

REALMS OF LAW: JUDICIAL PROCEDURES OF THE LOW COUNTRY SINHALESE DURING DUTCH RULE IN SRI LANKA¹.

D. A. KOTELAWELE

The introduction of an alien system of justice raises the problem of how indigenous peoples can be made to relate to a new judicial system. One way in which this could be facilitated would be to incorporate certain judicial procedures familiar to the indigenous people drawn from the earlier system into the new judicial structure. The essay is an attempt to illustrate one such attempt. The attached documents are also valuable in shedding some light on Sinhalese judicial procedure in pre-colonial times.

The swearing in of litigating parties at the Landraads² was found to be ineffective by Governor Van Gollennesse (1743-1751) because the litigants did not attach any sanctity to swearing in the Christian manner. This made the governor request the Sinhalese chiefs to provide him with reports on traditional practices of swearing in the Sinhalese areas ruled by the Dutch. On December 24th, 1744 three reports from Colombo, Galle and Matara were placed before the governor's council and it was decided there to seek the opinions of the Landraads of Colombo, Galle and Matara as to their efficacy in settling disputes among the Sinhalese. In the meantime, it was decided that litigants would swear upon the head of a near relative affirming to the truthfulness of their evidence³. In a related resolution, the governor's Council decided on the 11th of February 1745 that Landraads will decide on cases coming before them summarily without allowing parties to submit detailed pleas and counter pleas⁴. At the meeting of the governor's council held on 22nd March 1745 replies from the Landraads of Colombo, Galle and Matara regarding the questions posed by the council on 24th December 1744 were considered and it was found that all Landraads were in favour of adopting the methods of swearing detailed in the reports submitted to the council on 24th December 1744. Thus, the council decided to establish the procedures contained in the reports as a permanent order and statute so that the oaths contained in these could be followed "in word and deed"⁵. These form the translated extracts published here.

A word of explanation about the terminology used is required at this stage. What the governor meant by the swearing in of parties in the Christian manner in this context was merely the affirmation by litigants to be truthful. What, however, was produced by the Sinhalese headmen as the manner of taking oaths or swearing was a series of procedures for adjudicating disputes, even though the element of oath taking is present in the latter procedures too. Thus, one was merely a preliminary to a judicial procedure, while the other was the procedure itself. This is an apt illustration of what Bohannan called a "systematic misunderstanding"⁶ that comes into being in colonial situations where there are two legal cultures, one brought in by the ruling colonial power and the other, the local indigenous one.

In the reports on judicial procedures submitted by the Sinhalese chiefs it seems clear that it was mostly the local headmen who had supervised the proceedings. In this context, there was a related decision by Van Gollennesse that affirmed the judicial powers of the headmen of various ranks. This was the decision to reissue the placaat of 20th February 1706 as a new placaat requesting the inhabitants with complaints to resort to "Wanniars,

Modeliars, Korales, Aracchis, Naydes of respective village chiefs" depending on the circumstances, in the first instance. If these officials were unable to settle the dispute, complainants were then to seek remedies by appealing to the higher ranking officials such as commandeurs, dissawes and opperhoofden. In the case of the cinnamon peelers they were to go to the captain of the *mahabadde* or chief of the cinnamon department who was always a European ⁷. The instructions issued to the Landraads in 1789 (articles 1, 2, 3, and 5) confirms the minor judicial powers of these officials, Sinhalese and European. In these instructions the inhabitants are enjoined to seek remedies to their complaints from them in the first instance prior to coming before the Landraads ⁸.

Evidence on the malaise in the administration of justice by a European power in an Asian context was present from the early days of Dutch rule in Sri Lanka. There was endless renewal of old disputes and frequent recourse to adjudication. Commandeur Zwaardcroon of Jaffna writing in 1697 noted that cases dragged on from the days of the Portuguese, and the compendium placata issued in Jaffna in 1704 set a time limit for the revival of old cases. Malicious prosecution was another aspect of the problem. The preamble to the compendium of 1704 dwells at length on this, and one article there imposes heavy penalties against the same. Says Zwaardcroon: "The natives are also known to be very malicious and contentious among themselves, and do not hesitate to bring false charges against each other, sometimes for the sole purpose of being able to say that they gained a triumph over their opponents"⁹. Scant regard shown by inhabitants to oaths taken at tribunals was noted by Zwaardcroon when he said that they "think nothing of taking false oaths" and it seems that taking of oaths according to local custom was allowed in 1696 in Jaffna ¹⁰.

The situation in the Sinhalese areas was well summed up by an early British Chief Justice when he said, "The Sinhalese taken collectively as a nation, may justly be described as most litigious"¹¹. Van Gollenesse in deciding to enact local judicial procedures was only seeking a remedy to this kind of malaise in judicial administration.

Bernard Cohn discussing the introduction of innovations in the administration of justice in British India and its results makes the following comment:

It is my thesis that the present attitude of the Indian peasant was an inevitable consequence of the British decision to establish courts in India patterned on British procedural law. The way a people settles disputes is part of its social structure and value system. In attempting to introduce British procedural law into their Indian courts, the British confronted the Indian with a situation in which there was a direct clash of values of the two societies; and the Indian response thought only of manipulating the new situation and did not use the courts to settle disputes but only to further them ¹².

In the Dutch ruled Sri Lanka too, the existence of two realms of law led to the problems of administration of justice noted above and to which Van Gollenesse was seeking remedies by establishing local customary procedures as well as by restoring the judicial powers of headmen. At the apex of the system of adjudication were the Raad Van Justitie,

the *Civiele Raad* and the *Landraad*; then came the jurisdiction of European officers and the hierarchy of local headmen. And appeals from the lower tribunals were available to the higher courts. The higher courts in this system were, no doubt, inspired and guided by Dutch jurisprudence which had reached a level of evolution characterised by, to use the words of Weber, "systematic elaboration of law and professionalised administration of justice by persons who have received their legal training in learned and formally logical manner."¹³"

As for changes in procedural law that Cohn notes in the case of British India, there were parallels in Dutch Sri Lanka. The instructions to *Landraads* lays down procedures even though there was an attempt to reduce the same by Van Gollennesse on February 11, 1745¹⁴. Procedures in the *Raaden Van Justitie* and *Civiele Raaden* must have been undoubtedly elaborate.

The oaths translated here no doubt formed part of the system of judicial administration during the days of the Kings of Kotte. The evidence from the Portuguese period points to their being in use in the areas ruled by the Portuguese. Riberio, writing in 1685, refers to the annual visits of the *maralleiro* or collector of death duties to the *dissavanyes* or provinces. In the course of his main business also seems to have dispensed with justice. The attestation to the veracity of inventories of dead persons was done on oath. In this capacity of itinerant judge he tried offences like thefts and non-payment of debts. Says Riberio.

If anyone denied the theft or debt *Maralleiro* put him to oath; to do so they bring his son or daughter or some other person whom he loved, according to the choice of the other side. The party taking the oath would place three or four small stones picked up from the ground on the head of the son, and say, 'I did not commit this crime or, I do not owe the debt which is claimed from me. And if what I say is false, may god convict me by killing my son in as many days as there are stones on his head.'

Riberio also refers to another use of the oath – taken by a woman of high caste who is alleged to have committed adultery with a man of low caste.

.....she could either plunge her hand into a cauldron of boiling oil, or lift up a red hot bar of iron and hold it in her hand for the time required to repeat the oath and say, 'may this fire kill me if I have committed the offence imputed to me, and may god prove my innocence and the purity of my life.' After the said oath is taken she would go to the house of her father or husband and purify herself; and if within a day she showed no sign of having been burnt she would be greatly congratulated by her kinsfolk; but if the result were otherwise they put her to death in the presence of witnesses for that was the only way to clear the stain¹⁵.

The oath recorded by Riberio is similar to the fifth type of oath in the fourth extract translated below. Though this does not mention the offence directly, from the context it is evident that the oath refers to the same offence.

The oaths recognized by Van Gollennesse were also similar to those prevalent in the kingdom of Kandy. In fact some of the Sinhalese headmen who recorded them for Van Gollennesse noted that this was so. Robert Knox writing in 1681 attested to their prevalence in the seventeenth century kingdom of Kandy:

For deciding of matters in controversie especially of more abstruse cognizance, the paaties (sic.) do both swear before their Gods, sometimes in their Temples, and sometimes upon more extraordinary occasions on hot oyl.

Knox goes on to describe some of these along with his own observations on them¹⁶. D'Oyle records¹⁷ in some detail several forms of oaths, and Davy too refers to some. D'Oyle's description is more complete and specific and clearly specifies the officials who officiated at these in the context of the entire judicial machinery of the Kandyan state.

These judicial procedures are also similar to what was obtained in contemporary south India as recorded by Abbe Dubois¹⁸. The main features that distinguish the south Indian procedures from those recorded for Sri Lanka are the adherence to Hindu religious ritual and the dominance of brahminical priesthood in the conduct of the procedures.

The attached documents are a free translation from the minutes of the governor's council referred to earlier. There is also a verbatim report of the same in the memoir of Pieter Sluysken of 1784¹⁹. This means that the procedures continued very much in force till the end of Dutch rule in Sri Lanka. The reference in Bennett to the use of oaths testifies to their use during British times.

The numbering of the different reports is mine. The first and the second reports are from the leading headmen of the Colombo Dissavony. The third report is from the commander of Galle, A. Samlant. This has evidently been obtained by him from a Sinhalese headman. The fourth report is from the disave of Matara. As evident in the preamble to the report it has been obtained from a group of leading headmen of the Matara dissavony.

REFERENCES

1. I am indebted to the Netherlands Institute of Advanced Study in the Humanities and Social Sciences for the facilities provided for the preparation of this paper while I was a Fellow in Residence there.
2. The three courts of record established by the Dutch were: the Raad Van Justitie (High Court of Justice) the Landraaden (the Land or District Courts) and the Civiele Raaden or Stads Raden (Civil or Town courts). For the jurisdiction of these see Nadaraja T. *The Legal System of Ceylon in its Historical Setting*, Leiden 1972. pp. 5-9.
3. Sri Lanka National Archives, (hereafter SLNA) 1/93, Resolutions of the Governor's Council, December 24, 1744.

4. SLNA 1/94, Resolutions of the Governor's Council, February 11, 1745.
5. SLNA 1/94, Resolutions of the Governor's Council, March 22, 1745.
6. Bohannan, Paul, The different realms of law in Bohannan, Paul, (ed.) *Law and Warfare: Studies in the Anthropology of Conflict*, New York, 1967, pp. 51-52.
7. SLNA 1/2442, Placaat of January 31, 1744.
8. Instructions for the respective Landraaden of this Government (extract from the Dutch Political Council Minutes of 25th June 1789. Translated by S. A. W. Mottau with a preface by Professor Nadaraja, *Journal of the Dutch Burgher Union of Ceylon*, Vol. LV (1965) pp. 5-6.
9. VOC 1682 foz. 840-877 for the Dutch original of this compendium dated Nov. 28, 1704; Zwaarde roon. H. *Memoir of Hendrick Zwaardecroon, Commandeur of Jaffnapatam*, 1697, translated by S. Pieters, Colombo, 1911, p. 50.
10. *Ibid.*
11. Bennet, J. W. *Ceylon and its Capabilities*, London, 1843, pp. 55-56. Here Bennet relates an incident occurring in the 1820's that has relevance to the question of the manner of taking oaths and the religious beliefs of the person taking an oath. In a case that came up in Galle the defendant agreed to settle provided the complainant agreed to swear upon the justice of his case. The plaintiff agreed as the method used in court was to swear upon the insignia of goddess Pattini. However, the defendant who knew the plaintiff to be anon believer in the cult of goddess Pattini, insisted the plaintiff swear upon the sacred books of Buddhists in a temple, upon which the plaintiff agreed to withdraw his plaint! Swearing upon the insignia of goddess Pattini, Bennet has been informed by a Buddhist monk, was anything but sacred in the eyes of 'true' Buddhists.
12. Some Notes on Law and Change in North India in Bohannan, *op. cit.* pp. 154-55.
13. Weber, Max, cited in, Bendix, R, *Max Weber, An Intellectual Portrait*, London 1962 p. 391.
14. Instructions for the respective Landraaden in *Journal of the Dutch Burgher Union of Ceylon*, Vol. LV 1965; SLNA 1/94, Resolutions of the Governor's Council, February 11. 1745.
15. Ribeiro, Joao, *The Historic Tragedy of the Island of Ceilao*, 1685, translated by P. E. Pieris, Colombo, 1948, pp. 58-60.
16. Knox, Robert, *An Historical Relation of the Island of Ceylon in the East Indies*, (First facsimile edition of the original printed in London 1681) Colombo, 1983, pp. 102-104.

17. D'Oyle, Sir John, *A Sketch of the Constitution of the Kandyan Kingdom 1826*, (2nd ed.) Colombo, 1975, pp. 57-62; Davy, John, *An Account of the Interior of Ceylon 1821*, (Reprint), Colombo, 1983, p. 137.
18. Dubois. Abbe J. A. *Hindu Manners, Customs and Ceremonies*, translated by H. K. Beauchamp, Oxford, 1947, pp. 661-662, 717-722.
19. SLNA Photostat No. 1/2755 pp. 80-96 Beschrijving van al het geene de land dienst betreft.....etc. May 19 1784.

Translation:

(1) Translation of a Sinhalese ola containing the manner in which the heathen Sinhalese of the Colombo Disavany swear in the customary manner.

(a) To establish evidence they swear in the following manner: they raise both their hands to heaven and bring them down to touch the earth uttering these words: "that which I have said is the truth, and if untrue, let those gods that made heaven and earth punish me". At this point the person who swears must state the time limit of one, two or three weeks (the most) as fixed by the judge, within which punishment must befall. Sometimes the swearer lays his hands upon the head of his father, mother, brother, sister of child while swearing as above.

(b) In settling the disputed boundaries of a village the swearing is in the following manner: first, the parties to the dispute must cut a tender coconut branch, build a wooden platform (a "digge digge"!) at the place where the oath is to be taken and place the coconut branch on the platform. The platform then must be covered with a piece of white linen. The platform must be sprinkled with a mixture of milk and sandalwood water and must so stand for three days. This done, all concerned must stay purified for three days. Meanwhile, those who take the oath must stay purified for three days, and must change into clean clothes brought to them daily by the washers. They must refrain from taking fish or flesh during these three days. On the fourth day too they must brush their teeth, wash their bodies, put on new clothes and remain purified. When these things are over, the person who first takes the oath must take the coconut branch mentioned earlier and hold it on his head; and he goes along the boundary that he maintains to be correct while breaking leaves from the branch and dropping along the path he is traversing... While doing so he utters the following words: "the boundary that I have indicated is the correct one. If this is not the case, may the god that has made heaven and earth punish me". The same time limit for the visitation of punishment of one, two or three weeks is fixed as noted earlier in the first manner of swearing. But if a party is not content with this, the coconut leaves are collected once again and are taken upon the head of the swearer who goes round indicating the boundary dropping them on the way and uttering the same words as before. Regarding differences concerning paddy lands, gardens and chenas they employ some features of the method of swearing described above. The witnesses of both parties purify themselves in the manner described above and without using any other ceremonies go along the boundary swearing the previously mentioned oath.

(c) There is a third method used in establishing evidence which differs from the above only in that the swearer while going along the boundary uttering the oath puts his hand upon the ground here and there.

Signed by us on the 22nd of November 1744, Louis de Zarram, Mahamodeliar of the Gate ²; Don Balthazaar Dias, Mahamodeliar of the Atapattu ³; Don Alexander, Modeliar of the Siyane Korale; Don Anthony, Retired Modeliar of the Siyane Korale; Don Anthony, Mohandiram of the Siyane Korale.

(2) Translation of a Sinhalese ola instructing in what manner the heathen Sinhalese are accustomed to settle their disputes.

(a) First, when differences arise as to the boundaries of a village, both parties of villagers purify themselves, don clean clothes, and assemble at a place determined by the officers appointed for the purpose. Then one party must hang white olas (*gokkola*)⁴ along the boundary they wish to indicate. This being done, a party consisting of the eldest men of the village walk along the above mentioned line of white olas calling upon god to witness that was the boundary; and if it may not be so, they be punished in three days, three weeks, or three months. The time limit has to be agreed to earlier by both parties.

(b) Second, when a judge fails to reconcile a dispute concerning a paddy field, garden or an uncultivated land, both parties must prepare for an oath by bathing and putting on clean clothes. The owner (*sic.*) of the land in question must indicate the boundaries of his possessions whether garden, paddy land or empty land. This must be done while calling the name of god and saying that the land belonged to his forbears, and if such was not the truth that god might punish him within a period specified by the judges. But when a judge decides to put [this] evidence to oath, the swearer must purify himself in the manner prescribed above. Then around the garden or paddy field in question white olas must be hung with the help of stakes driven into the ground. Into the middle of this goes the witness with his child, places his hand on the child's head, and declares that as much as it was true that he had placed his hand on the child's head, so it was true that the land belonged to so and so; If such were not the truth, god would punish him within three days, three weeks or three months as agreed to by the parties beforehand.

(c) Third, when a thief is apprehended, the person responsible must give evidence to establish it in the following manner: he purifies himself in the aforesaid manner, and in the presence of the accused, lays his hands upon the head of his own child and utters the following words; "If it is true that I lay my hands upon my child, so it is true that so and so has stolen the missing goods". Then he submits himself to the to the punishment of god within a period of time as mentioned earlier. If within the specified time something evil happens to him it is taken that he has given false evidence. If such an evil befalls him after the passage of the specified time, then it is not taken as a punishment.

(d) Fourth, there is another method of swearing by which they arrive at the truth with great sureness. The party that takes the oath purifies by bathing and changing into clean clothes during six days. On the seventh day the swearer heats a piece of iron, oil or cow dung; then a party is called to see the oath being taken. When everything is ready the swearer takes in his hand the hot iron, the burning oil or excrement in both hands, and while doing so utters the following words: "god is my witness that I tell the truth". Having said this he throws whatever he holds in his hands at the feet of his party. In case the swearer comes off without any burns in his hands he becomes the winner of the case. On the other hand if his hands are scalded he has lost. Since his method of swearing is cumbersome it has to be resorted to with special permission from the judges.

I have never seen such an oath. Nor have I seen such prescribed in any Sinhalese book on laws though I have read many. I have only heard of it. Sgd. L Prera⁵ September 4th 1744. Colombo.

(3) Report on the manner in which the heathen of these lands take oaths according to the evidence given by various Sinhalese inhabitants who have a good knowledge of the same.

(a) Heathens swear in the following manner: the one who takes the oath purifies himself, puts on new clothes and takes one of his children to the place of swearing and stands him opposite himself. The swearer raises his right hand thrice to heaven, calls the name of god thrice and then lays his hand on the child's head uttering the following words: "what I said was the pure truth; if it is not so let god's righteous wrath and punishment befall upon me". Here a time limit for the visitation of punishment too is added.

Those who do not have children for this oath will have to bring instead a brother, sister, nephew, niece or any other next of kin,

Sgd. A Samlant⁶ December 1st 1744, Galle.

(4) On this 30th day of November 1744 appeared before me Johannes Hendrik Busschop, the officer of the Secretariat of the Matara Disavony under the authority of Koopman and Assistant Commandeur of Galle and Disava of Matara, Gerradus Kersse, the following witnesses Domingo Dias Ranawana Tennakoon *Mahavibadda* and Master of the Hunt⁷, Don Fransisco De Sa Abewickrama Bandaranayaka Modliar, Don Bastaan D'Orta Amaracoon Mohandiram of the Atapattu, and Don Duarte Perera Pallehewadana Mohandiram. They together and individually affirmed and declared at the request of the Disawa of Matara that the following methods of taking oaths prevalent among the Sinhalese were well known to them: that they were always prevalent both in the Kandyan as well as Dutch territories among the heathen Sinhalese without any change.

(a) First, that under the Sinhalese kings no injustice would be done to anyone by their calling their heathen gods by name to witness while laying a hand on an unsheathed dagger.

(b) Second, when an ordinary Sinhalese wants to take an oath he raises both his hands to heaven and then brings them on the head of his child's or brother's while uttering the following: "in case what I say be untrue this child (or brother) must die in seven days". In case such a death takes place swearer loses his case.

(c) Third, the swearer puts his hand on his eyes and swears that if what he says be untrue he be made blind.

(d) Fourth, the swearer beats his hands upon the earth and swears in the name of a certain goddess named *Polowe Midedu Amma* (denoting the goddess that bears the earth) that in case what he says is untrue he may die within a specified number of days.

(e) Fifth, is an oath which is taken mostly by women in order to publicly cleanse themselves from an [alleged] insult or dishonour or similar injury. Having washed, donned clean white clothes and purified daily for three or seven days the swearer comes on the destined day under a *Bogaha* tree⁸ with hanging hair. Then three sticks of *Burulla* wood⁹ each one foot long is stuck in the ground. Upon these is kept a vessel with coconut oil by a close friend of the swearer who wears a white gag. Then the swearer is gagged by a close friend. A fire then is kindled under the oil and fed with a fan until the oil becomes seething hot. Then three sticks of wood of the kind named earlier, each three feet long, are driven into the ground. These are decorated with seven coconut leaves. Then the swearer calls the name of god Kataragama to help her in the swearing. Having asked for leave from the bystanders she walks round the *Bogaha* seven times at the same time breaking each of the seven coconut leaves at a time. Then she takes the seething oil in both hands five or six times and throws it on a *Habarala* leaf¹⁰ made ready for the purpose. Immediately after this, a washer comes and cleans the fingers of the swearer. In case the skin on the fingers does not peel off, the oath is taken to have been genuine. If this happens, the swearer is immediately taken on the shoulders of a friend and borne to the house with great rejoicing accompanied by beating drums. Then a triumphal feast on a big scale is held, the washers and barbers who kept away from the house and family of the swearer until the purification, returning.

(f) Sixth, an iron ring is placed on the right palm of the swearer on which placed are crosswise seven green *Kaduru* leaves¹¹. The swearer must keep the iron ring on the palm until the ring burns through the seven leaves and iron becomes cool. The rest of the ceremonies are similar to those described above except that the swearing does not take place under a *Bogaha*, and the place is not decorated with coconut leaves.

(g) Seventh, a snake (Koper Kapel or Naya¹²) is captured and put inside a new pot along with a stiver and shut. The serpent and the stiver are kept for seven days in this manner, the serpent without any food. After seven days the swearer must put his hand inside the pot and retrieve the stiver.

(h) Eighth, an *Indie*¹³ tree is selected and its branches cut off leaving only the thorns. The swearer must beat the tree with both hands on the thorns without receiving any injuries to prove his righteousness.

(i) Ninth, the swearer washes and purifies himself for seven days and lives in a specially cleansed place for seven days. On the seventh day the parties go to a place of worship, a Devale, and make offerings of money. At this place the swearer says that Kataragama Deviyo must kill the offender within seven days. If this does not happen the swearer loses his case.

(j) Tenth, in connection with a boundary that has been made on another's land. The offended party goes on to hand young coconut leaves between the boundaries. Then, the swearer saying that the land belongs to him in truth, must pass the forenamed boundary [presumably the incorrect one according to him] removes the coconut leaves with his hands.

(k) Eleventh, the offended party goes to a *Bogaha*, kisses the same, and having taken the oath puts his hands on his child saying that if his oath was untrue his child must die within a specified time.

Finally, the meeting of the chiefs declared that the above was the pure truth given for scientific reasons and were ready to take an oath on it. This done and approved in the Fort of Matara in the month and year mentioned earlier.

REFERENCES

1. Probably Sinh. *dik ge*. The meaning in the present is clear from the context.
2. Chief Sinhalese headman at the office of the governor.
3. Officer in charge of the local militia at the governor's office. Other officers were in charge of divisions (*korales*) of the Colombo disavony or district.
4. Tender coconut leaf.
5. Probably Louis Perera who was *basnayaka modeliar* (interpreter) at the governor's office in the 1750's and who was implicated in the uprising against the Dutch in 1757-60.
6. Abraham Samlant was commandeur of Galle in the 1750's too.
7. Officer in charge of cultivating Company's paddy lands in the Matara disavony and conducting the elephant hunt there.
8. *Ficus Religiosa*.
9. *Leea Indica*.
10. *Colocasia Esculenta*.
11. The reference here must be to a heated iron ring even though this is not so stated in the text. *Kaduru—Cerbera Monghas*.
12. *Naja Naja*.
13. *Phoenix Zeylanico*.