a follower of the Buddha forgive counsel for the severe strictures passed on him. Being a Buddhist himself, he was carried away by his emotions. I reject the contention that the applicant is not a person of good repute.

Counsel for the Colombo Y.M.B.A. and Counsel for the A.C.B.C. and B.T.S. both contended that no Bhikkhu can practice as a lawyer without violating his religious precepts. They say that the Bhikkhu's way of life and the Code of Conduct to which he is subject are incompatible with those of an Attorney-at-Law and that the affirmation of an Attorney-at-Law violates the affirmation made by a Bhikku at the time of robing. In short, that when the applicant became a Bhikku, he disqualified himself from being a lawyer. Therefore they state this court, in the exercise of discretion it has under section33 of the Administration of Justice Law, should refuse to admit and enrol him. The Code of conduct referred to by Counsel is the Vinaya Pitaka. Counsel for the objectors further contested that the Vinaya Pitaka prohibits a Bhikku from entering the legal profession. Counsel for the Bar Association contended this fact and stated that at the time the Vinaya was framed the profession of lawyers was totally unknown. The Mahanayake of the Amarapura seat and the Mahanayake of the Sri Kalyaniwansa seat states categorically that there is no rule of Vinaya Pitaka which prohibits a Bhikku from studying law and from practicing the profession of an Attorney-at-Law. There are statements regarding discipline and conduct of a Bhikku. They are made by priests who are the final arbiters on such matters relating to the order to which the applicant belongs and to whose discipline he is subject. These opinions can hardly be questioned by this court and must be accepted by us. They cannot be lightly rejected. They are the only evidence before us. Counsel for the Y.M.B.A. challenged this opinion and stated that he could produce affidavits from Maha Nayakes of other sects to the country. He possibly could do so, but we did not think it necessary to permit such a course of action as it would only have enlarged the dispute unnecessarily. It is common knowledge that Bhikkus in this country have hitherto been employed in various secular pursuits such as Vice Chancellors of Universities, Ayurvedic Physicians and Teachers, notwithstanding the rule of absolute poverty. (Vide the evidence of Sri Sumangala Nayaka Thero in *Ratnapala Unnanse vs. Appuhamy*[1] some priests have held, and do hold even now considerable property which fact is recognized by the Buddhist Temporalities Ordinance. These and other

deviations from the strict rules are "necessary developments in the course of centuries. Doctrine and belief, are of course, immutable but discipline and administration are naturally subject to modifications. Per Sampayo, J. in *Saranankara Unnanse v Ratnajothi Unnanse*[2] (at 401). This Court has in *Sumangala Unnanse v. Sobitha Unnanse*[3] (at 255) expressed the opinion that the Buddhists of Sri Lanka have not adopted all the strict rules and regulations of the Vinaya. Therefore an exhaustive inquiry into whether or not the Vinaya prohibits a Bhikku to practice the profession of a lawyer would be a futile exercise especially when we are confronted with the fact that Bhikkus have for decades been engaged in secular employment. In the circumstances, to exercise a discretion against the Bhikku, if discretion there be, would be fraught with danger and unwise. Counsel for the Colombo Y.M.B.A. appealed to us to use our discretion because Buddhists were powerless to prevent the Bhikku's enrolment. My only reply is that the massive opinion of the Buddhist's of this country cannot be ignored by and should prevent a mere Bhikku from seeking enrolment if it is in fact so abnoxious to Buddhist public opinion. There was also the plaintive cry of counsel for the A.C.B.C. and B.T.S. – " have mercy on us. Buddhism will be ruined if a Bhikku is enrolled as a lawyer". Buddhism has been an integral part of the life of this country for well over 2,500 years and has withstood the assaults of foreign powers and foreign doctrines for over 400 years. It is preposterous to think Reverend Sumana can achieve what foreign domination in all its might has failed to do for 400 years.

There is another reason for not embarking on such an inquiry. The Vinaya Pitaka containing the rules and conduct of Bhikku are of a purely ecclesiastia nature (Hayley page 341). Court has consistently held that such matters are outside the pale of the civil law and cannot be entertained as legal disputes in Civil Courts. Canon law is within the exclusive jurisdiction of ecclesiastical courts (Woodhouse – Sisyanu Sisya Paramparawa page 9). The history of these courts records that a dispute in the Maradana Mosque regarding irregular practices at religious festivals and the exclusive right to offerings was not entertained by the court. "The

religious privilege ..... is a question for the priests or the spiritual guardians of the Mohommedan religion. The civil right is the sole right with which we are concerned ....." To decide otherwise would be a "fearful responsibility " (Marshall's Judgments pages 657 & 658)[4] *Vide also Aysa Umma v Sago Abdul Lebbe* [5]

The contention that the Vinaya have become and now have the force of customary law of the land and therefore enforceable in the Courts needs little consideration in this matter. Even if they form customary law the statements of the two Mahanayakes which is the only reliable evidence before us state that there is no such rule in the Vinaya. Again for a rule to have the force of law by custom there must be certainty and on this material before us such certainty is not shown. Moreover to say that the rules laid down by the Buddha for the discipline and personal conduct of his disciples is enforceable through civil courts by laymen as Customary Law, is abhorrent and should not rightly be entertained in any court.

The last argument put forward is based on section 6 of the Constitution of Sri Lanka which reads as follows : -

"BUDDHISM"

The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster Buddhism while assuring to all religions the rights granted by section 18(1)(d). How much protection is to be afforded is a matter of policy for the State acting through the National State Assembly. In what manner and when, are matters within the power of the State exercized through the enactment of legislation. The mechanics of this section have not been made known. We can neither lay down policy nor make laws. Our function is only to interpret and administer laws made by the legislature, not to make law.

Before I conclude I desire to state that we must in no way be understood to condone the proposed action of the applicant. The Civil Courts are concerned with matters mundane and the practice of the profession is in some respects a mercenary one – not one for him who has renounced the world and is seeking enlightenment. We in the Civil Courts are only concerned with civil rights and duties and I can see nothing in the civil law which disentitles the applicant to be admitted and enrolled as an Attorney of this Court and we are powerless to prevent it. For these reasons on the 21st of March, 1978 I joined with three of my brother Judges in overruling all objections. I should like to record my thanks to Counsel for their assistance, especially to Counsel for the Bar Association and the Attorney-General who appeared at my request.

SAMARAWICKREMA – *I agree*

WALPITA – *I agree*

GUNASEKARA – *I agree*

WANASUNDARA, J. (dissenting)

The applicant, an upasampada bhikku said to be a member of the Sri Kalyanawansa Maha Nikaya of the Amarapura Sect, has, in that capacity and under his monastic name of Nakulugamuwa Sumana, sought admission and enrolment as an attorney-at-law of this court.

The applicant has filed with his application the required documents for enrolment. They are the three certificates from the Law College showing that he has duly passed the Final Examination for the admission of attorneys, having been exempted from the two earlier examinations as he has graduated in law at the University. The certificates testifying to his good character are also annexed. There is also material indicating that he has served the prescribed period of apprenticeship and thereafter given public notice of his intention to apply for enrolment.

Consequent to this public notice, however, a number of institutions, organizations, and individuals have protested and objected to his proposed enrolment. Three of the leading Buddhist lay institutions – the Young Men's Buddhist Association, the Colombo Buddhist Theosophical Society Limited, and the All Ceylon Buddhist Congress were represented before us, and counsel appearing for them made submissions in support of these objections.

The matter before us is both *res integra* and the subject of a great deal of public interest, concern, and discussion in this country. It is due to this importance that the Chief Justice has thought it necessary to constitute this divisional bench of five judges, presided over by him, to decide whether or not a Buddhist monk could be enrolled as an attorney-at-law.

The Bar Association was represented before us by Mr. Jayewardena, and the Association indicated that it saw no objection to the enrolment of the applicant. We are also thankful to the learned Attorney-General, who appeared as *amicus*, for expressing his views in regard to some of the matters we are called upon to decide.

The application is supported by two important affidavits one from the Chief High Priest or Maha Nayaka of the sect to which the applicant belongs, and the other from the Maha Nayaka and President of the conglomerated group of the Sri Lanka Amarapura Maha Nikaya. This Nikaya does not claim to represent all the Buddhist monks in this country, but is only one of the three Nikayas that exist here. These two affidavits are to the effect that the admission of this monk as an attorney would not be in conflict with the Dhamma and Vinaya, and that by such admission a monk would neither commit a transgression of the monastic rules nor come under any disability as a monk. There are also other affidavits and material to the same effect from the Buddha Sravaka Dharma Bhikku University, Anuradhapura, from the Sri Lanka Bauddha Maha Sammelanaya, from the Loka Sama Maha Sangha Sammelanaya, and from two well-known scholars of Buddhism, namely, Rev. Walpola Rahula and Dr. W.S.Karunaratne.

The legal provision relating to enrolment is section 33 of the Administration of Justice Law, and Mr. Jayawardena first argued that in the exercise of the powers under section 33 this court has not been vested with a discretion in the matter. It was his submission that if the requirements mentioned in the section are satisfied, we have no option but to allow the enrolment of the applicant. He alleged that the documents submitted by the applicant, prima facie, satisfied the requirements of the section. The learned Attorney-General, however, was inclined to the view that the section should not be interpreted as being mandatory but only directory, and it left us with a discretion. This point is of some importance and I find that it is necessary to deal with it first, before coming to the other matters raised before us.

An attorney-at-law in Ceylon can be said to occupy a position practically the same as that of a Barrister in England- per Jayewardena, J., in *Perera Vs Moonesinghe* at[6] 79. We have generally looked to England for the principles and rules that should regulate the legal profession in this country. In cases of disciplinary proceedings, our courts have been guided by the decisions given in the United Kingdom on such matters. In the course of the argument, Mr. Amerasinghe, Mr. Jayewardena, and the Attorney-General freely referred to material from the United Kingdom and relied on the respective citations in support of their arguments on this point.

The position in England, as far as I can gather, seems to be as follows: Originally, the King himself was concerned in the training of advocates in disputes, but later this power was given to the judges. Thereafter, a part of the power came into the hands of the Inns of Court. A passage in Dugdale's Origines Juridiciales, 2nd Edn. 1671, quoted in *Inre S.* [7] traces the origin of these institutions;

"Chapter 55 of Dugoale's Origines Juridiciales, 2nd ed. (1671), is headed 'Settled places for students of the law, called Inns of Court and Chancery' and records that King Edward I in 1292, ' did especially appoint .....the Lord Chief Justices of the Court of Common Pleas and then rest of his fellow justices.....that they, according to their discretions, should provide

and ordain, from every country, certain attorneys and lawyers, of the best and most apt for their learning and skill, who might do service to his court and people; and that those so chosen only and no other, should fellow his court and transact the affairs therein; the said King and his council then deeming the number of seven score to be sufficient for that employment; but it was left to the discretion of the said justices, to add to that number or diminish as they should see fit.' Certainly from that time onwards for many years not all those who had been called to the bar of their Inns were allowed to practice in the courts at Westminster. From time to time regulations were made by the judges prescribing the period of time which must elapse after call to the bar of an Inn before the right to audience in the courts was exercised."

Another useful statement of the development of these institutions is contained in the judgment in *A.-G. of Gambia V. N'Jie.*[8] This statement is cited by Halsbury, Vol.III (4th Edn.) p.589, note 6:

" By the common law of England, the judges have the right to determine who shall be admitted to practice as barristers and solicitors, and, as incidental thereto, the judges have the right to suspend or prohibit from practice. In England, this power has for a very long time been delegated, so far as barristers are concerned, to the Inns of Court; and, for a much shorter time, so far as solicitors are concerned, to the law society. In the colonies, the judges have retained the power in their own hands, at any rate, in those colonies where the profession is "fused."

That this power is of a discretionary nature, is further borne out by a statement in Halsbury, that the courts have refused to grant mandamus to the benchers to admit a person as a student, or to call a student to the bar, and that they will not also determine questions of title to Chambers which belong to any of the Inns of Court. Halsbury (ibid) 591. More than one case is cited in support of the above statement.

The practice that prevailed in the colonies can be seen from the judgment of the Privy Council in *By Petition from Antigua* [9]

" In England the Courts of Justices are relieved from the unpleasant duty of dis-barring advocates in consequence of the power of calling to the Bar and dis-barring having been in very remote times delegated to the Inns of Court. In the colonies there are no Inns of Court, but it is essential for the due administration of justices that some persons should have authority to determine, who are fit persons to practice as advocates and attornies there. Now advocates and attornies have always been admitted in the Colonial Courts by the Judges, and the Judges only. The power of suspending from practice must, we think, be incidental to that of admitting to practice, as in the case in England with regard to attorneys . In Antigua the characters of Advocates and Attorneys are given to one person ; the Court therefore that confers both characters may for just cause take both away. Although indeed our own Courts do not dis-bar for the reason I have mentioned, I have no doubt they might prevent a barrister, who had acted dishonestly from practicing before them. In (269) a case (in that case the Recorder's court had suspended the whole bar for six months from practice. (in the hearing, the Privy Council deferred its determination until further evidence should have been brought from Bombay, but the case has never been brought forward again), which came before us a short time ago from Bombay none of the members of this Board doubted that the Recorder's Court there had authority to prevent English barristers to practice before them. The question was whether their authority had been properly exercised."

Mr. Amerasinghe drew our attention, particularly, to a statement contained in Halsbury, Vol. II (2nd Edn.) at page 365, section 611, and to a reference in the English and Empire Digest, Vol. III, P.316. According to this, persons in holy orders or those intending to be clergymen were debarred in England from being called to the bar. This rule appears to have undergone some modification very recently and, as the learned Attorney-General submitted, it now seems to be included in a much broader regulation enacted, with a similar object in mind. At the present day, a student, before he is called to the bar, is required to sign a prescribed "call declaration". This declaration states, *inter alia,* that "he will not

engage in any other occupation whatsoever which is incompatible with the practices at the bar." (Halsbury, Vol. III (4th Edn.)

In Sri Lanka, our courts have been empowered, since the time of the Charter of 1801, to admit lawyers to practice in the courts. In the Administration of Justice Law, sections 33 to 36 deal with the legal profession. The two sections that have a bearing here, are section 33 dealing with admission and section 35 dealing with suspension and removal. They are as follows:-

" 33. The Supreme Court may admit and enrol as attorneys-at-law persons of good repute and of competent knowledge and ability". "35. Every attorney-at-law who shall be guilty of any deceit, malpractice, offence or other conduct unworthy of an attorney-at-law may be suspended from practice or removed from office by any three judges of the Supreme Court sitting together.

It will be observed that the Legislature has used the word "may" in both these sections. The word "may" in its natural meaning is used as permissive or enabling. But the courts have sometimes interpreted "may" to mean "must" or "shall", where such a meaning is warranted by the context. Mr. Jayawardene has presented his argument on this basis. It would, of course, lie on those who contend for such an interpretation to adduce convincing reasons for doing so. Craies' Statute Law (7th Edn.) 284. The word "may" has been given mandatory effect where the power reposed is coupled with a duty. *Julius v, Bishop of Oxford.*[10]. The ambiguity in the use of "may" can, for example, be seen in two recent cases. In *Ex Parte Inahoro* [11] and In Re Shuters,[12] the word "may" occurring in two consecutive sections of the Fugitive Offenders Act, 1881, has been read in the two different ways, depending on the context.

On a close reading of section 35, it would be seen that it contains only three requirements – good repute and competent knowledge and ability. Mr. Prins Gunasekara drew our attention to the Sinhala version of the Administration of Justice Law and showed us that the word "ability" is

translated in the Sinhala as "dakshatawayak" and stated that this word carries the meaning, "competence or proficiency." If this is so- the Sinhala version being the authentic version – this section is circumscribed and narrowly drawn. There is nothing in it which contemplates any kind of physical disability, though it is possible to imagine some such instances when this court will be justified in refusing admission to a person physically incapacitated though otherwise qualified. There is every indication that our powers under section 35 in respect of admission are wider than stated by counsel. In this connection it is interesting to find that rule 4 of the Rules regulating the Admissions, Enrolment and Removal of Attorneys-at-Law- Gazette No.115/4 of 12th June 1974- states that on the receipt of an application for admission, the Supreme Court shall direct the Registrar "to inquire and report whether the applicant is of good repute and whether there exists any impediment or objection to his enrolment as an Attorney-at-Law." This is how the authorities concerned in this matter have understood it and it is indicative of a wider discretion being vested in this court.

The position under the Courts Ordinance was substantially the same as that now obtaining under the Administration of Justice Law, and it could be interesting to see how our courts had interpreted the corresponding provisions in the past. Let us first look at the cases dealing with re-enrolment. There is no special action dealing with re-enrolment in either law and applications for re-enrolment are in effect determined under the section dealing with admission. In dealing with such matters, our courts have always stressed the discretionary element vested in the court. Three distinguished judges of our court- Wood Renten C.J., Ennis J., and Sampayo J., *In re Moonesinghe* [13] said that' a court which has the right to remove the name of a solicitor from the Rolls had also an inherent discretionary power to re-admit him where he has subsequently expiated the offence of which he may have been guilty and redeemed his character.".

In another case of re-admission, *In the matter of Application of Seneviratne to be admitted an Advocate,*[14] Schneider, A.C.J., quoting from an Indian judgment , said;

" These cases amply establish the position that in so far as the English and American Courts are concerned though the name of a legal practitioner may have been removed from the Rolls by reason of professional misconduct or criminal conviction, the court may in its discretion readmit him, if satisfied that during the interval which has elapsed, since the order of removal was made, he has borne an unimpeachable character and may with propriety be allowed to return to the practice of an honourable profession."

An examination of the power of suspension and removal may also throw some light on the extent of our powers as regards section 33. There are numerous cases where our courts, acting under the corresponding provisions, have indicated that the power contained there is of a discretionary nature. For example, Howard C.J., *In in re Brito*[15] at 531, quoted with approval the following passage from the judgment of Esber.N.R. in *re Weare*[16]: " It was there contended that where a solicitor had been convicted of a crime it followed as a matter of course that he must be struck off, but Barron Bollock and Hanistry J. held that, although his being convicted of a crime *prima facie* made him liable to be struck off the roll, the Court had a discretion and must inquire into what kind of a crime it is of which he has been convicted, and the court may punish him to a less extent than if he had not been punished in the criminal proceeding. As to striking off the roll, I have no doubt that the court might in some cases say, "under these circumstances we shall do no more than admonish him"; or the court might say, "we shall do no more than admonish him and make him pay the costs of the application" ; or the Court might suspend him, or the court might strike him off the roll. The discretion of the court in each particular case is absolute. I think the law as to the power of the Court is quite clear".

Coming back to section 33, a close analysis of it shows that the conditions set out in section 33 are of a limited nature. In effect it comes down to just one requirement, i.e. of good repute, because the other two requirements- knowledge and ability- will be presumed once a person

has successfully qualified in the law examinations. Having regard to the background to these provisions referred to by me, I find it difficult to accept a limited view of these sections as advocated by Mr. Jayawardena. The language used and the context, the nature of the power, the persons in whom it is reposed, the manner in which it has been interpreted and exercised by the courts, and the limited nature of the requirement contained therein, all impel me to form a wider concept of our powers. I am therefore inclined to agree with the learned Attorney-General that these sections vest in us a discretion when we deal with such applications. It would now be legitimate for us, upon this conclusion, to proceed to the consideration of the various objections that have been taken to the applicant's admission and to find out whether they constitute a sufficient ground for refusing him admission to the bar.

Turning to the main case, I think it desirable for a proper appreciation of the issues before us that some reference be made to the matters set out in the affidavits, namely, the sangha the monastic rules, and their place in society. For this purpose I propose taking the liberty of referring to matters of common knowledge, to the texts and authorities brought to our notice at the hearing by counsel on both sides and to certain matters of public history of which this court can legitimately take judicial notice. It may be specifically mentioned that the Vinaya and the Sutras were freely referred to by counsel at the hearing, and we were informed that the Pali texts constituting these pitakas along with their Sinhala translations, prepared under the auspices of the Government and published by the Government are publicly available. These texts have also been translated and are available in English.

There is the further fact that the Constitution enjoins the State to protect and foster Buddhism. The constitutional provisions contain a solemn assurance, worded in categorical terms, as follows : -

"The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster Buddhism while assuring to all religions the rights granted by section 18(1)(d)."

Since it binds the State, it must be taken cognizance of by all State functionaries, including Judges, as I shall show later in the course of this judgment.

Anyway, a majority of the persons in this country are Buddhists by religion. This is, I believe, reflected also in the composition of the State Services. The main principles and tenets of the Teaching are well known to practically all practicing Buddhists, and there are many such persons in this country occupying places both high and low in all walks of life. They, of course, cannot disown that knowledge whatever the circumstances may be. I am sure that it would be a matter of surprise and perplexity to most of these Buddhists, if they are told that there is nothing in the Teaching that would make it objectionable for a Buddhist monk to don court attire and begin practicing in the Courts while still remaining a monk. This would undoubtedly appear to them as a novel and startling interpretation of the Buddha's Teaching. Though this may be the immediate and instinctive reaction, yet those of them who are fortunate to be acquainted even cursorily with the Suttas would have the satisfaction of knowing that there is ample reasons for their disagreement. And yet, we have the spectacle of persons who profess a knowledge of the Dhamma speaking in a different voice. I have in mind the affidavits filed before us by the applicant. But that material is unconvincing and even contradictory. To give one example, the applicant relies on a statement of Dr. Walpola Rahula, which includes the following passage :-

"Professions such as practicing medicine, chanting and the preparation of talismans were against both the dhamma and vinaya. Monks who had taken up these professions had acquired a place in present day society in spite of the fact that these types of professions were not in keeping with the disciplinary code for monks."

Would it be unreasonable to say that what has been said of medicine would apply with greater force in the case of the practice of the law?

But, yet counsel who supported this application attempted to show that there was nothing in the Buddha's teaching which prohibited a monk from practicing as an attorney-at-law. It was suggested that this kind of pre-occupation could be regarded as a sort of public service to the community which, he said, the Buddha had actually enjoined on the monks. This view is unfortunately shared by many, especially by some well-meaning persons who give undue emphasis to "social service". Undoubtedly there is an aspect of Buddhism which shows a concern for the material well being of man, since the Dhamma was preached for layman too and not solely for monks. But Buddhism so far as a Bhikku is concerned is essentially a path of individual self development, entailing the regulation of mundane matters and the leading of a life of purity. Mr. Prins Gunasekera relied on the well known exhortation by the Buddha to his first sixty disciples to wander forth among the people and preach the Dhamma, out of compassion for them. Let it be noted that the exhortation was to proclaim the Dhamma and the brahma chariya – the holy life, and not anything else. What we are now dealing with here is a case of a very worldly profession and even Rev. Walpola Rahula seems to suggest that this vocation would be contrary to the Vinaya. The exhortation was also addressed to (arahats) persons who had reached the pinnacle of holiness – "They had done what had to be done and brought to an end the Brahma faring – the holy life". It is only they who could grasp the Teaching in its fullness. I think, it could be truly said that unless a person has gained what is called "right view" (samma ditti), he cannot be said to be in a position to rightly understand this profound Teaching. It is undoubtedly a noble service for anyone to preach the Dhamma, which he can do only to the extent of his knowledge and capacity, but even so, one should not neglect one's own progress in the Teaching. The effort to obtain competence and mastering in the chosen field must take priority over public service. When the Teaching is so deep and profound, requiring sustained exertion of almost a superhuman level, one may well ask, where could a monk find the spare time and energy to lavish on a very exacting vocation like the law ?

Since the material filed by the applicant is contradictory and somewhat confusing in many respects, it would be necessary for us to ascertain the

correct position in regard to them. For this purpose it would be best to follow the salutary rule – so often mentioned by the courts – that is, to go to the original source and try to ascertain what the Buddha has actually said on these topics. Chief Justice Anton Bertram had, on a number of occasions, delved exhaustively into the original Vinaya texts. Chief Justice Basnayake himself advocated a return to the fundamental principles of those texts. He said in *Dhammavisudithi Thero V. Dhammadassi Thero*[17] (at 480).

"But when we are dealing with ecclesiastical property, a region in which we are enforcing simply the ecclesiastical law based upon the original authoritative texts developed by religious customs, we ought not to recognize claims and transactions which are in their terms or in their nature inconsistent with the fundamental principles of those texts and those customs".

Although a little search in the Suttanta will show any number of passages indicating that it is no part of the training for a monk to occupy himself in worldly matters once he has renounced the world I shall select a few of those passages which come immediately to the mind of any Buddhist for this purpose. In the Sanyutta Nikaya the Buddha declared –

"Formerly and now also Anuruddha, it is just suffering (dukka) and the cessation of suffering that I proclaim". .Aryaketha Samyutta Sutta No. 02, Sayuttta IV)

Again,

Just as Paharada, the great ocean, Paharada has but one taste, the taste of salt, even so Paharada this Dhamma and Discipline has but one taste, the taste of Deliverance." (Attaka Nipata Maha Wagga Sutta No. 09, Anguttara iv)

The Buddhist concept of suffering dukka goes to the very roots of existence,. in fact it touches existence itself – the existential being.

Even in the first sermon the Buddha summed up the Noble Truth of suffering (dukkha) in the following words: "In short, the Five Grasping Groups (pansa upadana skanda) are suffering."

In Buddhism, these Five Grasping Groups constitute the self or being. The way of the world and all wordly affairs are based on this foundation of the self, but the Buddha's Teaching is a way leading to the destructions of the self which is founded on ignorance (avijja) and desire (thanna). The graduated scheme of training consisting the Teaching has been devised for this purpose and anyone who takes to the doctrine with any seriousness must progressively give up worldly affairs and pursue a life of renunciation This is precisely the effect of the monastic rules of training and for a monk there could be no compromise. In the case of the layman, it is a different matter. He must necessarily follow the Teaching within the contents of his day life.

Accordingly, a bhikku or monk is one who has voluntarily chosen to renounce the pleasures and unhappiness of the world in the active search of a higher ideal. He has sought refuge in the Sangha. Today, ordination is given by the Sangha. Upasampada is never forced on an unwilling person. It is the tradition that the aspirant must utter words requesting the going forth (pahajja) indicating that he renounces the lay life and enters the order to seek an escape from suffering. A Bhikku is however at liberty at any time to leave the Sangha and revert to lay life. It is the duty of a monk to strive earnestly and by learning, practice, and meditation, develop those virtues, qualities, and attainments that bring about a true understanding of the Dhamma. The greatest effort is called for to realize the Deliverance spoken of by the Buddha. It is needless to state that such a life of exertion would be a full time occupation, leaving no time for any other activity. In fact, any worldly activity would, by it's very nature, be inimical and an obstacle to one who wishes to follow in the footsteps of the Buddha.

That a monk's life, as ordained by the Buddha, in its pure form, is incompatible with lay life would be apparent to anyone even having a little

acquaintance with the Dhamma. The institution of the Sangha was established by the Buddha as a haven for those who wish to get away from lay life and who need the optimum conditions for pursuing the arduous life of virtue, meditation and wisdom demanded by the Teaching. A person who enters the Order should be mindful of this change of status and recall this difference as often as possible. In the Anguttara v page 87, the Buddha refers to ten Dhamma which a bhikku should often contemplate. They are :

(i) A bhikku should often reflect that: How my status is different from that of a lay person and my actions and behaviour must accord with those of a samana

(ii) A bhikku should often reflect that : "My necessities of life depend upon others and I should act in such a way as to be one who is easy to supply with these necessities.

(iii) A bhikku should often reflect that : "There are other kinds of bodily action and speech which I shall have to do that are better than these (which I do at present). There is still more to do and what I have done is not yet enough.

(iv) A bhikku should often reflect whether, as far as sila is concerned he can criticize himself or not.

(v) A bhikku should often reflect whether, as far as sila is concerned, sameera who is in a position to know could, after due consideration, criticize him or not.

(vi) A bhikku should often reflect that: "We are bound to become separated from all things that we love and that give us pleasure

(vii) A bhikku should often reflect that: 'One's kamma is one's own. If one does good one receives good, if one does evil one receives evil.'

(viii) A bhikku should often reflect that: 'Right now time is passing by and what am I doing ?'

(ix) A bhikku should often reflect upon whether he is glad to live in solitary places or not

(x) A bhikku should often reflect that: 'Have I or have I not developed any extraordinary qualities so that I shall not became embarrassed when questioned by my fellow bhikkus in the future time.'

This theme of exertion and renunciation runs through all the Suttas. The Dhamma Dayada Sutta in Hajjihima NIkaya I Sutta No. 3 gives one instance of the extreme nature of this demand. Here the Buddha enjoins the monks to be heirs of His Dhamma and not heirs of material things. He himself illustrates this by giving the example of two monks who come to him worn out with exhaustion and hunger just after the Buddha has finished his meal and some alms food is remaining in the bowl to be thrown away. The Buddha tells them to eat it if they so desire. But one monk mindful of the Buddha's teaching not to hanker after material things, forgoes it, while the other seeing no harm in eating eats it. The second monk did what everyone, by worldly standards, might do. The Buddha himself does not blame him, but he said that the first monk is for Him the more to be honoured and praised. What is the reason for it ? He said that it will conduce for a long time to that monk's desirelessness to his contentment, the expunging of evil, to his being easily supported, and to his putting forth energy. Therefore, He exhorted His monks, to be His heirs of Dhamma and not heirs of material things.

The life of a monk, as laid down by the Buddha, is thus at complete variance with that of lay life. The spirit and flavour of the Dhamma is one of renunciation of giving up worldly affairs, and strenuous exertion for the development of virtue and mental development. And it is in the secluded and monastic life as a monk that the Dhamma can be practised to the full. The Vinaya reflects the Dhamma and in order of sequence it takes its place after the Dhamma. The Patimokkha Vinaya actually came into

being about 20 years after the Sasana was established. During the long period before the Vinaya came to be laid down, there was no lack of arahats even though there was no Vinaya Patinakkha In fact it is said that during this period the sangha existed in complete purity and every monk was an arahat or well on the way to becoming one. The Vinaya rules came to be laid down by the Budda with the beginings of a corruption in the Sangha. The rules were formulated for specific transgressions and were laid down as and when the occasion arose. For example the first parajika rule was laid down when Rev. Saddinna referred to by Mr. Prins Gunasekara at the hearing, trangressed the practice of celibacy. The Buddha rebuked him in these words which if one examines them carefully seem to embody the essence of the Teaching :

"How can you foolish man, while Dhamma is taught by me in various ways, for the sake of passionlessness, strive after passion how can you while Dhamma is taught by me for being without fetters, strive after being bound; how can you, while the Dhamma is being taught by me for the sake of non-grasping, strive after grasping? Foolish man, is not Dhamma taught by me for the subduing of conceit, for the restraint of desire, for the abolition of clinging, for the annihilation of the round of becoming, for the destruction of craving, for passionlessness?..... foolish man, you are the first doer of many wrongful things.....

The Vinaya rules themselves are most exhaustive in nature and contain the training rules, prohibitions, allowances, and regulations, governing the life of a bhikku. They do not constitute penances or mortification, but are intended to hedge in a monk to a life of seclusion and purity which will facilitate his mental development. They deal inter alia, with such minute matters as of dress deportment and propriety of conduct of eating, wearing the robe and even aganst causing harm to seeds and plants. It is not necessary here to refer to them in any detail as even a cursory perusal of the 227 rules will reveal this. These rules will give a fair idea of the great degree of restraint and control over the faculties demanded from a monk and how incompatible such conduct is with the life of a layman By no stretch of imagination could it be said that the

profession of the law with this pre occupation with criminal and civil matters and its atmosphere of debate and contention heat and tension can be reconciled with the calm and detached life expected of a monk as indicated by the Vinaya.

To the average Buddhist of this country, it may thus appear that there is sufficient material in the suttanka and these Buddhist texts were relied on by counsel - to justify the putting forward of a view counter to that contained in the affidavits. I do not say that this court should import its own knowledge on such matters into the record of the case, but there are ample procedures is our law where expert opinion can be obtained when a court likes to be informed on some complex or unfamiliar subject, Since the material placed before court was as stated earlier, both contradictory and confusing this undoubtedly was the procedure the court should have adopted in this matter. In fact that practice has been followed by this court on several occasions, especially when difficult questions relating to the Vinaya itself, as in this case arose for consideration vide *Dhammaratana Unnase V Sumangala Unnanse* and the Appendix in. This was the least the Court could have done in this case but unfortunately my brothers did not choose to adopt this procedure.

Such a course was obviously indicated having regard also to the references in the affidavits to the practice called granthadura which clearly needed some clarification. It is a historical fact that, in the course of the many centuries since the passing away of the Buddha, the Sangha has fallen into decline. One of the most important factors that brought about this deterioration was the evaluation of the two vocations named granthadura (vocation of books i.e. scholarship) and vipassana dura (vocation of meditation and insight). This arose at a certain point in our history when monks decided to give precedence to scholarship as against the earnest practice of the Dhamma, with a view to realizing here andnow the states of holiness. Rev. Walpola Rahula a scholar on whom the applicant relies, in his book, "The History of Buddhism in Ceylon" states that we all know that according to the original teaching of the Buddha the practice of Dhamma (Pattipatti) is of greater importance than mere learning (pariyatti)" (page 158), and he continues (page 161) -

" ..... originally grantha dura meant only the learning and teaching of the Tripitaka. But as time went on the term was widened and it began to embrace languages, grammar, history, logic, medicine, and other fields of study as well. This trend on occasions took the monks not only beyond the confines of the Vinaya but also the criminal law of the land" (vide p. 86).

It is in this context that Rev. Rahula makes a reference to a Thera, named Abhidammika Godatta, an erudite monk learned in both Vinaya and Abidhamma. Although the applicant relies on a statement that Rev. Godatta had been appointed the Chief Justice of the country, that statement is not actually borne out by the citation. Rev. Godatta, according to Rev. Rahula "was raised to a position virtually equal to the office of the Chief Justice of Ceylon."

Even this opinion seems unwarranted because as Mr. Jayawardnea pointed out the legal profession and the courts as known today were unknown at that time. The proclamation of the King as regards Rev. Godatta was merely to the effect. "As long as I live, judgments given by Godatta Thera in cases either of the monks, nuns or layman are Abhidammika final .

I will punish them who does not abide by his judgment". This appears to mean nothing more than that his decisions had the approval of the king. Even lay people seem to have gone to Godatta Thera with their problems but there is nothing to indicate that he was the holder of an office that carried with it remuneration. In any event Rev. Godatta's case is one where a monk enjoyed royal favours and got mixed up in lay matters to an extreme degree. It shows to what extent monks at that historical period had departed from the original tradition.

Rev. Walpola Rahula then, tracing the history of the Sangha states that soon some monks got interested in other lay activities such as literature and the fine arts. With the inevitable acquisition of property and

temporalities within this way of life, further changes were wrought in the life of the Sangha. He goes onto say at page 166 :

" A large number of practices that the new situation demanded were against the original Vinaya. Monks had not the authority and the courage to change the Vinaya rules against the decision of the Rajagaha Council. Nor were they able to ignore the new situation. They were placed on the horns of a dilemma. Some of the examples given below will show how ingeniously they got over the difficulty without going against the letter of the law though in fact their solutions were quite contrary to the spirit of the teaching.

Fortunately, a survey of the history of the Sangha in Ceylon does not show (except with one or two rare exceptions) either a continuous decline of the Sangha or a degeneration that embraced the whole of it. Only on a very few occasions was the Dhamma threatened with destruction and on these occasions remedial action was taken successfully to preserve the Dhamma and the Sangha. Time and again, pious and able rulers and monks with faith and vision stepped into stop the decadence and purify the Sasana. Some of the great names in our history and the numerous kathika vathas bear testimony to this fact.

The latest was the Kathikavatha of Sri Rajadhi Rajasinghe which is reproduced in the Report of the Commission on the Administration of Buddhist Temporalities. In this view of the matter, harking back to an ancient period of decadence would give no indication of the state of the religion today or of any other period.

Looking at it in its historical perspective, our present constitutional provision giving protection to Buddhism could be regarded in many ways as being akin to such remedial action and as a measure thought out and designed to preserve Theravada Buddhism in this country. One may

well ask the question as to what is the real state of Sasana today when we see monks beginning once again to participate in secular activities. It is, however, common knowledge that the great majority of the monks in this country, particularly the elder monks, though following the *grantha dura*, still believe that the nobler ideal is a life of seclusion with their full time being devoted to the practice of virtue, meditation and wisdom. But, though their spirit may be willing, they do not choose to exert themselves to achieve that progress. They have been content to remain mere scholars and guardians of the books, leading lives of indolence and ease. But, one has no reason to presume that by and large they do not adhere to the basic morality and discipline expected of them. It may well be that the sum total of their lives, as Rev. Rahula says, are limited " to the recitation of the Suttas (Pirit Chanting) , preaching a serman, attendance at funeral rites and alms giving in memory of the departed, and to an idle cloistered life in the temple". But, still a majority of monks in this country lead cloistered lives in temples and are content to lead even such scholarly and idle lives rather than betray the spirit of the Teaching by entering the public arena and taking an active part in worldly matters.

Side by side with this, the true and pristine monastic tradition, as outlined in the Pitakas, has survived in this country. There are still monks in this country who are scrupulous in the adherence to the Dhamma Vinaya and are faithfully following in the footsteps of the Master. That tradition has survived in this country virtually unbroken, and in recent times there has been an upsurge and revival of the practice of monks taking to a life of seclusion and meditation in remote and lonely places. Without fear or contradiction, one could say that there are probably more such monks today than at any time within the last 500 years. This tradition, constituting the practice and understanding of the Dhamma Vinaya, and not mere scolasticism , is, in my view, the true heritage of the Sangha.

I now come directly to the objection based on the constitutional provisions, namely, section 6 of the Constitution. This objection has

been taken in the papers filed by the Y.M.B.A. and it was also formally taken up before us by Mr. Amerasinghe. Mr. Jayawardena referred to it in passing and it is unfortunate that this question was not given its due importance, because the majority were not receptive to the argument arising from it. Needless to say there was more to this problem than outlined in the submissions. In my view it is this matter which has the greatest bearing on the issues before us and on which the decision in this case must turn.

Section 6 of the Constitution has been reproduced earlier in this judgment and I have referred to the important position it holds in our Constitution. This provision has had a noble and ancient ancestry. For over two thousand years the State in this country had undertaken the protection of Buddhism, which was at that time the State religion. It was so even in times of foreign domination and when alien rulers occupied the throne. At the time the Kandyan Kingdom was ceded to the British, the Chiefs and the High Priest insisted that a clause guaranteeing protection of the religion of the Buddha be embodied in it. But a foreign Government, with an established Church and Missionary activities found its Treaty Commitments in conflict with its colonial policy and Christian ideals. Thus, this clause in the Convention was quietly ignored during this period, though it remained on our statutes book, virtually a dead letter, till the present provision superceded it in 1972. The protection of Buddhism, whether by the courts or other instrumentalities of the Government, during that period was minimal and therefore those who point to the absence of any cases or precedent on this matter have merely searched for something which was not there to be found. This present provision in our Constitution may well be said to embody the aspirations of the great buddhist majority of this country, who, after we regained independence, once again wanted this guarantee written into the Constitution so that the state and the people could re-dedicate themselves to it.

Section 6 declares that the Republic of Sri Lanka shall give to Buddhism the foremost place and in the second part of the section enjoins the State in these words ;

"..... it shall be the duty of the State to protect and foster Buddhism while assuring to all religions the rights granted by section 18(1)(d)."

I do not think my bothers will disagree if I say that there is a clear duty cast on the State to protect and foster buddhism. The aspiration of our people are not embalmed in this section : neither was this section put in to deceive the people, nor is it a mere ornament to be admired from a distance. The section is very much alive and carries with it a force for the good to be availed of , so that our society will continue to be firmly anchored to the highest values of religion and morality.

These provisions create legal rights and obligations and have the force of law and are enforceable in the courts of this country. Further, any law, act or transaction inconsistent with these provisions can be brought up for legal determination before the appropriate forum. This legal position becomes apparent when we contrast this section with section 16 of the Constitution which sets out the principles of State policy. Section 17 expressly states that "the provisions of section 16 do not confer legal rights and are not enforceable in any court: Nor may any question of inconsistency with such provisions be raised in the Constitutional Court or any other court." There is no such indication in respect of section 6.

That section 6 creates obligations of a strictly legal nature binding on the State is manifest. Mr. Jayewardena submitted that whatever action that is called for in this matter should be left to the Legislature and Executive. My brothers appeared to acquiese in that view. If it is a question of power, both the Legislature and Executive undoubtedly have powers to intervene in the present situation in their own way. But I do not think that we need instruct them as to what they ought to do. On the

other hand, if these provisions cast a duty on us, could we remain indifferent or inactive in respect of our obligations?

Let us next find out what is meant by the " State" and more specifically whether the judicial department of government could be said to be included in the term "State".

An analysis of Chapter 1 of the Constitution shows that the people in whom the sovereignty of this country was vested established a sovereign State named the Republic of Sri Lanka. The manner in which the power of the State is to be exercised is set out in section 5, as modified by the Second Amendment. That is to say, there are now two supreme instruments of State power – the National State Assembly and the President. The judicial power is exercised by the National State Assembly through courts and other institutions created by law. These are the main instrumentalities of the State and there is reposed in them those important functions without which a State cannot exist. Even the ordinary meaning of "State" contemplates the Legislature, judiciary and executive – the three great departments of State. One distinction usually drawn between the judiciary and the other departments of State is that Judges do not govern." By this it is meant that the judicial department cannot initiate or promote action. It can act only when its jurisdiction is invoked in a case or controversy by parties. This distinction may be valid for certain purposes, but has no relevance in the present context. I do not think it can be seriously argued that the judiciary, which is such an important component of the Government, does not come within the ambit of the term "State."

To take an example, if the fundamental right of the freedom of worship enshrined in section 18(1)(d) is violated by executive action in a matter coming before Court, the court must, by the very nature of its functions, give effect to the superior provisions of the Constitution. In the present case the fundamental right of religion, so far as Buddhists are concerned, is contained not only in section 18(1)(d), but also in section 6. This section gives to Buddhism- the religion of the majority - a precedence

and greater emphasis, while assuring to all religions the freedom of worship contained in section 18(1)(d).

The application of section 6 to the matter before us arises in this way. The State is enjoined to protect and foster Buddhism. When a monk is enrolled by us as an attorney, this determination by us as Judges places a seal of approval on an act which is said to be violative of the Dhamma Vinaya. For this purpose it is not necessary that some specific tenet of the Vinaya should be transgressed even a significant division from the spirit of the religion, I think, may suffice if it could be said to endanger the Teaching.

Questions similar to this have arisen in other jurisdictions and those decisions, I find, are of great help in interpreting our law. In America, prior to 1948, there was a practice among the whites of having racial restrictive covenants which prohibited the sale or lease of land and other property to Negroes.. Those were purely private agreements. Where such conditions had been imposed by the government or municipal authorities, the Supreme Court had earlier ruled that they violated the equality clause of the Fourteenth Amendment. The Supreme Court in *Shelley v. Kramer*, [19] was confronted with a racial restrictive clause between private parties. But in this case judicial recognition by the local State Court had been given in enforcement proceedings. The question was whether the judicial intervention in the proceedings made it State action so as to constitute a violation of the fundamental rights guaranteed by the Constitution.

Justice Vinson, delivering the opinion of the Court, said,

"But the present cases, unlike those just discussed, do not involve action by state legislature or city councils. Here the particular patterns of discrimination and the areas in which the restrictions are to operate, are determined, in the first instance, by the terms of agreements among private individuals. Participation of the State consists in the enforcement of the restrictions so defined. The crucial issue with which we are here

confronted is whether this distinction removes those cases from the operation of the prohibitory provisions of the Fourteenth Amendment.

Since the decision of this court in the *Civil Rights Cases*, 109 U.S. 3, the principle has become firmly imbedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the State. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.

We conclude, therefore, that the restrictive agreements standing alone cannot be regarded as violative of any rights guaranteed to petitioners by the Fourteenth Amendment. So long as the purposes of these agreements are effectuated by voluntary adherence to their terms, it would appear clear that there has been no action by the State and the provisions of the Amendment have not been violated.....

But here there was more. These are cases in which the purposes of the agreements was secured only by judicial enforcement by state courts of the restrictive terms of the agreements. The respondents urge that judicial enforcement of private agreement does not amount to state action; or, in any event, the participation of the States is so attenuated in character as not to amount to state action within the meaning of the Fourteenth Amendment.....

That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the state within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court .....

Against this back ground of judicial construction, extending over a period of some three-quarters of a century, we are called upon to consider whether enforcement by state courts of the restrictive agreements in these cases may be deemed to be the acts of these States and, if so,

whether that action has denied these petitioners the equal protection of the laws which the amendment was intended to insure.

We have no doubt that there has been state action in these cases in the full and complete sense of the phrase. The undisputed facts disclose that petitioners were willing purchasers of properties upon which they desired to establish homes. The owners of the properties were willing sellers, and contracts of sale were accordingly consumated. It is clear that but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint.

These are not cases, as has been suggested, in which the States have merely abstained from action, leaving private individuals free to impose such discriminations as they see fit. Rather these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, on the ground of race or colour, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell. The difference between judicial enforcement and non-enforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on as equal footing

.....

We hold that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand....."

In a later case , *Barrows v. Jackson*, [20] this principle was extended where one of the parties to a racial restrictive covenant was sued by the other for damages, both being white, for selling the property to a Negro. The Supreme Court held that the defendant seller could defend the action

on the ground that the contract was discriminatory of Negroes and that a State Court judgment for damages would constitute state action violative of the Fourteenth Amendment in the same legal sense as an order by a court for specific enforcement of a restrictive covenant.

Seervai in his book "Constitutional Law of India (1968 Edn.)" after referring to *Shelley v. Kraemer (supra)* and dealing specially with the Equality Clause in the Indian Constitution, observed,

"Those judgments are direct authority for the proposition, that the prohibition of the Equality Clause is as binding on Judges as it is on the executive and the legislature, and having regard to the identical language employed in Article 14, it is submitted that the prohibition of Article 14 applies to the Judiciary".

On the basis of those principles and in the light of all relevant considerations, it is manifest that the provisions of section 6 of our Constitution are intended to govern even the acts of Judges and, therefore, the section will have a controlling effect in the resolution of the matter before us. I would, however, like to stress that this is more than a mere terminological decision. I feel that, in coming to this conclusion, I have been able to avoid programming a series of contradictions which may have had the effect of unsettling a result achieved by the Legislature and the People. In saying this, I like to add one word of explanation; lest, some people misconstrue the actual effect of my ruling. It should be remembered that we are dealing here with the case of a Buddhist monk still in yellow robes, where a section of Buddhists have taken exception to the course of action on which he has embarked. This matter in essence is a dispute among the Buddhists and concerning the Buddhists only. In the course of the hearing, it was brought to our notice that a priest of another religious order had already taken his oaths as an attorney-at-law; but it was agreed that that case had no bearing on the issues in this case. Thus, my ruling in the present case is not meant to have wider effect. It is unnecessary in the present context to rule on the extent or

range of this constitutional provision; but, in the event it comes up for decision in the future in a different context, I have no doubt that section 6 will be so interpreted as to further the legitimate rights of all persons living in this country who go to constitute the multi-religious and multi-racial society of ours.

The next matter that arises for consideration is the extent of the protection afforded by section 6. The operative words are "protect" and "foster". They are ordinary words understood by everybody. "Protect" means keep safe, defend, guard against damages or injury. "Foster" means promote growth or, encourage tend. For the purpose of interpreting the provisions of section 6, it would be sufficient if I were to regard the year 1972 as the material date this being the date of the introduction of that provision. When it is said that Buddhism should be protected, does this envisage a restoration of the religion to its original purity or merely its preservation from further degeneracy and depredation? The issue becomes further complicated by the fact that, as stated earlier, it is still possible to see in this country the Dhamma Vinaya in its pure form, not only preserved as theory or text but also in practice as living example. Side by side with this, we also see in certain quarters the spectacle of a departure from those high ideals where laxity and degeneracy prevail. Let me again, for the present purpose, take as it were the lowest common denominator, namely the present state of the religion and the general standards now prevailing among the majority of the Buddhists. I find that it is unnecessary to express a wider opinion, since this case can be resolved on that basis. There is another way of looking at the same matter. One may pose the question whether the provisions of section 6 should be regarded as a sword or as a shield. That is to say, should section 6 be applied in a positive sense so as to undo even earlier transgressions and transactions, or only negatively in a defensive way, to prevent and ward off threatened dangers. Following what I have said earlier, let me again assume that we are concerned with prospective transgressions and the duty of preventing them. Even transactions, if any, between 1972 and today are not before us for determination and in

any case if there had been any such transgression, they will have to be tested in the light of the over-riding provisions of section 6. They too have no bearing on this matter.

In this case the Court is faced with an altogether new situation. Here we find a Buddhist monk knocking at the doors of the legal profession for admission. Such a thing has never occurred in contemporary times, nor do I think it ever occurred before in the 2500 years of the history of the sasana notwithstanding Rev. Dodatta Thera. It is a melancholy fact that today we see monks in yellow robes engaged in diverse worldly occupations. There are monks who are astrologers, makers of talismans, charmers of magic spells, and ayurvedic physicians. I do not think we still have a monk who has passed out and is practicing what is called "Western Medicine". Compared to these vocations, the practice of the law is a new departure, a sort of quantum leap a striking out in a new direction that cannot but have a most unhealthy influence on the prevailing position. History reminds us that it is always by such little advances that a retrograde movement imperiling the Dhamma has been able to achieve such deep penetration.

The legal profession, which is an honourable one, has its due place in the fabric of society and it serves the community in its own way. But from the spiritual stand-point of the Dhamma,. the practice of the law is regarded as being more materialistic and more worldly than even teaching and the practice of medicine. It is also reckoned as being different from them in kind rather than in degree.

In so far as the legal position is concerned, it is my view that any deterioration or worsening of the prevailing state of affairs of any significance would attract the protective provisions of section 6 of the Constitution. No standard less exacting than this can properly be attributed on an interpretation of these provisions. It will be noted that the protection afforded by this provision is to a religion. The manner and extent in which certain acts will have an impact on a thing which is of the spirit and of an

unworldly nature cannot be weighed or measured with any degree of precision, or assessed by worldly standards. We are dealing with imponderables and the consequences of the present act cannot be for seen. It is certain the ruling of the majority will be sought to be used as a spring board for a wider incursion into lay life. I am also inclined to agree with Dr. Wickramasinghe that if an increasing number of monks were to take to these worldly occupations, the destruction of Buddism will be hastened. The conduct and behaviour of such monks, who will find it increasingly difficult to confirm to their monastic vows, would be a reflection on the entire *Sangha* and in consequence the *Sangha* would, before long, forfeit the great respect and support it has earned from its lay supporters. The lay buddhist is an essential component and the stay and support of the *Sasana* : and when he turns lukewarm to the religion, we can expect its destruction to be at hand.

I now come to a part of the case where the applicant has shown the greatest amount of misunderstanding and confusion. The affidavits from the Mahanayakas - two respected and well known monks - have apparently being filed on the basis of certain authorities of this court, but unfortunately those cases, if carefully examined do not bear out the position taken up by the applicant.

There are cases which state that our courts will generally give recognition to decisions of domestic tribunals, where such decisions concern matters of internal management and discipline. A court will not go behind such a decision unless that decision was made without authority, or when in arriving at the decision the tribunal had disregarded the principles of natural justice. This principle has been made use of in temple cases where the courts have given recognition to decisions of *Sangha Sabhas.* There are however, numerous instances where court has refused to accept the decision of a *Sangha Sabha.* In those cases, the court itself had to consider and make a decision on every aspect of the case including the matters alleged to have been dealt with by the *Sangha Sabha.* Such

decisions involved an examination of what may be termed " pure ecclesiastical matters."

This shows that, although our courts do not function as ecclesiastical courts, they have the necessary jurisdiction to deal with ecclesiastical matters in the course of proceedings which are before them. There is ample authority for the proposition that where the decision on a religious or ecclesiastical matter is a necessary incident to the decision of a civil right, it is well within the power of this court to deal with such religious or ecclesiastical matter. *Aysa Oemma v Sago Abdul Lebbe* [21], *Devarakkita v Dharmaratana* [22], *Neisammah v Sinnethamby* [23]. Vide also section 9, Indian Procedure Code. It is undoubtedly on this basis that our courts have concerned themselves with Buddhist Ecclesiastical law and built up a body of legal principles relating to Sangika property. Hayley – Laws and Customs of the Sinhalese , 563.

In this case we must not forget that the present application relates only to civil rights. The applicant is seeking enrolment as an attorney-at-law. The petition and other material he has filed show this; and if there were any doubt on the matter, there is the statement of his counsel that the applicant has come before us to claim his civic rights to which every citizen of this country is entitled. He specifically relied on the provisions guaranteeing fundamental rights in the Constitution. Thus the ecclesiastical issues that arises for consideration are only incidental to the main issue in this matter, which is a pure civil right. This was then, on authority, clearly a matter which fell within the jurisdiction of this court for adjudication. There is thus no warrant for this court to refuse to go into this aspect of the matter on a supposed lack of jurisdiction in the court.

Let me now make a critical comment on the cases relied on by the applicant. These cases related to decisions of a duly constituted Maha Sangha Sabha. There is, however, no indication in the affidavits before us to show that a Maha Sangha Sabha was duly constituted and there has been a decision of such a Maha Sangha Sabha in the present matter.

Such a decision has certainly not been produced before us. In lieu of it, we have these two affidavits where the decadents has sought to express their own personal views on a matter now before court. The mere recital in the Mahanayake's affidavit that he is the president or Chairman of the Amarapura Maha Sangha Sabha, - there is no information before us as to the nature of this institution - is insufficient for this purpose. The uncertainty in this matter was re-in forced by the statement made by Mr. Prince Gunasekera that the applicant was advised to adopt the precaution of filing an additional affidavit from the other Mahanayaka - his immediate superior - because there was some doubt about the authority of the Mahanayake of the Amarapura Nikaya over him or over the group to which he belongs.

Further, an examination of the reported cases relied on by the applicant shows that those were instances where a decision of a Maha Sangha Sabha was relied on in a dispute regarding an incumbency or property appertaining to a particular set. Those decisions had no wider impact than that. The matter before us hardly bears analogy to these cases. The present matter can, by no means, be regarded as one confined to one Sect but concerns all buddhists. The Mahanayaka's statement amounts to a public pronouncement on the Dhamma Vinaya of which he is not entitled to be the spokesman or the sole spokesman. This is a matter concerning and affecting all the three Nikayas existing in this country and is also of great moment to all buddhists in this country - both monk and layman. Accordingly, in the face of this decision and what transpired here, a Mahanayaka of any other Nikaya might find it difficult or unwilling to prevent a monk under him from taking advantage of our ruling however much he may disapprove of it. For, if this court sees nothing incompatible in a monk practicing as a lawyer, while remaining a monk could a Mahanayake be expected to take a monk to task for an act which has been endorsed and given effect to by the highest judiciary of the land.

There are other infirmities in these affidavits. A perusal of them shows that they are not confined to statements of fact as required by the law,

but they purport to express certain opinions on this most complex and controversial matter. My opinion gives some indication of the essentially legal nature of the issues before us and the problems that could arise in trying to solve them without reference to the laws and the Constitution, and without a consideration of the chequered history of the Sangha. The Maha Nayakas cannot claim that they are in a position to express an opinion on all these matters nor do I think that these matters fall properly within their duties or authority. It is moreover highly significant that the Maha Nayakas have relied on the *grantha dura* as a basis for their pronouncement. If so, the statements must necessarily be of a limited nature, as they stand on the somewhat lesser ideal of mere scholasticism as against the fullness of the Buddha's real Teaching. These affidavits are therefore practically valueless as legal evidence. I regret to say that they contain nothing but an eloquent articulation of the irrelevant and inadmissible, and it would have been best for everyone if they had not been forthcoming. Even if the affidavits were legally admissible for the purpose intended by the applicant, then I agree with the learned Attorney-General that they could not have been used by the Court without having given Mr. Amerasinghe an opportunity of filing counter material. In my view, the majority erred when it gave no ruling on Mr. Amerasinghe's application in regard to the filing of counter affidavits. There is thus no legally admissible material on which the court could have determined one of the main issues in this case, namely, whether the applicant's conduct is violative of the Dhamma Vinaya. The court of course, did not think it was necessary in this case to have expert evidence to elucidate these matters.

Having regard then to my analysis of the legal position on the basis of the authorities cited, I am of the view that this application must be refused on one or more or all of the following grounds:-

(1) As a matter of law, on the ground of incompatibility of the two vocations. I think, this court has the power to lay down such a principle and every reason for adopting it. The court is entitled to

do so in the exercise of the powers contained in section 33. The notion that a regulation is necessary for this purpose is entirely erroneous. In fact, the power to regulate, i.e. the power to make rules and regulations does not include a power to take away a right given by the principal Act. *Ceylon Workers' Congress v. Superintendent Beragala Estate* [24] in any event, since the court's powers are discretionary, the discretion ought not to be exercised in favour of the applicant on this ground alone.

(2) On the ground that what the monk is seeking to do is morally reprehensible. His action has disturbed the moral sense of a section of the public. Accordingly the Court should not lend its aid or support or approve the conduct of the applicant. It was Mr. Rajapakse's submission that this monk, while representing to the public on the one hand that he is a mendicant monk dependent on alms food supplied by the public intends on the other hand to pursue a worldly occupation which is inconsistent with what he stands for. This he said was tantamount to a false representation. If this is the situation, I certainly think that there is an element of bad faith in his conduct. Our courts do not overlook moral considerations especially when there is a discretion vested in the court. For example, on principle our courts do not enforce immoral contracts or those which are contrary to public policy. This therefore, is eminently a case when we should follow those principles.

(3) On the basis that there would be a violation of the Vinaya rules which the court must recognize and give effect to. The Vinaya rules have been referred to and acted on by the courts on numerous occasions. At the very least, they must be given effect as customary law or placed on the same footing as the rules of a recognized institution or association which the courts are not averse from recognizing. If there were a rule of the Bar Association in regard to admissions, I have no doubt that the court would

have examined and given effect to such a rule. Vide *Solicitor-General v. Jayawickrema*,[17] where the court looked at certain rules of the Bar Council which, at that time, was in the nature of a private association. It is interesting to find that in the present case the applicant represents two "Vocations" in his own person. Since it is in the capacity of a monk that he is seeking admission to the profession, the applicable rules, *qua* monk, must be given as much relevance as the Bar Association rules. I think, the learned Attorney-General agreed that these rules can be so recognized.

(4) On the ground that the applicant had failed or had not been able to discharge the burden lying on him in this matter. Having sought enrolment in his capacity as a monk and being governed by monastic rules and discipline, it was incumbent on him to satisfy the court that his continuing to lead the life of a monk would be no impediment to his practicing as a lawyer. He sought to establish this by the affidavits which stated that he would not be transgressing his monastic discipline by becoming a lawyer. As I have pointed out earlier, these affidavits were legally inadmissible for this purpose and should have been ruled out. If this had been done by the court, the application would have failed at that stage. In any event, if the necessity for gong into that aspect of the matter had arisen provided a *prima facie* case was first made out the proper procedure which should have been adopted by Court was to call expert opinion. This the majority failed to do and I cannot therefore see how the issue can be decided in the absence of the necessary material which should have been obtained by following the correct procedure. Even if the affidavit were considered to be admissible, they are again (for the reasons stated earlier in this judgment) insufficient and inadequate to discharge the onus that lay on the applicant. There is also the disconcerting fact that these affidavits had been filed without due notice and were sprung on the objectors without warning. When Mr. Amerasinghe indicated that he would like to file counter affidavits, the court deferred giving a ruling on his applications. At the least, it could be said that the matter is still at large and it was improper for the majority to have based their ruling on material which was adduced virtually *ex parte*.

(5) On the overriding ground of the application of section 6 of the Constitution to this matter. Its effect is manifold. First, as a matter of pure legal interpretation the superior provision of the Constitution must prevail over all ordinary laws that are repugnant to it. Section 6 of the Constitution has this overriding effect over section 33 of the Administration of Justice Law. Second, the constitutional provision must necessarily be considered as a relevant factor and given effect to whenever a discretionary power is vested in us as in this case. Third, its power, as directly imposing a duty on the Judiciary, must be recognized and given effect whenever the occasion arises for doing so. This would prohibit the court from giving judicial approval to any conduct that can be brought within the ambit of the Constitutional provisions.

For the above reasons I find myself unable to concur in the judgment of the majority of this court and I am of the view that the applicant was not entitled to enrolment as an attorney-at-law, and that his application should have been refused. It is a matter of regret that I have to disagree with my brothers who are at variance with me on a number of issues which, I think, can only be decided on the lines set out here. To reassure myself, I have gone over this opinion more than once and every time I did so I found myself adhering to what I have said here with increasing conviction.

I would therefore refuse this application.

Application refused.

By majority decision application to be admitted and enrolled as an Attorney-at-Law – allowed.

Editor's Note.- Applicant priest wrote to the Registrar of the Supreme Court requesting permission to take oaths in robe of a monk. This was conveyed to his lordship the Chief Justice who stated that the attire for an attorney-at-law is prescribed in the Supreme Court rules, and applicant must comply. The record does not indicate that he has taken oaths as an attorney-at-law.