

India and the Apostle Thomas in South India and Dr. Zaleski, the author of *The Apostle St. Thomas*. Bishop Medlycott says at pages 147-148 of the book:

“After the demise of the Blessed Virgin Mary.....Thomas commenced his second apostolic tour...He passed on to Socotra... Going thence he would have landed on the west coast of India.”

Dr. Gundert, writing in the *Madras Journal*, an old time Magazine (Vol. XIII, page 120) quoted by Yule and Burnell calls, Cranganore, “the first resort of Western shipping”. He points out to its prominence in all the earliest narratives, especially in connection with Malabar Christians and says it was the site of one of the seven churches alleged in the legends of Malabar Christians to have been founded by St. Thomas. In regard to what is known as the St. Thomas tradition, namely that St. Thomas arrived in A. D. 51—52 preached Christianity, made many converts and founded seven churches, it might be that there is no proof such as modern historians require to establish the history of the tradition. But, at the same time, as Mr. C. Achutha Menon, the author of the *Cochin State Manual* and an eminent literator and civil servant had pointed out in one of his articles (referred to in ‘Ancient Kerala—studies in its history and culture’ by Komattil Achyutha Menon—page 154) that in view of the extensive trade relations that the Romans from the East Mediterranean countries had with the Malabar Coast and before the time of Christ, there is no intrinsic improbability in the story. Therefore, though some might say that in the circumstances, as Sir William Hunter has pointed, the case admits only of the Scotch Verdict, “Hot proven”, as Professor H. H. Wilson, a very dispassionate scholar, in speaking of the preaching and martyrdom of St. Thomas in South India had said of the same “as occurrences advanced against the truth of the tradition.” Captain Welsh in his *Reminiscences* written in the opening years of the nineteenth century says that the Syrian Church was established in Malabar ‘ever since the persecution and dispersion of the Christians at Antioch’. (see *Ancient Kerala—K. Achyutha Menon* page 155). In L. K. Ananthakrishna Iyer’s book on the ‘Anthropology of the Syrian Christians’ his conclusions show a distinct leaning in favour of the tradition.

133. Anyhow we will go by the majority judgment in *Mar Thomas Athanasius’ Case*. It would appear that in that case the counsel on both sides allowed that Revd. Howard’s, Mr. Ittoop’s and Dr. Buchanan’s works might be taken to be fairly correct narrations of events though they were far from saying that these books could be wholly relied on. The judges there were also very nearly of the same opinion of all the historical treatises filed in that case. It was pointed out in that judgment that with regard to all the important events, the books of history marked there almost agree.

134. Apostle St. Thomas arrived in Malankara in A. D. 51-52. He preached Christianity and made many converts. He is said to have built seven churches at different places in Malabar (the present erstwhile states of Travancore and Cochin and the major part of the Malabar

District of the old Madras province). He is said to have ordained two men as Arch-Deacons, one from each of two respectable families, namely Sankarapuri and Pakalomattom. Leaving the affairs of the Church in the hands of his two nominees upon whom he had conferred holy orders, he left Malayalam. Then there is a gap of about 150 years. In A. D. 200, Ittoop states that some Christians of India had written to Demetrius the Bishop of Alexandria, requesting him to send a teacher, to instruct them in the doctrines relating to the beliefs in Christ.

135. In A. D. 325 the first general Council, well-known as the Council or Synod of Nice was held, marking the first great epoch in the history of Christianity. To this Council priests and prelates from all parts of Christendom were invited and representatives of all Dioceses in the Christian world attended that Synod. Christians in India were represented by Johannes, Metropolitan of Persia and India. The Council of Nice among other matters relating to the revival and establishment of Christianity, revision of the Scriptures and framing a code of faith and rituals etc. settled the jurisdiction of the several ecclesiastical heads who were charged with the due carrying out of the acts of the Council. This was an important part of the work done at the meeting of the representatives from all Christian communities. Four Patriarchs recognized were (1) the Patriarch of Rome (2) the Patriarch of Constantinople (3) the Patriarch of Alexandria and (4) the Patriarch of Antioch. These were given authority and supreme jurisdiction over their respective Sees. Besides these four Patriarchs, one was appointed at Jerusalem as a mark of distinction for that place with the title of the fifth Patriarch and subordinate to the Patriarch of Antioch. It was also laid down that the Catholica appointed at Tigris (Bagdad) was to manage the affairs of the Eastern Churches subject to Antioch but could exercise the functions of the Patriarchs. The majority judgment of the Royal Court of Final Appeal, marked as Ext. B74 in this case, mentions two documents filed in that case, the latter by the defendant himself, namely Exts. RRR and XXXVIII. It would indicate that the Patriarch of Antioch was given authority over all the East and the Patriarch of Jerusalem specially designated the fifth Patriarch was made subject to the See of Antioch. The learned Judges conclude that it is seen that so early as the 4th century, the Christians of India accepted the Patriarch of Antioch as their Supreme authority in the Ecclesiastical Government of their Church. Within almost twenty years of the decision of the Nicean Synod, one Thomas of Cannan arrived at Cranganore in A. D. 341. He saw some persons at that place wearing the cross about their neck. When he made enquiries about their religion, he learned that they were his co-religionists. He, however discovered that they were in great distress on account of the spiritual as well as temporal affairs of their Church. Thomas, who had a great zeal in the cause of Christianity, at once resolved to use every effort to promote its adoption or restoration among the people. Returning to Bagdad, with the aid of the Catholica there, he set out on a voyage to Malabar with a Colony of Syrians consisting of men, women and children numbering in all about 400, some Deacons and Joseph Episcopa of Uraha under the

direction of Eustathius, Patriarch of Antioch. They arrived at Cranganore in A. D. 345. Thomas devoted himself entirely to the service of the Church in Malabar of which he himself had assumed charge by the direction of the Patriarch of Antioch. The Royal Court Judgment marked as Ext. B74 states that all the historians are agreed with regard to the above account of the Mission of Thomas and of the useful work done by him in the cause of Christianity under the authority of the Patriarch of Antioch.

136. Thomas obtained from the Sovereign of Malabar various privileges, honours and titles and a grant of land for the purposes of his mission. The grant was engrossed on a copper plate. With the help of the Ruling Power, Thomas built a Church at Mahadevapuram (Kodungalloor) in the Cochin State which he made his Capital. The learned Judges say that Thomas made the power of the Patriarch of Antioch supreme in Malankarai in those days and founded a colony, as if it were of Syrians. For a long time, the visits of foreign ecclesiastics were few and far between either owing to want of interest in the Syrian Christians here or to the difficulty and the enormous expenses of sea voyages in those troublous times. Therefore, on account of this rarity, the Christians of Malabar welcomed and venerated foreign Bishops, Episcopas or Metrans and allowed them to take part in the spiritual affairs of their church, whatever might be their creed and beliefs. At that time, the differences that divided the Eastern Christians had not become so great till the tenth or eleventh century, as to exclude the prelates of one creed from the Churches of the others. It would appear that in A. D. 825, two ecclesiastics or episcopas by name Mar Sabor and Mar Abrotha arrived in Malabar under command of the Nestorian Patriarch of Babylon. They were much respected by the Syrian Christians and their Arch-Deacon. With the aid of the one and the co-operation of the other, they travelled through the country, built churches and looked after the religious affairs of the Syrians. This resulted in the Nestorian Creed becoming to a certain extent intermingled with that of Malayalam Church.

137. By the time, the Syrians of the Western Coast had become a rich and influential class of people. There had been a succession of Metropolitans from foreign parts who ruled over the Church (see Paragraph 64 of the majority judgment). The Episcopas came down to Malayalam from foreign parts from under the Antiochian Supremacy or from Babylon under the orders of the Nestorian Patriarch till the arrival of the Portuguese in 1500. The Portuguese who were adherents of the Roman Catholic Church came to the region in 1498 and were here for a number of years. With their advent, the persecution of the Syrians began. No doubt, at the outset, the Portuguese thought that the Syrians could be persuaded by peaceful means to adopt their faith, treating them with kindness and consideration. But, finding them tenacious, the Portuguese changed their attitude towards the Syrians in matters of religion. The local Christians were not yielding to persuasion or persecution. I do not want to go into the details of the period except to state that the Portuguese did everything to complete subjection of the Syrians to Papal Supremacy and complete conversion of them to Roman

faith. The Patriarch of Babylon sent a Nestorian Bishop named Simeon to take charge of the Church. The people and their Arch-deacon strongly opposed him and would not receive him. The Portuguese however disposed of him as easily as they had disposed the two earlier Bishops who had preceded him from the foreign parts. The climax of the persecution was reached in 1599 and culminated in the so-called Synod of Diamper (Udayamperur). On the 20th June of that year, the Portuguese Arch Bishop, called a meeting of all the Syrian clergy for the purpose of settling their doctrines, canons and rituals. The Arch-Deacons, Cathanars (Priests) etc. all attended. The decision of the Synod was communicated to them. Their books which were denounced to be heretical were burnt and destroyed, and some of the historians state that all traces of Apostolic succession in their church were obliterated. The portuguese had also taken steps to prevent the arrival of any more prelates from Syria. Orders were issued to their sea-ports to arrest foreign prelates who might arrive there. The Arch Deacon of the local Christian Church was one Thoma. The desire of the Syrian Christians was to get a Metropolitan from one of the Eastern Patriarchs to consecrate their Arch-Deacon and make him Metran. At that time, a person came to India, whom the learned Judges considered to be the Patriarch of Antioch—Mar Ignatius. The Portuguese arrested him when he was at Mylapore to prevent his coming to Malabar coast. The judgment here refers to Itoop's version, which has stated that hearing of their Patriarch's arrest at Mylapore, two deacons of the Syrian Church went to that place to communicate to their Patriarch the affairs of the Church and obtain his commands. They, accordingly, had an interview with the Patriarch who drew up a Staticon to have Arch-Deacon Thoma to be consecrated and appointed as Metropolitan and entrusted the same to the Deacons and sent them away secretly to Malayalam. The Deacons on their return summoned the people to meet at Alangad and communicated to them what had occurred. The learned Judges also refer to the fact that Howard and Day do not expressly speak of the meeting of the Patriarch and the Deacons and the authority entrusted to them to consecrate Thoma as Metropolitan. However, substantially they all agree with the story of the arrival of the Partriarch and the appointment of Thoma the Arch-Deacon as Metropolitan.

138. The Portuguese brought Mar Ignatius in fetters to Cochin. According to Howard and Day, the Patriarch was seized and embarked in fetters for Cochin, but not until he had found means to communicate with his flock, approving of the appointment of Thoma and directing that four assessors should be nominated to act with him but enjoining him on no account to consecrate the holy oil or to presume to confer order. When Mar Ignatius was brought down to Cochin on his way to Rome, the people became enraged and their excitement knew no bounds. They assembled at Allengad, went to the Portuguese Governor and solicited the release of their Patriarch. The Governor declined to grant their prayer. Thereupon the Arch-deacon and people resolved to forcibly effect the release of the Patriarch and boldly marched to the fort where the Patriarch was confined. The Raja of Cochin was appealed to.

He at first seemed to sympathise with the Syrians but finally yielding to the influence of the Portuguese allowed them to have their own way. The Portuguese in some mysterious way disposed of the Patriarch. Some believed that he was drowned with a stone tied to his neck; some say that he was burnt to death; and others that he was sent off to Rome. He was not heard of afterwards.

139. The enraged local Syrian Christians met at Mattancherry Church and resolved that they should never again unite themselves with the Portuguese who had, without any fear of God murdered their holy Patriarch; that Francis Metran of the Roman persuasion should not be acknowledged as their superior; that Arch-deacon Thoma should be consecrated as Metran in accordance with the Staticon given by Ignatius Patriarch; and that their ancient and spotless doctrines should be followed. This is known as the Oath of Koonan Cross. The assembled people had cast themselves on the refuge of God, attached a large cable to the Koonan Cross at Mattancherry and extended it both ways in the market place; and the people assembled held by this rope and unanimously and with one voice swore as stated above and separated themselves from the followers of the Roman faith. From this time onwards, from Mar Thoma I to Mar Thoma V, we find in the history of the church as narrated in the Royal Court judgment that the Patriarch of Antioch had supreme powers as far as spiritual matters of the church are concerned. No doubt the supremacy related to spiritual matters. The commands of the Patriarch and his delegate have reference only to what the Metropolitan should do as the ecclesiastical Head of the Church. There was no direction whatever in them regarding the government of the Church so far as the temporal affairs go. The Patriarch supremacy, the learned judges point out, was confined to spiritual matters alone.

140. It would appear that in the case of Mar Thoma V who was consecrated by Mar Thoma IV, neither the Patriarch of Antioch nor his delegate had a hand in the consecration. According to the majority judgment in the case before the Royal Court of Final Appeal, Travancore, the Metropolitan authority was consequently rejected by a considerable section of the Malankara Church. The Patriarch himself denounced the consecration of Thoma V as utterly invalid and opposed to law. It was a condemnation of the Dignity assumed by Thoma without a proper Imposition of Hand. The judgment further points out that this Command of the Patriarch had at once immediate effect. Thoma V submitted to the Bavas, not against his will, but with the consciousness that his consecration was imperfect and that it should be perfected by the laying on of hand by the Patriarch's delegate. The people keenly felt and fully believed that their Metran was really not properly consecrated Metran. The Patriarch's delegate, Basilios Catholica acknowledged the position of the Metran and gave him commands for his guidance. After Thomas V, came Thomas VI, who was consecrated by the Bavas who were the delegates of the Patriarch. He became the Metropolitan of Malankarai with the title of Mar Dionysius. He was commonly known as Valia Mar Dionysius or Dionysius the Great. Mar Dionysius, who had much influence with the reigning

Sovereign and people, devoted his attention to placing the temporal affairs of the Church on a satisfactory footing, made an endowment in its favour of 3000 Star Pagodas and built a Church at Puthenkavu mostly at his own expenses. Mar Dionysius the Great died on the 25th Meenam 983 M. E. and was succeeded by Mar Thoma VII, who died within a short time. In regard to the next Metran, Mar Thoma VIII, he was not consecrated by the Patriarch of Antioch or his delegate. The Syrian Christians of the locality were not satisfied. They compelled their new Metran to draw up a new memorial on behalf of the Malankara Pallikars to the Patriarch of Antioch to send a Prelate duly authorised to consecrate their Metran and submit it to the Patriarch through the British Resident of Travancore and Cochin. As the Metran put off complying with the people's request, they troubled and annoyed him in various ways and would not allow him a moment's rest. 10

141. The people namely, the Syrian Christians (it might be noted here though belatedly that a section of this people had gone to the Roman Catholic fold during the Portuguese days and by the term Syrian Christians, what is meant is that section that eagerly and as their birth right clung to the supremacy of Antioch as the Royal Court judgment would put it in paragraph 90 of the Judgment) went to the Resident at Alwaye and represented their grievances. Upon this representation Col. Munro, the then Resident referred the matter to the Madras Government, who sent down seventeen questions through the Resident to the Metropolitan. The Royal Court judgment would say at paragraph 120:- 20

"The circumstances under which the questions came to be referred to the Metran and the straight forward and honest manner in which even to the prejudice of his own personal interest, the Metran returned replies to those questions have great significance and important bearing on the present dispute." 30

The questions 2, 4 and 15 and the answers there to extracted in that judgment would have some significance even in this case.

**"Second Question:"** "As subject to the authority of what superior have the Syrians being obeying Laws and Rules?"

**Answer:-** "In Malayalam, it is as subject to the authority of Mar Ignatius, Patriarch of Antioch, that the ordinances are recognised. Metrans come from Antioch and consecrate members of the family which has derived ordination from Apostle Mar Thoma and these conduct all routine affairs; and important affairs are conducted informing the Patriarch of Antioch thereof." 40

**Fourth question:-** "What is the rule as to the succession of Metropolitans the Syrian Churches, and what all are done on one's in death?"

**Answer:-** "In 1653, Mar Ignatius Patriarch was arrested in Mylapore by the Portuguese on his way to Malayalam from Antioch. At that time two Deacons had gone to Mylapore. Fearing that the Portuguese might kill the Patriarch, he sent Patent of Consecration through the aforesaid Deacons to consecrate the Arch-Deacon as Metran. The Portuguese then brought the Patriarch to Cochin and drowned him in the sea. Thereon the Arch-deacon 50

and people met at Mattancherry and swore, holding the cross that the Portuguese shall not to the end of their race, be obeyed. And then all met in the Allengad Church and consecrated the Arch-Deacon as Metran in pursuance to the Warrant of Office sent by the Patriarch through the Deacons and thus Metran's functions were exercised. Subsequently in 1665, Mar Gregorius Patriarch of Jerusalem came to Malayalam and made perfect the ordination of the then Metran and offered him the books, Morone, and Sythe that had been sent from Antioch. In those days, the Anandaravan of Arch-deacon Thoma was made Metran and empowered to exercise the functions there to appertaining. Towards the close of his career, his Anand- 10 aravan was consecrated as Metran. It is thus that the office of Metran has been vested in succession in members of this family."

#### **Fifteenth Question:-**

"What are the forms of worship of the Syrians?"

#### **Answer:-**

"The Jacobite Syrians observe the practices mentioned in the books sent by Mar Ignatius, Patriarch of Antioch."

142. During the rule of Thoma VIII, the Syrian Church received a donation of Rs. 8000 from the Ranee of Travancore and also Rs. 20,000/- from the Isle of Munro near Kalladay, free of tax through the influence 20 of the Resident. A school was built in 1813 for training young men for spiritual orders. In 1815, one Ittoop Ramban of Pulikote got himself consecrated as Metran by Philixinos the Metropolitan of Tholiur. This Tholiur Church is an independent one with some history dealt with in the Royal Court Judgment Ext. B74. It is not necessary to go into the details of that Church here. Mar Thoma VIII died in 1816 consecrating his relative as Mar Thoma IX. This gentleman was advanced in years and finding him weak having no support of the people or of the authorities, Ittoop Ramban, newly styled Dionysius on the authority of Philixinos, came to Kadamattom where Thoma IX was staying, forcibly divested him of his staff, Mitre, 30 Crosier and Vestment and returned to the Kottayam Seminary, carrying away all the properties of the Metran. Mar Thoma thus divested of episcopal functions spent the rest of his days at Kadamattom in retirement. According to the Royal Court Judgment Pulikote Dionysius pretending to have a proper consecration actually usurped the powers of a Metropolitan. However he did not enjoy the office long. He died almost within 18 months of his assumption of the office.

143. The same Philixinos who had consecrated pulikote Dionysius came on the scene again and consecrated one Geevarghese Kathanar in 1818 as Mar Dionysius Metropolitan. He became known as Punna- 40 tharai Mar Dionysius. He became very friendly with the English Missionaries of the Church Mission Society reviving hope in the Missionaries of a final union of the Syrian Church and the Anglican Church as had been earlier proposed by Dr. Buchanan. They jointly set on foot a scheme of general education to the youth of both the creeds. The British Resident Co. Munro gave them much encouragement and support. The Missionaries used to visit the Syrian Churches and preach sermons therein. The C. M. S. Missionaries hence began to exercise much influence in the Syrian Church. However, this Mar Dionysius did not seem to feel quite at ease about the validity of 50

his own consecration. Ittoop's history says that he "desired to get down a Prelate from Antioch to Malayalam to have his dignity made perfect and sent one or two letters to His Holiness Moran Mar Ignatius Patriarch and tried very much. But it happened that none was arrived during his rule." Whatever be his failure in his endeavours to perfect his consecration, he made his position secure with the help of the Resident and the Missionaries. The Government thus issued a Proclamation, Col. Munro himself being the Dewan then, directing all people to obey him as Metropolitan. The Royal Court Judgment says:-

"Such extraordinary violation of the rule or practice hitherto strictly observed and such utter disregard of the feelings of the people and the Metropolitan himself could not do away with the rule altogether. It could only be treated as an exceptional case, not in the least degree affecting the long established practice." 10

Punnatharai Mar Dionysius died on the 8th Edavom 1827 A. D./1000 M.E. No successor was appointed by him. The Pallikars in consultation with the Missionaries fixed upon Philipose Malpan of Cheppat and three others as fit candidates for the vacant seat. They cast lots to make a selection out of them. They selected Philipose Malpan, the old Philixinos consecrated Malpan as Metropolitan of Malankarai. The State immediately issued a proclamation about his appointment. According to the Royal Court Judgment this was the result of the combined action of the C. M. S. Missionaries and the Dewan-Resident of Travancore. The new Metropolitan was known as Cheppat Dionysius. Immediately after the installation of Dionysius, the Missionaries pressed for the proposed union between themselves and the Syrians. The Metran, however, while agreeing to do so, gave no occasion for the removal of any of the practices of the Church as he did not wish it to be said that he undid any practices of the past time. This state of affairs continued till 1838. 20 30

144. In the meantime there were some attempts by the Patriarch of Antioch to regain the spiritual supremacy of the Church. However, as Revd. Howard says the English Missionaries were now able to carry on their designs under the most favourable circumstances, with the help of a friendly Metropolitan, who might be said to be a creature of their own to support their efforts and possessing considerable influence with the British Resident and through him with the native Government. However this success was only for a time. The union between the C.M.S. and the Syrian Christians did not fructify. This led to the appointment of a Panchayat to decide upon the disputes regarding the apportionment of the endowment which had been held in common till then. By the decision of 4th April, 1840, there was an allotment of the funds and properties between the C. M. S. Society and the Syrian Sabha, which further directed how they should be respectively administered. 40

145. The Syrian community was not satisfied with the manner in which the prelates and priests had been ordained and they were feeling keenly the spiritual decline that was coming on them. This led to their adopting means to lay their grievances before their spiritual head, the Patriarch of Antioch, who alone could grant them redress. In 50



spite of the State recognition and support of the British Resident, Mar Dionysius was not acknowledged by the people as their spiritual head. His consecration was no consecration to them. They drew up a Memorial to the Patriarch and sent it to him. Subsequently the late Mar Athanasius who becomes prominent afterwards in the matter of quarrel within the church arrived in Antioch and presented himself before the Patriarch. He was consecrated as a Metropolitan and sent to India by the Patriarch. The Royal Court Judgment, Ext. B74, gives this as an instance by which the Patriarch once more asserted his ecclesiastical authority to the great relief and satisfaction of the community. Then followed a period of long controversy between Mar Athanasius and Mar Dionysius of cheppat. Athanasius could not easily persuade the authorities to undo what they had already done in favour of the Metropolitan Mar Dionysius. There was a long correspondence between Mar Athanasius and the Resident. The matter was further complicated when Mar Kurilos came from Antioch as the patriarch's representative. It would appear that Dionysius and his people being aware that an investigation could inevitably lay upon their activities and lead to frustration of their plans persuaded Mar Kurilos to take over the churches in Malabar. This resulted in the Travancore Sarkar with counsel of the British Resident, resolving upon appointment of a commission to enquire into the allegations of both parties- Mar Athanasius and Mar Kurilos-supported by Mar Dionysius and his adherents to find out who should be the Metropolitan. In regard to this it will be interesting to quote what the Royal Court Judgment says:

“Before going to consider the decision of the Committee and what followed it, it may be remarked that this incident is one worthy of serious consideration. Here were three Metropolitans—two holding credentials and Staticons from the Patriarch of Antioch and competing for the office; and the third a man that had been already in the office of Metropolitan for quarter of a century all admitting in the most unequivocal terms the supremacy of the Patriarch and claiming to derive their right to office from him. One of these Metropolitans, Mar Dionysius, willingly surrendered his office which he had held for many years under a Royal Proclamation, simply and solely on the ground that he felt his consecration defective or invalid. Does not this incident present a striking illustration of the strong hold that the spiritual supremacy of the Patriarch had had and still has upon the minds of the Syrian community?”

The committee after inspection of the documents produced before them and on a review and consideration of the circumstances and evidence before it, came to the conclusion that Mar Athanasius should be recognised and proclaimed by the Sarkar as Metropolitan of the Syrian Church in Malabar. This was in 1852. Mar Athanasius thus became the de jure and de facto Metropolitan. The administration of Mar Athanasius continued undisturbedly till 1866. The learned Judges in the majority judgment of the Royal Court of Final Appeal, Ext. B 74, in Case No. 3 of 1061 say that evidently he was carrying on his duties and performing his episcopal functions under his Ecclesiastical head and superior as he

had originally said, when entering on his duties.

146. In the meantime, a Gentleman from the local Syrian Church and connected with the Powlomattom family by relationship went to Antioch and got himself consecrated and appointed Metropolitan of Malabar. The Patriarch appointed him Metropolitan because complaint of heresy and objectionable practices had been received against Mar Athanasius. This new Metropolitan, Mar Joseph Dionysius after his return to Malabar, addressed the Dewan of Travancore on the subject of his appointment to, and deposition of Mar Athanasius from, the Metropolitanship and asked for Sirkar recognition. The Dewan refused 10 to interfere stating that the only satisfactory course for the dissentient parties to pursue would be to effect a compromise and failing that go to law. Disappointed, the newly ordained Metropolitan then approached the Madras Government pointing out to a Proclamation issued by the Travancore Government dated 15th Karkadagom (1851) in which it had been stated that the Patriarch of Antioch had appointed Mar Athanasius as Metropolitan and that all Syrian Christians should subject themselves to him as such Metropolitan. The Circular of the Dewan was also referred to wherein it had been directed that any persons who were unwilling to follow Mar Athanasius should build 20 churches of their own, or if they had any lawful claims on the church buildings under the control of Mar Athanasius, should have recourse to civil suits. The circular further stated that if either the Metropolitan or any members of the community report that, notwithstanding these orders any persons prove disobedient, and entering the churches, act in a way contrary to previous possession such persons should be immediately sent for and tried by the Police Officers and duly punished if guilty. Mar Joseph Dionysius represented that the circular issued by the Dewan, although no doubt, intended to be impartial, really placed him in a position of the greatest possible disadvantage, and the 30 Community, who would subject themselves to him, in a still worse position. He pointed out that the circular assumed throughout that Mar Athanasius was in possession of all the churches. He would point out that it was evident that the Bishop had no possession of any Church. He only acts upon the Churches through his authority over clergy who officiates in each. If that authority rested solely upon the voluntary submission of the clergy and congregations, there was nothing to be complained of. But under the Proclamation all Syrian Christians had been directed to obey Mar Athanasius and by the circular, those who act contrary to previous possession were warned 40 that they will be liable for criminal punishment. He therefore prayed to the Madras Government to preserve the strict neutrality in religious matters, by cancelling the circular and issuing another proclamation simply declaring that each and everyone of the Syrian Christians are at liberty to openly profess their adherence to, and subject themselves to the jurisdiction of, the Bishop of their own choice without any lay restraint upon their moral obligations, and adding that if there be any division of opinion as to such choice, commissioners be appointed to ascertain the wishes of the majority of the Syrian Christians attached to each church, and the Church and funds placed under the control of 50

the Bishop who has such majority on his side. The Madras Government also did not act on the representation. The Metropolitan Dionysius approached the Patriarch of Antioch, who it would appear, represented the grievances to the Queen of England by going there personally and also to the Governor of Madras after coming over to India. He, it would appear, came to Travancore represented the grievances to the Maha Rajah. The Maha Rajah of Travancore revoked the previous proclamation. Mar Athanasius, who was alive when the Patriarch came to India, denied the Patriarch's authority. He consecrated his younger brother (I think more correctly, his cousin) Thomas Athanasius as his successor and left a will in his favour. Mar Athanasius died in 1052 and the dispute that had been going on for some time ended finally in the litigation that became well known as the Seminary Case. 10

147. Before going into the details of that litigation, which would be necessary to be gone into, I would here refer to the conclusions arrived at on the fore-going history of the Church, by the Royal Court of Final Appeal in its majority judgment:-

"From the foregoing history of that Church, the conclusion appears to us to be almost irresistible viz., that it was a period of hard struggle on the part of the Syrian Community in Travancore and of their several Metropolitans against odds and difficulties-sometimes insurmountable-to keep up the continuance of Apostolic succession unbroken in their Church by having Imposition of hand on the Metropolitan by either the Patriarch of Antioch direct or his Delegates duly authorised in that behalf; and that they more or less succeeded in doing so. The feelings of the people in favour of maintaining the spiritual supremacy of the Patriarch on several occasions had carried them even so far as to set the Ruling Power and their Metropolitans at naught and to rise in open opposition against them. Doubtless in a few instances the effort of the people to maintain the Apostolic succession, proved fruitless, the difficulties being insurmountable. Such cases could only be treated as exceptions to the rule. A general acknowledgement of the spiritual supremacy of the Patriarch of Antioch over the Syrian Christian Church in Malabar during the whole of this period-two centuries-is manifested by the numerous events narrated above. Consecration of metropolitans by the Patriarch or his Delegate alone satisfied, and gave peace of mind to the people as well as to the Metropolitans. Where that was wanting we find from history that the utmost possible endeavours were made to get down Prelates by any means from Antioch to supply that defect. Neither the Metropolitan nor the people rested or enjoyed peace of mind till the defect was cured. Even the payment of an enormous sum of money as passage money to get down Prelates did not make the people give up their connection with the place "where the followers of Christ were first called Christians". 20 30 40 50

The connection was not denied till 1875 when the late Mar Athanasius who had got into the office of Metropolitan solely on the strength of his consecration and appointment by the Patriarch had the audacity to deny his spiritual Preceptor and Superior to gain his own purposes.

For over two centuries neither the successive Metropolitans nor the Syrian Community had the courage to deny the authority of the Patriarch over the local Church in matters spiritual. Each and every Metropolitan during that period acknowledged most unequivocally, as has been shown, the supremacy of the Patriarch and submitted to it. In the face of the history above sketched, the answers returned to the questions of the Madras Government under very peculiar circumstances so early as 1813 by a Metropolitan whose interest and even security lay in denying the Patriarch's authority, and the long and persistent correspondence of the late Mar Athanasius above noticed in the face of these to say that the supremacy of the Patriarch has not been made out would be to declare the Metropolitans disinterested and aimless (for they had nothing to gain but some of them much to lose) dissemblers and the late Mar Athanasius a consummate imposter and hypocrite (this affects the Appellant also as he was indirectly a party to the late Mar Athanasius correspondence as his Secretary, brother and right hand man.). We are far from being prepared to say so though that is the Appellant's insinuation. To us it appears that it is impossible upon the evidence to come to any other conclusion than that the supremacy of Antioch is established beyond a shadow of doubt."

148. I may make it clear that with regard to the history of the church, I am depending upon Ext. B74 judgment and that judgment alone. This is because both parties swear by the judgment. I am referring to this because there might be frank, honest, different opinion as to the conflicts within the church during the period. It may depend upon the historian's approach to the question, his sympathies. For example, one finds in Mr. P. Cherian's Malabar Syrians and the Church Missionary Society, the author was eager to defend or vindicate the Missionaries whereas Mr. E. M. Philip would be seem to be a severe and unsympathetic critic of the C. M. S. Ext. B74 judgment also is critical of the C. M. S. In Mr. Cherian's Book which is marked as Ext. D23 in the case, there appears the following criticism of the verdict passed upon Mar Philoxenus Tholiyoor Bishop and the two Metropolitans consecrated by him, by the learned Judges who decided the Seminary Case.

"In the face of the facts set out above, one cannot help regarding the verdict passed upon these three pious and eminent Bishops by the learned Judges who decided the Seminary Case in favour of Mar Dionysius V (who was a near relative of Mar Dionysius II) as a strange irony of fate. About Mar Dionysius II their Honours say that the Ramban was an "unscrupulous" and "designing usurper" "who pretended to

have proper consecration” and that “he forcibly divested a meek and aged man like Thoma IX of the insignia of episcopal office and assumed the dignity himself”. Philoxenus was “the successor of a run-away and deported metran who had all along cherished ill feelings towards the Malankara Church”. “It was this Philoxenus, the old enemy of the Malankara Church, ‘that consecrated Punnathara Dionysius also.’ The learned judges were so satisfied about the wickedness and villainy of Pulikkottil Dionysius, that they felt that Philoxenus was sufficiently condemned when they described him as “the worthy preceptor of a worthy disciple”. About Punnathara Dionysius, the learned judges observe that he got into the good graces of the authorities by lending his aid to the scheme of union proposed by Dr. Buchanan. It need hardly be said that the unfounded strictures passed against these three pious Bishops are looked upon by many as a most serious blot on the majority judgment. If it is considered that such strictures were necessary to support the decision of the learned judges, then one cannot help doubting the soundness of a judgment which stood in need of such a prop.”

149. It is not necessary for me to go into the controversies in view of the fact that both parties to the present proceedings have relied on the majority judgment in the Royal Court Case as representing the correct view in regard to the history. Under Section 42 of the Evidence Act, ‘judgments, orders or decrees other than those mentioned in Section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.’ Under Section 43 of the Evidence Act, ‘judgments, orders or decrees, other than those mentioned in Section 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provisions of the Evidence Act.’ When these two sections are read with Section 57 of the Evidence Act, which states that on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference, I do not think there is any mistake in referring to Ext. B74 judgment for finding out the history of the Church. No doubt, a judgment is never evidence of collateral matters and no judgment is evidence of the truth of any matter not directly decided or a necessary ground of the decision. Thus judgments are not evidence of facts which came merely collaterally in question, or were incidentally cognisable, or can only be inferred by arguments from the decision. Though a view has been taken in some cases that a judgment is conclusive only of the point actually decided and not of the grounds of the judgment, Phipson in his book on Evidence, 12th Edition, at para 1325 (Page 531) states:-

“However, it is submitted that a broader view is today both permissible and correct, namely, that resort may be had to any materials from which the decision in the previous case can be deduced on issues which had to be decided before the

judge could make his final determination of the legal question before him. It seems clear that a judgment can be looked at for an exclusionary purpose, that is to say, to eliminate possible grounds of decision on which it can be shown the judge's decision did not ultimately rest. Some cases go further if only by implication, and suggest that the whole of the judgment may be perused for the purpose of ascertaining the facts decided."

#### **Royal Court Judgment Ext. B74:-**

150. We might now go into the history of the case so far as it is 10  
relevant for the purpose of this case which had culminated the judgment Ext. B74. That was a suit filed by Mar Dionysius Metropolitan against Mar Thomas Athanasius, and two others for the recovery of certain movable and immovable properties. The dispute which led to the suit related to the succession to the Metropolitanship of the Syrian Church in Travancore on the death of the late Mar Athanasius, who admittedly was a properly consecrated Metropolitan. The main question that arose in the case was whether the Patriarch of Antioch had the power to vest the Malankara Church Trust in a Metran consecrated by him; whether such consecration by him gave the person any right or 20  
title to the property of the Syrian Church in Travancore. Another question that arose was whether the power the patriarch had exercised over the Malankara Syrian Church was purely spiritual rather than temporal. The question also arose whether without consecration and appointment by the Patriarch of Antioch or his delegates can anybody claim the Metropolitanship of the Syrian Church? After narrating the history of the church, which I have referred to earlier it was found that the Patriarch of Antioch had been exercising ecclesiastical jurisdiction over the Syrian Church in Travancore. The conclusions that the court came to were that the ecclesiastical supremacy of the 30  
See of Antioch over the Syrian Church in Travancore has been all along, recognised and acknowledged by the Jacobite Syrian Community and their Metropolitans; that the exercise of that supreme power consisted in ordaining either directly or by duly authorised delegates, Metropolitans from time to time to manage the spiritual matters of the local church, in sending Morone (Holy oil) to be used in the churches in this country for Baptismal and other purposes and, in general supervision over the spiritual government of the Church; that the authority of the Patriarch has never extended to the government of the temporalities of the Church which, in this respect, has been an independent Church; 40  
that the Metropolitan of the Syrian Jacobite Church in Travancore should be a native of Malabar consecrated by the Patriarch of Antioch, or by his duly authorised delegates and accepted by the people as their Metropolitan to entitle him to the spiritual and temporal government of the local Church; that Mar Thomas Athanasius had been so consecrated and accepted by the majority of the people and consequently had a perfect right to succeed to the Metropolitanship on the death of Mar Athanasius; that Mar Thomas Athanasius had neither been properly consecrated nor accepted by the majority thereof and therefore had no title to the dignity and office of Metropolitan; that Mar Athanasius's 50

possession of the properties of the Church and its appurtenances and the assumption of the office of Metropolitan had been wrongful since the death of Mar Mathews Athanasius, the admitted last Metropolitan and Trustee, that the appellant in that case should therefore surrender the insignia and office of Metropolitan of the Malankarai Syrian Jacobite Church and give up possession of all the properties and moneys appertaining thereto which he now holds, to the respondent who would assume and take possession of the properties etc. to be administered with two other Trustees as required by the Endowment Deed.

151. In this connection, it might be necessary to understand what the learned Judges said when they said "acceptance by the people". The learned Judges say that 'acceptance by the people' was necessary to entitle a Bishop duly consecrated and appointed by the Patriarch to become Metropolitan of the local church seems to them to be a new idea and was due, probably to a precaution on their part (parties to the suit) to prevent foreigners sent out by the Patriarch from assuming the management of the temporalities of the Church without the consent and against the wishes of the community. The judges point out that there was no acceptance by the people in the case of Metropolitans from Thoma I down to the late Mar Athanasius (1665 to 1877). History shows that no such custom was extant at any time. In the case of former Metropolitans, the consecration and appointment by the Patriarch were alone thought enough to constitute a Metropolitan. With regard to Proclamation-Metropolitans (Thoma VII to the late Mar Athanasius), the consent of the people or their acceptance was wholly unnecessary and, as a matter of fact, was not even thought of, for the Proclamations directed the people to obey the Metropolitan recognised by the Sirkar. It was only after the Proclamation, which had been marked as Ext. P in that case, under which the Sirkar disclaimed all connection with the appointment and removal of Syrian Metropolitans and explained the effect of its Proclamation in favour of particular Metropolitans, that acknowledgement by the people was thought of as the best and safest substitute to adopt. The idea of acceptance or consent by the people could have originated with the so-called cancelment of the Proclamation Ext. O (in that case) and the issue of the Proclamation Ext. P (in that case) which would characterise as the people's Magna Carta as they understood it. This was done in 1051 and the first case under that system was the case which came before the Royal Court.

**The Case before the Court of Appeal of the Rajah of Cochin —**

**S. A. No. 7 of 1076 — Ext. B110:-**

152. The success of Mar Joseph Dionysius in the Royal Court of Final Appeal, Travancore, as per Ext. B74 judgment led to further litigation in various courts of Travancore and also in Cochin for getting possession of the Churches. One such case was O. S. 56 of 1069 on the file of the Trichur Zilla Court, where Mar Dionysius alleging that he is the duly consecrated Metropolitan of the Syrian Church of Malankarai, appointed thereto by the Patriarch of Antioch and duly appointed by the Syrian Christians of Malankarai sought for a declaration in respect of the churches of Arthat, Kunnankulam, Cherlayam

Thekke Kurisu Palli and Kizhakke Puthen Palli comprising the Edavaga of Arthat and properties appertaining thereto were held by the Edavagayogam Open Trust. As said forth in the plaint, the said churches and properties were subject to the spiritual, temporal and ecclesiastical jurisdiction of the Metropolitan—the first plaintiff and relief sought was for recovery of the properties movable and immovable comprised in the schedules annexed to the plaint and it was prayed to be declared that the same may be used for no purpose rather than the purpose of the Church. The defendants in the suit were followers of Mar Thomas Athanasius. In that case also after going into the history of the church, the Cochin Royal Court comprising the Diwan of Cochin, Chief Judge and Senior Puisne Judge of the Cochin Chief Court said that notwithstanding the vicissitudes and troubles the church had to face owing to the oppression of the Portuguese and, in more recent times to the intensive disputes created by schisms started by certain Metrans to suit their own purposes, every endeavour was made by the majority of the Metrans and always by the people as a body to maintain intact the spiritual supremacy of the Patriarch. Even those Bishops who from force of circumstances, or from motives of self-aggrandisement denied the Patriarch's supremacy, were, at one time or other, though in some cases reluctantly, obliged to admit that the Patriarch of Antioch was the spiritual head of the Syrian Church in Malabar. The court said in paragraph 36 of the judgment which is marked as Ext. B110:

“Such then is the position of affairs as disclosed by the records. And we think that they conclusively establish that the Patriarch of Antioch is the paramount ecclesiastical authority over the See of Malankara, and that for a person to become a properly qualified Metran of that See, the essentials are that he should be consecrated by the said Patriarch or by some Bishop authorised by the Patriarch as alleged by the plaintiffs. No doubt there were certain instances where those essentials were wanting, but as pointed out by Sir Bhashyam Iyengar the exceptions only go to prove the rule and such exceptions cannot be treated as evidencing any desire on the part of the Syrian community to repudiate the Patriarch's supremacy or the teachings of their church.”

With regard to the particular Arthat Church, the court said:-

“The only safe criterion by which we can form an idea of the trust imposed upon the church is to see what was the acknowledgement by the people as a body of the religious tenets, formularies and Church Government observed in the church for a long series of years before the community became dissident amongst themselves.”

In considering the question whether the plaint churches in that case had acknowledged the supremacy of the Patriarch of Antioch in spiritual matters, the court said:—

“To prove this it will be sufficient to point out that we have already shown in the brief history we have given of the Syrian Church in Malabar that the Patriarch of Antioch is the paramount authority over the Malankara See, and in the



light of the evidence we have dealt with in considering the question of the endowment, it seems to us abundantly clear that the parties to this suit have acknowledged his supremacy by submitting to the rule of the several Metrarchs of Malankara. Further none of the Metrarchs has fought more strenuously for the supremacy of Antioch than Mar Mathew Athanasius and whom the defendants have acknowledged as their Metran in the most unqualified terms, and that too in the early days of his Bishopric when he was to all appearances a staunch and loyal supporter of the Antiochean See. In these circumstances, we must hold that the plaintiff church is in subordination to the Patriarch of Antioch and that the 1st plaintiff, who is his accredited Bishop, and duly accepted by the people as such, has both spiritual and temporal jurisdiction over the plaintiff church and properties belonging thereto. 10

On the whole, we are of opinion (1) that the Patriarch of Antioch is the spiritual head of the Malankara Church (2) that the plaintiff churches are included in that See; (3) that the churches and the properties shown in the plaintiff schedules are bound by a trust in favour of those who worship God according to the faith, doctrine and discipline of the Jacobite Syrian Church in the communion of His Holiness the Patriarch of Antioch; and that the plaintiff churches and properties are therefore subject to the spiritual, temporal and ecclesiastical jurisdiction of 1st plaintiff as the Metropolitan for the time being. We therefore direct that, subject to the approval of His Highness the Rajah, the decree of the Lower Court be reversed and one be drawn up as sued for, except with regard to the Kymuthu amount, the claim to which has not been pressed." 20 30

153. The parties to the present litigation have proceeded on the basis that the majority judgment Ext. B74 and the Cochin judgment Ext. B110 are binding on the community and that in all subsequent litigations relying on these, the parties and courts have proceeded to discuss and determine further questions arising in those cases. It might be noted that before Mar Dionysius had moved the civil court, the Zilla Court of Alleppey, in O. S. 439 of 1054, as noted earlier, the Patriarch had come down to Travancore and he had held a meeting of the representatives of the various churches owing allegiance to him as spiritual head in Mulanthuruthy. The Royal Court Judgment Ext. B74 has said that an order or a notice had been sent by the Patriarch to all churches owing allegiance to the Malankara Church to attend or to send representatives to the meeting at Mulanthuruthy. Representatives of 102 churches actually attended the meeting. The court has taken it to be the meeting of the representatives of the Malankara Church. In that meeting, the Patriarch as the Chief authority of the Apostolic Throne of Antioch and the Holy Father of the Jacobite Syrians of Malankarai, was made the President of the Assembly called the Synod. The purpose of the meeting was explained by the Patriarch as follows:— 40

"... for bringing out church in Malankarai, to be confirmed 50

in and subject to the Faith of the true worship and the call of the Apostolic Throne of Antioch for ever; for removing the disputes which have in diverse ways happened among our community, so that union and peace may be insured among us; for promoting education and multiplying its good fruits among us more and more; for checking the progress of the evil endeavours of him, who, though he has been anathematized and excommunicated by three of our successive Holy Fathers, persists firmly in his evil designs, and being self-willed, defies authority and in manifold ways offers opposition to our Church and who has by his transgression of the truth become invested with the title of Beliar and of his associates, it has to be considered what measures should be taken therefore.” 10

Ext. B74 would indicate that resolutions to the following effect were passed in the meeting.

(1) That the people of each parish should execute and register deeds of covenant binding themselves to be subject to and never transgress the mandates of the See of Antioch, that they should be guided and controlled in all spiritual matters by the Apostolic See of Antioch, that they should accept and be guided by books of Canons and rules prescribed by the Patriarch. 20

(2) That a Fund, out of public subscriptions in their community, should be formed for the purpose of meeting the expenses of litigation etc. to settle the disputes that had arisen between them and the followers of the opposite party as well as for the purpose of augmenting the common funds intended for the improvement of the community, that a committee known as Syrian Christian Association should be established with the Patriarch as Patron and the Metropolitan as President to administer the fund as well as to regulate the affairs of the Church. 30

(3) That the Committee had full authority subject to the supervision of the See of Antioch to administer the Fund to regulate the affairs of the Church and to alter the existing rules and frame new rules etc.

(4) That the Committee should collect and remit Rassisa to the Patriarch.

(5) That the Metropolitan, Mar Dionysius, as President of the Association should carry on all litigation regarding religious and social matters of the Church.

#### **The Vattippanam Case and the Travancore High Court Judgments:-** 40

154. It had been earlier noted while dealing with the history of the Church that a sum of 3,000 Star Pagodas (equivalent in value to Rs. 10,500) was invested in the funds of The East India Company by Mar Thoma VI also known as Mar Dionysius the Great in the year 1808, as a loan in perpetuity for charitable purposes, carrying interest at the rate of 8 per cent per annum. The interest on this investment was received by the successive Metropolitans of the Syrian Church in Malabar till about the year 1838 A. D. when disputes arose with regard to the beneficial interest in the Fund, between the Church Missionary Society at Kottayam and the Syrian Metropolitan. As had been noted earlier, the disputes were referred 50

to arbitration and the arbitrators, by their award in 1840 A. D. adjudged the interest from the Fund of the Syrian Church and recommended that "the disposal of the said interest should be under the management of the Metropolitan for the time being of the Syrian Church, conjointly with two others, an ecclesiastic and respectable layman of the same persuasion, to be selected by the Syrian community itself." The interest popularly known as Vattippanam was paid till 1877 A. D. to the then Metropolitan, Mar Mathews Athanasius and two persons named Chanda Pillai Kathanar and Ittiachan Pillai who had been elected co-trustees. After the death of Mar Mathews Athanasius, it was paid to his successor Mar Thoma Athanasius till 1884 A. D. when disputes arose within the fold of Syrian Church itself culminating in Ext. B74 judgment. In the suit, the claims of the late Mar Joseph Dionysius and his co-trustees to the fund were upheld as noted earlier. Thereafter, the interest continued to be drawn till the year 1908 A. D. by him and his co-trustees, one Konat Malpan and Korah Ulahannan, and after the death of Korah Ulahannan, his son, C. J. Kuriyan elected to his place as a co-trustee. In 1909 A.D. (corresponding to 1084 M. E.) Mar Joseph Dionysius died. He was succeeded by Mar Gheevarghese Dionysius. After Mar Gheevarghese Dionysius became Metropolitan, misunderstandings cropped up between him and his co-trustees, Konat Malpan and Korah Ulahannan and they had therefore declined to join him in receiving the interest which for this reason continued to accumulate from the year 1908 A. D. In 1909 A. D. Abdulla II, the Syrian Patriarch of Antioch, came to Travancore and stayed here for two years. Before he left, he issued a Bull in Edavom 1911 corresponding to 1086 M. E. excommunicating Mar Gheevarghese Dionysius alleging certain acts of misconduct and his physical incapacity, and at a Synod convened by him at Alwaye in 1087 Chingom, he appointed another as President of the Malankara Jacobite Syrian Christian Association and Metropolitan Trustee in succession to Mar Gheevarghese Dionysius. Mar Gheevarghese Dionysius and his adherents in their turn convened a meeting of the Malankara Jacobite Syrian Christian Association at Kottayam in Chingom 1087 and declared that the excommunication was invalid and inoperative and that Mar Gheevarghese Dionysius continued as the Malankarai Metropolitan and Metropolitan trustee. The meeting further removed Konat Malpan and C. J. Kuriyan from their office as co-trustees and appointed Mani Poulouse Kathanar and Korala Abraham as co-trustees in their stead. The rival bodies brought into existence by these proceedings turned to the Vattippanam as the most convenient object upon which to fasten their disputes and both sides pressed their claims before the British Resident. The Secretary of State for India therefore instituted inter-pleader suit, O. S. No. 94 of 1088, in the District Court, Trivandrum for the purpose of compelling the two parties to interplead each other for the purpose of determining the rightful claimants to the interest which he accrued due since 1908 A. D. The sum due was deposited in Court by the Secretary of State for India as required by Section 449 of the Travancore Code of Civil Procedure then in force and he prayed for an order of inter-pleader as well as the usual order as to costs to be paid out of the amount in deposit, and for other incidental reliefs and directions. The suit was with the permission of

the court converted in to a Representative action on behalf of the Jacobite Syrian Christian population of Malabar and notice was given of the institution of the suit under Section 26 of the Travancore Civil Procedure Code by public advertisement in the several jurisdiction peopled by the Syrian Christian community. In response to the notice certain persons got themselves impleaded as additional defendants to the suit. The Secretary of State for India in Council who was merely a stakeholder, was discharged from liability in respect of the subject-matter of the suit, by an order passed under Section 452 of the Travancore Civil Procedure Code and he was dismissed from the suit with costs to be recovered out of the sum in deposit to the credit of the suit. Written statements were filed by several defendants pursuant to an order of the Court passed calling upon them to interplead one another in respect of the right to the fund in dispute. As many as 33 issues were framed in that suit. 10

155. The findings of the District Court on the issues were that Mar Gheevarghese Dionysius was lawfully and rightfully appointed and recognised as Malankara Metropolitan and as such had become the Metropolitan trustee in respect of the plaint properties. The Patriarch of Antioch had only the right of spiritual supervision over the Malankara Jacobite Church and had no right to interfere in its internal administration. Patriarch Abdulla had been trying to secure authority over the temporalities of the Church and for that purpose had been taking documents from congregations and from ecclesiastics of the Church. The excommunication of Mar Gheevarghese Dionysius was due to his refusal to acknowledge this temporal authority and the grounds given in the Bull, except one, were all false to the knowledge of the Patriarch besides being vague and indefinite and were insufficient to justify the excommunication. There was no previous inquiry nor was Mar Gheevarghese Dionysius informed to the charges against him so the rules of natural justice were not complied with. The excommunication of a Metropolitan should be by a Synod and not by the Patriarch alone. The bull of excommunication was opposed to the constitutions of the Church as laid down by the resolutions of the Synod of Mulanthuruthy. For these reasons it was a nullity. Konat Malpan and C. J. Kuriyan had been validly removed from trustee ship and Mani Poulouse Kathanar and Korala Abraham had been lawfully appointed in their place. Mar Gheevarghese Dionysius had not rendered himself unfit to be Metropolitan Trustee by his conduct subsequent to the Bull. He had not accepted Abdul Messiah as the ecclesiastical head of the Church nor denied the authority of Abdullah. The Turkish Government had withdrawn the firman issued to Abdul Messiah who had thereafter been prevented from exercising his jurisdiction as Patriarch. However, that did not prevent him from exercising purely spiritual functions and it was such functions which he preformed in Malankara when he came there in 1087. Mar Gheevarghese Dionysius or his disciples had not become aliens to the Jacobite Syrian faith. The 4th defendant in that suit and after him the 42nd defendant in that suit had not been validly appointed as Metropolitan trustee. In the result, the District Court passed the decree that Mar Gheevarghese Dionysius and co-trustees should draw the 20 30 40 50

deposited amount from Court and should receive their costs from defendants 5, 6 and 42 including the costs of the nominal plaintiff which had been paid out of the amount in court.

156. As regards the powers of the Patriarch to ordain and remove Metropolitans both sides had contended that Canon Law, or the law governing the church was in their favour. It was admitted that the authority is a Book called "Hudaya" compiled in the Syrian language by one Bar Hebraeus, Catholicos of Tigris in the 13th century. Rival versions of the above book had been put forward. Mar Gheevarghese Dionysius and his associates relying chiefly on Ext. A in that case, 10 a work apparently of great erudition and scholarship published in Paris by one Paul Bedjan while the Metropolitan who had been appointed by Patriarch Abdulla after excommunication of Mar Gheevarghese Dionysius and his associates relied on Ext. XVIII in the case a manuscript copy of the Hudaya which had been apparently produced in the former case in the Cochin State known as the Arthat case (Ext. B110 of the judgment referred to earlier) and allege that a different copy of the same version was filed in the Royal Court case by the successful parties. The District Court accepted Ext. A (in that case) in preference to Ext. XVIII. The appeal from the District Court judgment was 20 heard by a Full Bench. The findings of the District Court were dissented from and the court accepted Ext. XVIII (in that case) in preference to Ext. A there "as the version of the Canon Law that has been recognised and accepted by Malankara Jacobite Syrian Christian Church as binding on it. The court held that under the Canon Law the Patriarch had the power of ordaining and excommunicating Metropolitans by himself and without the intervention of a Synod. In regard to exercise of such powers, the Full Bench said that there was nothing in the Resolutions of the Mulanthuruthy Synod limiting the powers of the Patriarch in matters of a spiritual 30 character or imposing restrictions on him in regard to the exercise of such powers. No special forms of procedure were prescribed for observance by the Patriarch before exercising his powers of excommunication. Only the rules of natural justice had to be observed. The full Bench was of the view that these rules had been observed by the Patriarch who had acted bona fide and without any corrupt motive. With this view, on account of the excommunication, the Full Bench held that Mar Gheevarghese Dionysius had lost his position as Malankara Metropolitan and as Metropolitan trustee. Therefore, it was unnecessary to express any opinion on the question whether he had 40 become a schismatic or alien to the Jacobite faith by his conduct during the visit of Abdul Messiah to Malankara subsequent to the excommunication though such conduct was regarded as throwing a flood of light on his actions prior thereto. The removal of Konat Malpan and C. J. Kuriyan as cotrustees was invalid as they were removed at a meeting of the Malankara Association presided over by an excommunicated Metropolitan. Therefore, the Full Bench held that their trusteeship continued and the fresh appointment was a nullity. By the time, the Full Bench had disposed of the suit, the 4th defendant was dead, therefore the court said that it was unnecessary to consider 50

his claims. The 42nd defendant in that suit had not proved that he had been appointed Metropolitan by the Patriarch, his title therefore was defective and he could not step into the shoes of the first defendant, namely Mar Gheevarghese Dionysius.

The Full Bench concluded the judgment as follows:-

“As a result of the findings recorded above, we reverse the judgment and decree of the District Judge and direct that the money now remaining in court out of the amount deposited by the Secretary of State for India in Council, be drawn by the defendants 5 and 6 and by the person to be hereafter duly elected, appointed and consecrated as the Malankara Metropolitan. The costs incurred by the appellants in both the courts, excluding the printing charges which will be borne by both sides, will be paid to them by defendants 1, 2 and 3 who will bear their own. Defendants 5 and 6 and the Malankara Metropolitan are also entitled to realise from defendants 1, 2 and 3 the amount paid as costs to the Secretary of State out of the sum deposited by him.” 10

The Full Bench decision is reported in XLI T. L. R. (**Mathan Malpan and 2 others v. Oolahannan Geevarghese alias Devannasios and 37 Others**). This judgment was passed on 10th Meenam, 1098. Subsequently after a considerable period had elapsed, an application was filed by Mar Gheevarghese Dionysius and his associates, to have the judgment reviewed on the ground that there were certain mistakes and errors apparent on the face of the record. There was an application to condone the delay in filing the review petition. The Review petition was allowed. The relevant portion of the order in the review petition was as follows:- 20

“In view of what has been stated above, it would appear that, on the facts as found by this court, it has not been shown that the decision of the Patriarch to excommunicate the 1st defendant was the result of the proceeding conducted in accordance with the rules of natural justice as laid down in paragraph 185 of the judgment, and further that an important argument relating to the mingling of the charge as regards which the 1st defendant had absolutely no notice with other charges, was not noticed by this court. On these grounds, it would appear that there was some mistake or error apparent on the face of the record or something which may be regarded as equivalent to this. Further, an important argument which goes to the root of this part of the case, has been overlooked. For these reasons, the judgment of this court cannot stand, but, as the parties had been put to considerable expense already and as the judgment of this court has been found to be unvitiating by error, except as to a part of it which can easily be separated from the rest, I would make it a condition as to the admission of the review that on the re-hearing, the findings recorded as to the authenticity of Exhibits A and XVIII, as to the power of the Patriarch to ex- 30 40 50

communicate without the intervention of the Synod and as to the absence of an indirect motive on the part of the Patriarch which induced him to exercise his powers of excommunication, must be taken as binding. Subject to these conditions, the Review is admitted, and the case will be posted before a Full Bench."

157. It would appear that another petition was filed to review the above order. There the prayer was that the court having granted the review, the whole case should be treated as reopened and should therefore be allowed to be reargued. It was said that the court in admitting a review had no jurisdiction to impose any restriction subject to which the case must be reheard and that in any case restrictions so imposed would not fetter the discretion of the court which rehears the appeal or suit to go into any part of the case if it should think it necessary to do so in the interests of justice. The court which heard the petition rejected the same holding generally that the court in admitting the review had jurisdiction to do so subject to restrictions and that the court which should subsequently rehear the case could not reopen the questions which had been declared not open to reconsideration in the order of admission. The decision arrived at by Chatfield C. J. was as follows:- 10 20

"on the considerations above mentioned, I would refuse to allow the petitioner to reopen any of the points as regards which the order admitting the review states that the findings contained in the original judgment must be taken as binding, except to the following extent. If it is found that any of these questions is so logically connected with the questions relating to natural justice that the latter questions cannot be properly dealt with without considering such excluded questions then for this purpose and for this purpose alone the excluded questions may be considered. Subject to this reservation, I would dismiss this petition." 30

Mr. Justice Thaliath

"We can also conceive of another set of cases. The decision on a particular issue may mainly as to a large extent rest on the decision on another issue in a case. If the decision on the latter issue were to be reversed in review, the court would have the discretion to reconsider the former issue also, even though it had been expressly excluded by the admission court. Except in the circumstances already mentioned, I am not, as at present advised, prepared to say that the court that rehears the case has the jurisdiction to open expressly excluded issues for reconsideration." 40

Mr. Justice Parameswaran Pillai concluded as follows:-

"I was not a member of the Full Bench which heard the case, but the learned Chief Justice who thinks that none of the excluded subjects is so logically connected with the questions relating to natural justice, that the latter question cannot be properly dealt with without considering such excluded questions. I am bound to respect this view, and as at present 50

advised, I am inclined to think that a proper and binding decree could be passed on the determination of the issue now re-opened and that that point can be dealt with separately without the reopening of the other points. If that is so, we ought not to cause unnecessary loss and inconvenience to parties and needless expenditure of public time by re-opening the whole case; and that this is the view which prevailed with the learned Chief Justice, will be clear from the following passage in his order admitting the review.....  
 Further, if the point now re-opened is separable from the rest and a binding decree could be passed upon the determination of it, the determination of the other issues in the case becomes unnecessary and superfluous. It is in this view that I agree to the order proposed. If on the other hand, after hearing the parties, or in the course of the hearing, on the issue now reopened, it is found that the point now re-opened is not separable from the other issues in the case and the reversal of the decision upon this issue may seriously affect the decision on any other issue or issues in the case, or that a binding and effective decree could not be passed upon the determination of this issue alone, then it will be open to this court to re-open the other issues or even the whole case.”

158. The Full Bench which reheard the matter, came to the conclusion that the excommunication of Mar Geevarghese Dionysius was invalid because the tribunal, namely, the Patriarch did not observe the rules of natural justice but condemned him unheard-XLV (1929) TLR 116. The Chief Justice observed that no question had ever been raised as to the ordination of Mar Geevarghese Dionysius being invalid and therefore he was Malankara Metropolitan and Metropolitan Trustee. As the meeting of the Malankara Association which removed the 5th and 6th defendants in that suit was presided over by the Malankara Metropolitan and the reason given in the judgment of that court for holding that their removal was illegal cannot therefore stand. The learned Chief Justice further observed that it would not be necessary to consider other questions even if it were open to that court to do so in view of the orders already referred to. Therefore the appeal was dismissed. In his concurrent judgment Thaliath J. said:-

“Having found that the excommunication of the 1st defendant cannot be considered valid by a Court of Law and that the plea of the 1st defendant's secession from the Church cannot be availed of by the defendants, in the absence of an ecclesiastical pronouncement relating to the same matter, the consequences pointed out in the judgment of the learned Chief Justice necessarily follow. And I concur in the decree proposed by my brother.”

Mr. Justice Parameswaran Pillai said in his concurrent judgment that as the excommunication of the 1st defendant (in that suit) was invalid, defendants 2 and 3 there, who were elected as trustees in the place of defendants 5 and 6 there must be held to have been regularly and



validly appointed in their place. As these findings were sufficient for the disposal of the appeal before him, it was unnecessary to consider the other issues in the case.

159. Before we go into the subsequent litigation within the church, we may note certain facts which had been noted in the Vattippanam Case. Abdul Messiah was Patriarch of Syrian Jacobite Church. He subsequently ceased to act as such and Abdulla II was duly elected as the Patriarch. The circumstances under which Abdul Messiah was removed and how Abdulla II was ordained were points at dispute in the Vattippanam case and subsequent litigation known as the Samudayam Case. The case on the Catholicos side was that Abdul Messiah ceased to act as Patriarch on account of the withdrawal by the Turkish Government of the Firman issued in his favour which disabled him from exercising certain Judicial or administrative functions in his diocese. Two things seem to be conceded on both sides, namely that the Firman issued to Abdul Messiah was withdrawn and that such withdrawal in itself has no effect on the exercise by a Patriarch of purely spiritual functions. The case on the Patriarch's side was that the withdrawal must have been the result of some judgment of the Syrian Church itself. Otherwise, another Patriarch could not have been ordained or if by any chance, this did take place the Patriarch who was ordained subsequently could not have officiated. It was Abdulla who ordained Mar Gheevarghese Dionysius as Metropolitan when he came to Malankara. It would appear that there was a campaign to get direct udampadies, which acknowledged the Patriarch's temporal powers. There was resistance from some clergy men and Metropolitans with regard to this. Mar Gheevarghese Dionysius convened a meeting on 22-1-1087 of the Malankara Association and at that meeting they unanimously condemned the Patriarch's activities, reaffirmed their adherence to Mar Gheevarghese. At the initiative of the supporters of Mar Gheevarghese Dionysius, Abdual Messiah came to Malankara and did certain acts. He declared the excommunication of Mar Gheevarghese invalid, established a Catholicate in Malankara and installed a senior Metropolitan as Catholicos who could ordain Metropolitans for Malankara, consecrate morone for use even as the Patriarch could do without any reference to the Patriarch. It would appear that it was provided that the Metropolitans could install a Catholicos in the place of the Catholicos when he dies and no one can resist this right of the Metropolitans to so install. According to the plaintiffs (here I am referring on the basis of the party array in O. S. No. 4 of 1979) the move to obtain practical independence by means of a Catholicate was not a sudden thought to get over the crisis created by the excommunication of Mar Geevarghese Dionysius, but a move of the Church as a whole from 1899 onwards. They would say that Kora Mathan Malpan, who later for his personal purposes became an unrelenting and uncompromising protagonist of the Patriarch and his absolute powers was a prime mover in this. Atleast a section of the community desired to have a Catholicate established here, firstly because they were anxious to avoid dependency on Antioch for ordination involving the high expense of sending persons to Syria or getting down a delegate from there or it might be due to the animosity to Patriarch, Abdulla.

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Catholicos was consecrating morone which is the exclusive privilege of the Patriarch and defendants and their partisans had newly established a Catholicate which was a negation of the authority of the Holy See of Antioch; that the acts and conduct of the decisions were against the tenets of the faith and had rendered them aliens; and that the defendants and their adherents had voluntarily separated themselves by forming the Malankara Orthodox Syrian Church according to which ordination of Metropolitans, consecration of morone, issue of staticons, allotment of Edavakas etc., could be done by the Catholicos and others in repudiation of the Patriarch. These acts rendered them apostates and they had lost their right to membership of the Church. The first plaintiff, it may be noted, was the 42nd defendant in the Vattippanam Case. The defendants there repudiated the plaint allegations. The case went on to trial and after a very large volume, of evidence was recorded the District Court on 18-1-1943 dismissed the suit recording its findings on the several issues raised in the case. This judgment is marked as Ext. A16 in this case. As the findings in this judgment, which according to Mr. S. Narayanan Poti, learned counsel for the plaintiffs, had been affirmed by the Supreme Court in the appeal in the matter to the Supreme Court, I think it will be necessary to refer to the important findings recorded by the District Judge.

#### **Ext. A16 Judgment of the District Court, Kottayam:-**

163. The District Judge said therein that the case of synodical enquiry and decree of 1903 in the matter of Abdul Messiah is false and unfounded. There was only the withdrawal of the firman by the Sultan of Turkey in 1905 followed later on by the election of Abdulla II as per orders of the Sultan and this withdrawal of the firman was not preceded by and was not consequent on any synodical decree or enquiry and was also not consequent on any complaint to the Sultan by the prelates and people regarding Abdul Messiah's misconduct, mal-administration etc., or heresy but appeared to have been the result of the displeasure of the Sultan and was also probably brought about by the machinations and influence of some prelates who were inimical towards Abdul Messiah. Abdul Messiah was never guilty of any heresy or heretical conduct or any misconduct or maladministration or madness or brain disorder or of any other fault which would have deprived him ipso facto of the Patriarchate or which would have justified any excommunication, deposition or removal by a synod or by the civil power. In consequence of the withdrawal of the firman and in consequence of the election and investiture of Abdulla II Abdul Messiah was rendered incapable of openly exercising his jurisdiction and powers in the territories of the Sultan for some time and Abdulla II was able to exercise jurisdiction as a Patriarch though he was not the rightful and canonical Patriarch competent to function. Abdul Messiah and a section of the people did not submit themselves to the action of the Sultan. They resented it and though they were not able to restore Abdul Messiah and dethrone Abdulla II, Abdul Messiah appeared to have been able to exercise jurisdiction secretly for some time in remote parts and later on openly in Malankara and after his return from Malankara he was able to get back to his Patriarchal seat and throne and exercise his jurisdiction

openly when the obstruction caused by the civil power was removed. Abdul Messiah was thus competent to exercise and was validly and rightfully exercising the jurisdiction pertaining to the rightful and canonical Patriarch from the date of his installation till his death in Seema and in Malankara though for some period he was prevented from freely and openly exercising it in the Turkish Sultan's territory. Abdulla II though he was elected and put on the throne of Antioch owing to the Sultan's influence and probably the support of some prelates (the District Judge said that there was no evidence to show how many prelates took part in the election and supported him in the election and after investiture) 10 and though he was able to exercise jurisdiction in the Sultan's territory and in Malankara, he was never accepted by Malankara or the whole Jacobite Church as the sole and only Patriarch competent to function; nor was his acceptance by Malankara due to or consequent on any recognition by Malankara that Abdul Messiah had been excommunicated or deposed by any competent ecclesiastical tribunal or synod either for heresy or any other guilt or misconduct or that he had lost his competency and capacity to function and exercise jurisdiction as Patriarch because of his heresy or any other guilt.

164. In regard to the Patriarch's power over the Malankara Church, 20 the District Court said that it is not within the province of that court to lay down comprehensively what all powers the Patriarchs of Antioch have or may have or may not have as the supreme head of the Jacobite Church in matters with which the parties to the suit were not in issue. The District Judge held that the Patriarch acting by himself or through a delegate duly authorised in that behalf was the only authority competent to consecrate or ordain a Metropolitan or Malankara Metropolitan in or for Malankara, that the Patriarch acted in his own right and not synodically and that he need not act synodically. It was also held that unless it was shown that the Catholicate had been validly established, 30 the above rule and practice must and will continue in force. The resolutions of the Mulanthuruthy Synod do not and could not curtail the canonical powers of the Patriarch in the matter of ordination and excommunication. When the Patriarch ordained the Kaivappu must be by him as it is the Kaivappu that imparts the grace. If the Catholicos is held to be valid, the Catholicos will be entitled to perform the act of Kaivappu. If the Patriarch specifically authorises a delegate or the Metropolitan of a province to ordain a person as a Metropolitan or episcopa he can also perform the Kaivappu. The Morone can be consecrated by the Patriarch and the Catholicos. But, if the Catholicate is validly established 40 the Catholicos can also consecrate Morone.

165. As regards the allocation of edavagas in Malankara, the learned District Judge makes a detailed consideration of the question. He points out that this question did not form the subject matter of consideration or decision in the Royal Court Judgment in the Seminary Case (Ext. B74 here). This was so even though the alleged division of Malankara into seven Edavagas and the ordination of six additional Metrans and the issue of stathicons to them had taken place before that suit was filed in 1052. It had been contended before the District Judge that the Patriarch had the right to ordain and appoint the various 50

Metrans to specified Edavagas by issuing stathicons and orders of appointment. Only they have to be accepted by the people of the respective Edavagas before they can exercise jurisdiction or function there. According to the defendants in that suit, the right to allocate Edavagas as distinct from ordaining the Metropolitans did not vest in the Patriarch and does not and will not vest in the Catholicos either, but has all along vested in the whole Malankara Jacobite Syrian community and on the Malankara Association as its accredited representative body, after that accredited body was constituted by the Mulanthuruthy Synod. The court said in Ext. A16 judgment that on principle the right to exercise the ultimate deciding voice in respect of the Malankara Metropolitan and in respect of the Edavaga Metropolitan is the same and unless the evidence in the case justifies the claim on the plaintiffs' side that Malankara was divided into seven mutually independent dioceses each directly under the Patriarch, and the Malankara Church was completely shrone of its oneness and unity and the Metropolitan of the whole of Malankara was degraded to the position of an Edavaga Metropolitan with one additional right or duty of being the manager along with two other trustees of common trust properties and was further deprived of his position as the head of the spiritual and temporal government of the whole Malankara Church as recognised in the Seminary Case judgment, there is no warrant for holding that either the Patriarch had the sole or deciding power and voice in the matter or that the Patriarch's power was limited or restricted to or subject only to, the consent and acceptance of the people of the respective Edavagas. After pointing out that it cannot be denied that the Jacobite Syrian Association which was a creation of the Mulanthuruthy Synod, was a representative body that had the right to bind the whole community and all the Churches by its deliberations and actions, and then after a consideration of the whole evidence in the case, the District Court concluded that the position taken up by the plaintiffs in the case before it, is quite untenable either on the basis of custom, precedents or evidence. The Patriarch was entitled to and was the only person entitled to ordain Metropolitans for the Edavagas in Malankara. But the persons so ordained must be persons elected by the whole Malankara Church as represented by the Malankara Association or they must be accepted by the whole Malankara Church after ordination by the Patriarch. The ultimate deciding voice rested with the whole Malankara Church as represented by the Association. Though it had been the practice for the Patriarch to issue a stathicon also naming the Edavaga, that circumstance is only an evidence of the fact of ordination and does not mean an appointment in the sense of the final deciding authority. Election by or consent of or acceptance by the respective Edavaga people alone will not suffice. The court further pointed out that the valid institution of the Catholicate also will not affect this matter. The deciding authority will continue in the whole community, i. e. the Malankara Association. However, the District Court was of the opinion that the same principle and practice apply to the case of Malankara Metropolitan also. The court had no hesitation in coming to the conclusion that the Patriarch has no temporal authority or jurisdiction or control whatever over the Malankara

Jacobite Syrian Church and its temporalities or over the temporalities of the Parish and other Churches and their properties in Malankara. The power of general supervision over the spiritual government of the Church which is conceded to the Patriarch in the Seminary Judgment does not and would not carry with it by necessary implication the right to interfere in the administration of the temporalities and properties of the Malankara Church or churches whether suo moto or on the application of any of the members of the Malankara Church or of any of the parish churches nor would such right of general supervision over the spiritual government, necessarily carry with it by necessary implication the right to inflict spiritual punishment for mismanagement or misappropriation of church assets or misfeasance or malfeasance in respect of trust and other properties of the Church. This will not however be taken to deny the canonical powers if any which the Patriarch may have to inflict spiritual punishment on the Malankara Metropolitan or Metropolitans or clerics or laymen of the Jacobite Church (in and out of Malankara) for any ecclesiastical offence or any offence which may have a spiritual character or offence involving moral turpitude if under the Canons and disciplinary rules of the Church, the Patriarch has got such right. 10

166. In regard to Ressisa, the court was of the view that it has not been made out so far as Malankara is concerned that Ressisa is a compulsorily leviable contribution which the Patriarch or any other dignitary in the Church is entitled to as a matter of right or as a payment which could be enforced on penalty or any punishment ecclesiastical or otherwise. It may be a voluntary payment which may be payable to the Patriarch, Catholicos or Metropolitan or other Church dignitaries. 20

167. The court said that it was unnecessary for the purpose of that suit to determine or decide in a general and comprehensive manner or define exhaustively all the powers that the Patriarch may have over or in respect of the Malankara Church as the supreme spiritual ecclesiastical head of the whole Jacobite Church including Malankara. That it was so stated by both sides in the suit. 30

168. The court then went on to consider the question of the Catholicate, its establishment etc. It was of the view that the establishment of the Catholicate was not the result of any sinister motive on the part of Mar Geevarghese Dionysius to escape the consequences of the excommunication order but to fulfil and satisfy a long cherished unanimous real and genuine desire of the whole community for upholding and maintaining the integrity, dignity and independence of the Malankara Church while maintaining its connection with the Antiochean Throne and as a preventive to further inroads by the Patriarch. 40

169. The court found that the acts of Abdul Messiah in conjunction with Mar Geevarghese Dionysius the Malankara Metropolitan and those who supported him in establishing the Catholicate, in ordaining Mar Evanios, the first Catholicos and the Metrans and the subsequent installation of Mar Philexinos and Mar Basselius Geevarghese II as second and third Catholicoses were accepted by the Malankara Church and on its behalf by the Malankara Association and managing committee in successive meetings convened lawfully and in a binding manner. The court found that everything was done in such a manner as to bind the Malankara Church. The court further held that the Patriarchal party after tacitly 50

acquiescing in or admitting the validity of the Catholicate and its continuance and the perpetuation, put forward the alleged invalidity of the Catholicate and invalidity of the ordinations of the Catholicoses, as the main plank in their case when the contentions they put forward originally did not find favour with the court in 45 T. L. R. decision.

170. It would appear from Ext. A16 judgment that both sides to that case had argued before the trial court that the opinions expressed in Ext. B74 judgment (Ext. DY in that case) as regards the history of the church will not operate as res judicate and will not bind either parties. The learned District Judge however disagreed and said that granting it is permissible for the court to come to its conclusions, that will not take the parties any further. The court also positively held that it will not be permissible for the court to arrive at any finding on the question of relationship or connection between the Patriarch of Antioch and Malankara Church different from those expressed in Ext. B74. The court also stated that even if it were to come to a conclusion different from those arrived at by the majority judgment in Ext. B74, the court cannot hold that at any time prior to Ext. B74 judgment or prior to 1088 when the Catholicate was established here, the nature scope and extent of the relationship that subsisted between Malankara and the Jacobite Patriarch of Antioch were those which subsisted between any area of diocese under the direct jurisdiction of the Catholicos of the East and the Patriarch of Antioch. However having stated this (see para 89 of Ext. A16), the District Judge goes on independently to consider the history of the church and comes to the following conclusions:-

“From the above discussion on the basis of the materials placed before me in this case, it is clear that the following conclusions may safely be drawn, that the introduction of Christianity in Malankara whether in the 1st century or 3rd century was through Persia and not from Antioch direct, that through the ages the connection between Malankara and the Church in western Asia was with the great Metropolitan or Catholicos of the East at Selucia and subsequently with the Jacobite Catholicate of the East which functioned with headquarters at Tigris under the name or title of Maphrian, that even after the Catholicate at Selucia turned Nestorian the Malankara Church retained its connection with the Jacobite Maphrianate of Tigris, that though during the period preceding the coming of the Portuguese in the west coast of South India the Nestorians may have attained ascendancy in the contest between the Nestorian and Jacobite Catholicate for the supremacy over the East (including Malankarai) and brought Malankara under the Nestorian influence in the sense that they were sending bishops to Malankara, the Malankara Church and the community always retained and stuck on and tried to stick on to what it considered the true orthodox faith, i. e. (the Jacobite faith), that so far as the period preceding 1652, the evidence afforded by history shows that there was no connection between Malankara and Antioch direct, that after the Roman Catholics’ attempt to swamp the Jacobite Church ultimately failed with the Koonamkurisu oath, the Jacobite Church of Malabar sought and had to seek ordination

from Antioch, Alexandria, Babylon etc., because they were prevented by the Portuguese obstructing and placing obstacles in the way of its seeking and getting ordination from Persia and the Jacobite Catholicate at Tigris, that during the period between 1652 and the time when Mathew Athanasius got ordination from the Patriarch of Antioch, the evidence does not clearly establish that it was from Antioch either directly or through delegates sent from Antioch that Malankara got its Bishops ordained, that there is no clear evidence to show that the Jerusalem Patriarch and the two Besseliuses who came in 1665, 1685 and 1752 were sent by or under the orders of the Patriarch of Antioch, that the probabilities are more in favour of their having come of their own accord, that during the period of Mar Thoma Metrans when the validity of the ordination of some of them was questioned, these Metrans had put forward the plea that Malankara had all along had its ordination from Antioch direct through its delegates, that finally Mathew Athanasius and Joseph Dionysius got their ordination from Antioch direct at a time when the Catholicate at Tigris had become vacant, that when the Malankara Church tried to get a Maphrianate or a Catholicate after DY judgment it put forward its claim and tried to sustain and justify it on the ground that it had originally been under the jurisdiction of and formed part of the Jacobite Catholicate under the Patriarch of Antioch and when it finally got the Catholicate from Abdul Messiah it was not as a new institution unknown to Malankara or the Jacobite Church that it was granted but as an institution well recognised by and within the frame work of the Jacobite Church. It may be that Ext. 80 has not purported to grant to the Catholicate established in Malankara in 1088 all the territorial jurisdiction which the Maphrian or Catholicos of Tigris or Selucia originally had and that all that was intended was the Catholicate established here should have all the powers of the Catholicos or Maphrian, in Malankara. The claim put forward on the defendants' side that the Catholicate established here has jurisdiction over the whole eastern portion of the whole Jacobite Church (i. e. including places outside Malankara and India) may not be sustainable and does not appear to have any basis. But it is clear that the institution of the Catholicate, established here in 1088 is a revival of the Jacobite Catholicate or Maphrianate which had its headquarters at Tigris and which had fallen into abeyance for some time."

171. The District Court in Ext.A16 judgment was also of opinion that Mar Geevarghese Dionysius and his adherents were fighting for to retain the autocephalous nature or status which the Malankara Church had attained by the establishment of the Catholicos by Abdul Messiah. The court also found positively that the acts and claims made on behalf of the Catholicos' side did not amount to defiance of the authority of the Patriarch and they were not against the tenets of the Jacobite Church and did not amount to heresy. They had not made themselves heretics or aliens to Faith. They have not in any way ceased to be members of the



**Ancient Jacobite Syrian Church.** The court found that the Metropolitans on the Patriarch side including the first plaintiff in the case were not Metropolitans who had been elected or accepted by the Malankara Association and they were not validly exercising jurisdiction. They were not entitled to be joined with the managing committee of the Association. There was no need for their consent in convening a meeting of the Association. Therefore, according to the court the association meeting held on 11-5-1110 was validly and duly convened by the competent authority. The court also found that the Karingasseraï meeting convened by the Patriarch supporters was not convened by competent persons, there was no notice of that to all the churches and the meeting hence cannot bind the Malankara Church. 10

172. Ext. A16 also goes to the question of the correct version of the Hudaya canon. The issue that arose there was what is the correct or genuine version of the Hudaya canon compiled by Bar Hebraeus; whether it is Ext. A or 18 of O. S. No. 94 of 1088. The District Judge said that in the broad and general form stated in the issue, the question does not arise or call for consideration in the case. It was admitted by both sides that, if at all, the determination or decision of questions of this nature can come within the cognizance of a civil court and within the compass of its jurisdiction only to the extent that they will affect the determination of the civil rights or rights to properties as between the parties to the suit on the matters involved in the suit. The court then goes on to consider the effect of the decision in 41 T. L. R. 1, where the Travancore High Court had said:- 20

“After a careful consideration and for the reasons which will be detailed presently, we have come to the conclusion that on the points now coming up for decision, it is the version found in Ext. 18 that should be regarded as the version of the Hudaya Canons, accepted as authentic by the Jacobite Syrian Community and binding on them.” 30

The learned Judge refers to 45 T. L. R. and comes to the conclusion that the final result then is that the discussions and conclusions on the question relating to the canons do not operate as Res judicata and when the question is raised in the case before him, that court had to deal with the matter afresh, no doubt giving due weight to the pronouncement in 41 T. L. R. 1, being the pronouncement of the highest court in the land in a matter of importance. The court then points out that as per the pleadings of the plaintiffs in that case, their right to relief in the suit is not on the basis of the canons or on the strength of Ext. A18 in O. S. No. 94 of 1088. No mention whatever had been made in any portion of the plaint to Hudaya canon as supporting their view advanced in the plaint on any of the questions arising in the suit. But in the defendants' written statement and pleadings, the question of the canons had been raised. In their special pleading, they had said that the relationship between the Patriarch and the Catholicos were as indicated in the Hudaya canons exhibited as Ext. A in O. S. No. 94 of 1088. Then there is a detailed discussion of the evidence in the case and the court finds:- 40

“i. that no Hudaya canon book approved as authentic 50

and genuine by the patriarch has ever been supplied to the Malankara Sabha though there was an undertaking by Peter III to that effect at the Mulanthuruthu Synod.

ii. After the date of the Mulanthuruthy synod, the versions of the canons that happened to be produced in court for the first time were Ext. EEE in DY suit and Ext. PP (filed in the Arthat case and other cases). Both these versions happened to come from the Konattu Mathan Malpan's family. Both these manuscript canon books are seen to be of questionable origin; they were produced for the specific purpose of propping up the powers of the patriarch in and over the Malankara church 1st in the contest with Mar Thoma Athanasius and later on against Mar Geevarghese Dionysius. It has been clearly made out from the evidence that from 1069 Chingom Kora Mathen Malpan was in possession of Ext. 153 a very old manuscript which is seen to have come into his possession from proper custody. There does not appear to be any reason for doubting the genuineness of Ext. 153 or of doubting that it is not so ancient as it purports to be. He suppressed that and produced Ext. BP in courts of law apparently with sinister motives because Ext. 153 would not have served the purpose which the production of a canon book was then intended to serve. Ext. 68 canon book corresponding to Ext. 153 and 156 tallies with other manuscript versions which were even then in vogue and in use in the community. These manuscripts Exts. 153, 68 and 156 at least had been in existence before Ext. XXVI printed version was published and came into vogue. When Ext. 26 book was published and it became available, that was freely got down and supplied for use in the Malankara Jacobite Sabha and for use in its seminaries and among the clergy and laity by the Patriarch's delegate himself and apparently with the knowledge and consent of the Patriarch; and till after the controversies arose in 1086 as a result of the actions and conduct of Abdulla II, no one here in the Malankara Sabha or any where in the Jacobite church questioned the correctness and genuineness of Ext. XXVI version or contended that it should not be accepted or followed. Thus though no particular version of the canon was formally and authoritatively accepted or approved by the Patriarch or the Jacobite church or by the Malankara church, Ext. XXVI and manuscript versions corresponding to it, which had been in vogue and in use here even previously (e.g. Exts. 153, 68, 156 etc.) were allowed to be used and were being actually used by prelates, seminaries, etc., in Malankara unquestioned while it does not appear that Ext. BP version was ever used by any body (except by Mathan Malpan for production in court). It is not shown that either in Malankara or in Syria or Turkey or other places under the

Patriarch or any where in the Jacobite church outside Malankara, there is or has been in existence and in use any version of the Hudaya canon corresponding to Ext. BP or that such a version has been approved and accepted by the Jacobite church as a correct version. On the other hand Ext. XXVI version is seen to have been in use in Malankara and in Seema ever since its publication as a correct and genuine version though it has not been formally approved by the Patriarch. After the controversies began the difference between Ext.XXVI and BP versions has assumed and has been made to assume importance and on the basis of this difference the Patriarch and his adherents in Malankara have been and are still contesting that BP is the correct version. But on this account it cannot be held that BP has been approved or accepted by the whole Jacobite church or the Malankara church as the correct and genuine version.” 10

It might be noted that Ext. XXVI is the same as Ext. A in O. S. No. 94 of 1988.

173. The District Court on a consideration of all the issues in the case dismissed the suit with costs. 20

**Appeal from Ext. A16 to the High Court of Travancore and the Full Bench decision in 1946 T. L. R. 683:-**

174. Aggrieved by Ext. A16, the Patriarch appointed Metropolitan Mar Paulos Athanasius and his two co-trustees took up the matter in appeal to the Travancore High Court which by majority judgment (Justice Nokes and Justice Sathyanesan) set aside the District Judge's decision and decreed the suit in regard to some of the main prayers therein. By majority it was ruled that it was clear from the history of the Malankara Jacobite Syrian Church that the Syrian community meant the adherents of the church in 1840 and their successors. The properties subject to the trust are for the benefit of the members from time to time of the Malankara Jacobite Syrian Church which is subject to the ecclesiastical or spiritual supremacy of the Patriarch of Antioch. Justice Nokes in his concurring judgment pointed out that as one of the principle meanings of "Ecclesiastical" is 'of the church', if the Patriarch is the head of the church, it may be redundant but it cannot be inaccurate to describe him as the ecclesiastical head. The office is spiritual in the sense that the church is primarily and ultimately concerned with the welfare of its members. When a congregation becomes dissentient among themselves, the original institution must alone be looked as the guide for the decision of the court and to refer to any other criterion as to the sense of the majority, would be to make a new institution which is altogether beyond the reach and inconsistent with the duties and character of the court; the majority was of the view that no reasonable person can doubt that the spiritual supremacy of the Patriarch of Antioch was a fundamental principle in the opinion of the founders of the trust. The refusal of the defendants in that suit to acknowledge that supremacy must be regarded as a repudiation of a fundamental principle. Persons who persistently reject the head of a Church cease 30 40 50

to be members of that church, which aspect is emphasised by setting up a local rival in the Catholicos and diverting to him the contributions due to the head of a church. The majority decision was of the view that the canon recognised in the Jacobite Syrian Church at all material times is that contained in Ext. BP in that case (Ext. XVIII in the former suit – Vattippanam Case). The decision further held that the approval by the Patriarch of the Malankara Metropolitan is necessary. The power of ordaining Metropolitans either directly or by authorised delegates is one of the powers attached to the Patriarch by virtue of his supremacy. So also sending Morone (holy oil) to be used in churches. Ressisa is an acknowledged claim of the Patriarch at least from the last century and as laid down in the canons. The written constitution for the church adopted by the defendants in that suit does not recognise the ruling Patriarch of Antioch and would not recognise him unless he were accepted on terms which inter alia restricted his supremacy in matters of faith. They, the defendants therein, rejected the recognised version of the canon of the church and provided for a Catholicose without reference to the approval of the Patriarch, thereby depriving the Patriarch of his right to disapprove a candidate for the office of Catholicose or of Malankara Metropolitan and also curtailing the right of the Patriarch in respect of ordination and Morone. They also decided to divert to the Catholicose contributions of money from Malankara due to Patriarch. The majority decision took the positive view that the defendants in the case had by their action and conduct become members of a new church before the meeting in which the plaintiffs in the suit were elected trustees and the defendants' party were not entitled to any invitation for the meeting of the Association and were rightly excluded. Defendants 1 to 3 in the suit having seceded from the Jacobite Church must be deemed to have ceased to be lawful trustees of the Malankara church trust.

175. The third Judge, Krishnaswami Aiyar C. J. in his dissenting judgment took the view that two new churches in Malankara have come into existence in legal import, one with the Patriarch and the other without him. The learned Judge then said:-

“Hence the trusts constituted for services in the old Malankara Jacobite Church for its continuance and efficiency would naturally fail. But as the trusts were public religious charitable trusts this court as a court of equity could apply the doctrine of Cypres and allot the trust properties to kindred charities permissible under the law. The question of applying the Cypres doctrine and the earlier question as to whether the trusts have failed cannot and ought not to be decided in the absence of the Dewan, the protector of charities in this State. These are questions of far-reaching consequence which require fresh argument of counsel as also the presence of the Dewan as the protector of charities before the court. Any decision rendered in this case without the Dewan on record will be otiose for he will not be bound by any decision to which he was not a party. It would have

been a very satisfactory course to have added the Dewan as a party and to have heard him and to have finally decided the questions arising for decision in his presence and if possible to have divided the properties Cypres between the combatants if that be permissible. As that course has been found not possible, I can only say, I say it with all regret, the decision rendered by this court in this case will not in my humble view, finally decide the question of the legal effect of Exhibit Z as against the trust nor whether the old Jacobite Church at all survived and in whom. The decision 10  
can only declare the trustees and no more. The person vitally interested in it is the protector of charities. He is not a party to the suit or appeal.

It has been contended with great insistence on behalf of the plaintiffs, that the constitution Exhibit AM amounted to repudiation of the Patriarch. Exhibit AM does not say that the Patriarch of Antioch is not to be the Spiritual Head under the new constitution. But is it open to the Patriarch to direct that the Catholicos' party do walk out of his spiritual suzerainty and complain at the same breath that Catholicos' 20  
party have not recognised his supremacy. Exhibit Z is not claimed by the learned advocate for the appellant as a bull of mass excommunication. If it be an act of suzerainty, it is legally bad. If it be not that, it can only amount to his secession and the withdrawal of his spiritual supremacy over the party of the Catholicos. The repudiation of the spiritual union of the Church as regards the Catholicos' party cannot leave behind it subsisting a duty on the Catholicos' party to preserve the supremacy of the Patriarch. The duty of loyalty to the Patriarch was destroyed when the Patriarch repudi- 30  
ated his communion with the Catholicos' party. The supremacy of the Patriarch of Antioch cannot be thrust on the Patriarch in spite of his earlier repudiation of the same. For he cannot be bound by the constitution to which he was no party. The Patriarch commits what was not right by purporting to put out the Catholicos' party if the right over the trusts were intended to be preserved. The later resolution of the Catholicos' party – be it remembered the Patriarch has never withdrawn Exhibit Z – framing a constitution cannot be found fault with because it implicitly recognised 40  
the fact of the repudiation of the Patriarch of his spiritual headship of the Catholicos' party. He would be estopped by his own conduct from putting forward this contention. The Patriarch has ceased to be the Head of the whole Jacobite Syrian Church of his own will and by his own action and has thereby destroyed the original Jacobite Church. The Church of the plaintiffs and the Church of the defendants must in the eye of the law be considered as two distinct Churches just come into existence, on the extinction of the old Jacobite Church. It may be that by the application of 50

the doctrine of Cypres the properties may be evenly distributed between the two combatants but this suit is bound to fail on the ground that neither side has now the right to represent the old Jacobite Church. In my view it must be left to the Dewan to take such steps as he may be advised for the protection of trust properties in respect of which the trust has failed."

About the establishment of the Catholicate he said:-

"My learned brother's opinion about the Catholicate, I am unable to accept. The definite concession was made by the learned advocate for the Patriarchal party before the Full Bench hearing the review recorded in the judgment of the then Chief Justice, that had the Catholicos been established not by Abdul Messiah but by Abdullah, everything would have been proper. The only objection that jarred on the religious sentiments of the Patriarchal party was, as it was appreciated in or about 1103, that the Catholicos was established by Abdul Messiah. More sensitiveness would appear to have been developed later and if justification could be found for it, I can only say, I prefer to proceed by the admitted consciousness of the Church community as clearly expressed in the former judgment of Chatfield C. J., rather than speculating on the intrinsic justifications or otherwise drawn from authorities of which the general body of Church community and the Patriarch were not then aware. My learned brother would go so far as to say that the essential character of the Jacobite Church is not democratic but monarchical or aristocratic. This involves the negation of the principles on which the case was argued, viz., the applicability of the Free Church Case to the present dispute and the declarations of all the prior authorities of this court and the Cochin Court about the independent character of the Jacobite Church.

176. Within two weeks of the judgment of the Full Bench, the Catholicos side, namely the defendants respondents before the Travancore High Court, filed a petition seeking a review of that judgment. A Full Bench of the Travancore-Cochin High Court heard that application, since by the time the application came up for hearing, the new State of Travancore-Cochin had been found. The review application was dismissed on 21st December, 1951. Defendants made an application for leave to appeal to Supreme Court, which was also rejected. But special leave was granted by the Supreme Court and accordingly the defendants preferred an appeal to the Supreme Court against the order dismissing the review petition. The Supreme Court allowed that appeal and accepted the review petition and set aside the decree dated 8th August, 1946 passed by the Full Bench. The case was remitted back to the High Court with a direction that the entire appeal should be reheard on all the points unless both the parties accept any of the findings recorded in the earlier decision. As there was no such agreement between the parties, but on the other hand, they chose to

argue afresh all the points involved in the appeal, a Full Bench of the High Court consisting of Justice Sankaran, Justice Kumara Piliai & Justice M. S. Menon heard the matter in detail and pronounced the judgment in the case on 31st December, 1956.

177. The decree that was passed by the High Court was in the following terms. Plaintiffs 1 to 3 there were declared as validly elected trustees to be in management of the plaint items as had been found to be joint trust properties of the Malankara Church and also that as trustees they were entitled to maintain the suit. The court also upheld the alternative claim that the plaintiffs could maintain the suit in their representative capacity. By the time the appeal was disposed of, plaintiffs 1 and 2 and defendants 2 and 3 were dead. Therefore, the decree was passed in favour of the surviving 3rd plaintiff to recover all the items which had been found to be common trust properties from the 1st defendant who was in sole possession of those items after the death of defendants 2 and 3, and also from those who were holding the properties under the first defendant. A perpetual injunction was issued against the first defendant from dealing with the properties covered by the decree and also from doing any act as Malankara Metropolitan. The third plaintiff in that suit - trustee was directed to convene a meeting of the representatives of all the churches in Malankara, which continued allegiance to the Patriarch of Antioch, and which also accepted the fundamental principles governing the plaint trust as specified in that judgment within six months from the date of that judgment. The meeting was to elect the Metropolitan trustee and also the other two trustees. The Metropolitan trustee thus elected will be one ordained by the Patriarch or his duly authorised delegate. The 3rd plaintiff trustee was thus to surrender possession of the trust properties and their management to the three trustees elected in this manner. The election was to be controlled and supervised by a Commissioner to be appointed by the court on the 3rd plaintiff's application. The High Court further directed that if the 3rd plaintiff failed to make the necessary arrangements in time for the meeting to be held for electing the new trustees, one or more of the representatives of any of the churches owing allegiance to the Patriarch, in the manner indicated, could apply to the court for appointing a commissioner to call together a meeting of the representatives of the churches and have the new trustees elected. This decision of the High Court in *The Most Rev. Mar Paulose Athanasius and Others V. Moran Mar Bassaelios Catholicos and Others* is reported in 1957 K. L. T. 63 (F. B.)

#### **The High Court Judgment in 1957 K. L. T. 63:-**

178. The High Court was of the opinion that on a consideration of the several aspects of the case, the plea of *res judicata* urged on behalf of the respondents on the strength of the decision in 45 T. L. R. 116 can prevail only in respect of the finding in that case that on account of the acts and conduct attributed to the defendants, they cannot be said to have ipso facto become heretics and aliens to the Malankara Church and not in respect of the question relating to the validity of the Catholicate said to have been established in Malankara, or as to the question

whether Abdul Messiah had ceased to be a Patriarch at the relevant period, or as to the question whether the defendants and their partisans have voluntarily separated from the Malankara Church and established a new Church of their own. Then the court examined the two questions which had an important bearing on the question of the validity of the Catholicate relied on by the defendants in the suit, namely (1) which was the canon that was recognised and followed by the members of the Malankara Church at the time of the formation of the plaintiff trust and (2) whether Abdul Messiah had been effectively removed from his office as Patriarch before Abdulla was appointed as his successor. 10 In respect of the correct canon, the High Court accepted the conclusion as also the reasons in support of the same given with regard to that in 41 T. L. R. 1. The court also considered the legal effect of the finding in 41 T. L. R. 1 on the question. For the reasons given in the judgment, the court was of the opinion that the finding recorded in 41 T. L. R. 1 on the question of the canons accepted by the Malankara Church as binding on it, must be held to be conclusive and final for the purpose of the second suit also, namely the Samudayam suit. The court further held that prior to the synodical election and installation of Mar Abdullah II as Patriarch in the year 1906, Mar Abdul Messiah 20 had been properly and effectively deposed as per the synodical resolution passed in the year 1903 followed by the withdrawal of his Firman in the year 1905. The court said that during the life time of Abdul Messiah he did not take any steps to avoid the synodical resolution and to get himself restored to the position of Patriarch. The defendants who were all along maintaining that Abdul Messiah had not been synodically removed, cannot turn round and collaterally attack the validity of the synodical removal proved in the case. Such removal was followed by a synodical election and installation of Abdullah as the successor Patriarch with notice to the Malankara church also. After such installation, the Malankara church had 30 accepted Abdullah as the lawful Patriarch. Such acceptance necessarily implies an admission that Abdul Messiah had been validly removed from the Patriarchal Throne. Therefore, the High Court said that was not open to the defendants in that suit to challenge the validity of the synodical removal of Abdul Messiah which had become an accomplished fact and which was acquiesced in by the entire Jacobite Church.

179. The court next examined the question whether the Catholicate of the East had been reestablished in the year 1912 A. D. as 40 contended by the defendants. The court was of the view that the theory that up to the year 1840 the Malankara Church was directly under the control of the Catholicos of the East was baseless and untrue. Therefore, the case that what was done in the year 1912 was a revival and re-establishment of the Catholicate of the East, must also consequently fail. Finally it was said that no Catholicos even for Malankara had been validly created. The first defendant in that suit had not been validly installed as Catholicos, but his followers in the Malankara Church had also accepted him as Catholicos. His two predecessors were also not validly installed as Catholicos. Everything 50



done by Abdul Messiah in relation to the Malankara Church after he had been deposed from the Patriarchal throne was invalid and unlawful. The High Court then examined the question as to how far the then Catholicos and his co-trustees and other members of the church supporting them had voluntarily separated themselves from the other members of the Malankara Church by accepting the new constitution. The court was of the view that certain fundamental principles of the church had been deviated in the new constitution. The new constitution effected a complete severance with all existing ties with Antioch and to bring into existence a new Church outside the ecclesiastical supremacy of the Patriarch. Since it was a deliberate and intentional move on the part of the Catholicos and his supporters, it is clear that they had voluntarily separated themselves from the Malankara Church for whose benefit the plaint trust was constituted then. 10

180. The court then examined the defendants' contention in the case as to whether the plaintiffs and their partisans had voluntarily separated themselves from the Malankara Church and had established a church of their own. There the court came to the conclusion that the consistent stand taken by the plaintiffs had been that the trust should be administered in accordance with the object of the foundation and for the benefit of those who adhere to the faith of the founder and respect the fundamental principles governing the trust. On a consideration of all the aspects, the court held against the charges levelled against the plaintiffs and found that the plaintiffs and their supporters cannot be said to have voluntarily separated themselves from the Malankara Church or to have established a Church different from and in opposition to the Malankara Church. In regard to the Karingasra meeting which the plaintiffs' supporters have held, the court was of the view that the failure to give notice to the defendants' churches could not affect the validity of the Karingasra meeting. As regards the meeting convened by the defendants in that suit, namely the meeting at the M.D. Seminary, Kottayam, the court was of the view that it cannot be said that it was a meeting of the representatives of the churches on the defendants' side as also the plaintiffs' side. It was a meeting of the representatives of the churches of the defendants' side only. To that extent, the meeting can be held to be valid and the resolution passed in that meeting may be taken to be binding on those churches alone. 20 30

181. As should be expected in cases of this nature, where the interests of the community and its church is involved, the High Court decision was taken up in appeal to the Supreme Court. The Supreme Court allowed the appeal, the judgment of the High Court was set aside and the decree of the trial court dismissing the suit was restored. The decision of the Supreme Court is reported in 1958 K. L. T. 721. The case was disposed of by a Bench of five judges. 40

**The Finale of the Samudayam Case – The Supreme Court decision in Moran Mar Basselios Catholicos v. T. P. Avira & Others – 1958 K. L. T. 721.**

182. In the judgment the Supreme Court found that the defendants and their partisans had not become ipso facto heretics in the eye of the civil court or aliens or had not gone out of the church. The 50

meeting where the plaintiffs were elected trustees was admittedly held without notice to the members of the Catholicos party, for they were, quite erroneously as the court's decision finally indicated regarded as having gone out of the Church. As the plaintiffs had brought the suit out of which the appeal to the Supreme Court arose claiming to be trustees and praying for their own declaration as trustees besides the declaration sought for that the defendants were not trustees and also for possession of the trust properties and as it was found that the meeting was held without notice to the churches interested and was consequently not a valid meeting, the election of the plaintiffs was not valid and their suit, **so far as it is in the nature of a suit for ejectment,** must fail for want of their title as trustees. However taking due note of the contention raised on behalf of the plaintiffs that the suit was filed on behalf of all other members of the community under Order 1, Rule 8 of the C. P. C., the court proceeded to determine the questions arising in the appeal on the basis of the plaintiffs' competency to maintain the suit on a representative basis on behalf of all the members of the Malankara Jacobite Syrian community. 10

183. The Supreme Court points out that the plaintiffs seek to displace the title of the defendants on the plea that the defendants are heretics or aliens to the church or have voluntarily gone out of the church and consequently have lost their status as members of the Malankara Syrian Church and have forfeited their office as trustees of the properties of that church. The Supreme Court says that the major part of the arguments advanced before the court on both sides had centred round the questions as to how far the contentions sought for by the plaintiffs in the suit in derogation of the title of the defendants were concluded by the final decision in the interpleader suit - 45 T. L. R. 116 and by the provisions of Order 9, Rule 9 of the Code of Civil Procedure in view of the dismissal of an earlier suit O. S. No. 2 of 1104. 20 30

184. After noting the issues raised in the suit and the decision rendered in the earlier suit - interpleader suit - on review, the Supreme Court said:-

"It must, therefore, be held that the contentions put forward in paragraphs 19 to 26 of the plaint in the present suit on which issues Nos. 14, 15, 16 and 19 have been raised were directly and substantially in issue in the interpleader suit (O. S. 94 of 1088) and had been decided by the Travancore High Court on review in favour of Mar Geevarghese Dionysius and his two co-trustees (defendants 1 to 3) and against defendants 4 to 6. In short the question whether Mar Geevarghese Dionysius and his two co-trustees (defendants 1 to 3) had become heretics or aliens or had gone out of the Church and, therefore, were not qualified for acting as trustees was in issue in the interpleader suit (O. S. 94 of 1088) and it was absolutely necessary to decide such issue. That judgment decided that neither (a) the repudiation of Abdulla II, nor (b) acceptance of Abdul Messiah who had ceased to be a Patriarch, nor (c) acceptance of the Catholicate with powers as hereinbefore mentioned nor (d) the 40 50

reduction of the power of the Patriarch to a vanishing point, ipso facto constituted a heresy or amounted to voluntary separation by setting up a new Church and that being the position those contentions cannot be re-agitated in the present suit."

185. Then Chief Justice Das who spoke on behalf of the court notes the plea raised on behalf of the plaintiffs, that apart from the grounds set up in the interpleader suit, the plaintiffs had also relied on a cause of action founded on new charges which disqualify the defendants in the suit (reference here to plaintiffs and defendants is on the basis of the party array in the 1113 suit which ended with the Supreme Court decision) from acting as trustees of the trust property. The new charges were; 10

(i) By adopting the new constitution (Ext. A. M. in that case) which takes away the supremacy of the Patriarch, the defendants have set up a new church;

(ii) by inserting clause (5) in the new constitution, the defendants in that suit have repudiated the canons binding on the church. (Ext. BP in that case Ext. 18 in O. S. No. 94 of 1088) and have thereby gone out of the church; 20

(ii a) The privilege of the Patriarch alone to ordain Metropolitans and to consecrate Morone has been taken away as a consequence of the adoption of a wrong canon indicating that the defendants have set up a new Church;

(ii b) The privilege of the perquisites of the Ressissa has been denied to the Patriarch by the new constitution in breach of the true canons;

(iii) That there has been a complete transfer of the trust properties from the beneficiaries, namely, Malankara Jacobite Syrian Church to an entirely different institution, the Malankara Orthodox Syrian Church; 30

(iv) The re-establishment of the institution of the Catholicate of East in Malabar having jurisdiction over India, Burma, Ceylon and other countries in the East is different from the institution of Catholicate that was the subject matter of the interpleader suit.

186. I think for deciding on what points the Supreme Court decision conclude some of the points arising for decision in this proceedings, it will be useful if I quote exhaustively what the Supreme Court said about these charges:-

"34. Re (i): In support of the first charge learned counsel has drawn our attention to paragraphs 18, 22 and 26 of the 40  
 plaint, paragraphs 21 and 38 of the written statement, paragraphs 18 and 27 of the replication and to issues Nos. 6, 14, 15 and 16. We do not think the pleadings and the issues are capable of being construed in the way learned counsel would have us to do. The supremacy of the Patriarch has indeed been alleged to have been taken away, but that is not a general averment founded on Ex. A. M.—indeed there is no specific mention of Ex. A. M. in paragraph 26 of the plaint—  
 but it is based on certain specific matters which appear to be 50

incorporated as rules of the new constitution (Ex. A.M.). Therefore, what are pleaded as disqualifying the defendants from being trustees are those specific matters and not the general fact of adoption of the constitution. There is no charge in the plaint that for the incorporation in the constitution (Ex. A.M.) of any matter other than those specifically pleaded in the plaint the defendants have incurred a disqualification. The plaintiffs came to court charging the defendants as heretics or as having gone out of the church for having adopted a constitution (Ex. A. M.) which contains the several specific matters pleaded in the plaint and repeated in the replication and made the subject matter of specific issues. Those self-same matters were relied on as entailing disqualification in the earlier suit. The plaintiffs themselves contend that some of these matters are res judicata against the defendants in this suit by reason of the conditions subject to which their application for review was admitted. On the pleadings as they stand and on the issues as they have been framed, it is now impossible to permit the plaintiff-respondent to go outside the pleadings and set up a new case that the supremacy of the patriarch has been taken away by the mere fact of the adoption of the new constitution (Ex. A. M.) or by any particular clause thereof, other than those relating to matters specifically referred to in the pleadings. The issues cannot be permitted to be stretched to cover matters which are not, on a reasonable construction, within the pleadings on which they were founded.

35. Re. (ii) and (ia): Some remarks apply to these two grounds formulated above. There is no averment anywhere in the pleadings that by accepting the Hoodaya canon compiled by Bar Hebreus (Ext.26=Ex.A in O. S. No.94 of 1088) as the correct canon governing the church, the defendants have gone out of the Church. Learned counsel draws our attention first to issue No. 13 and then to issue No. 16 and contends that the loss of status as members of the Church by acceptance of the wrong canon is within the scope of those two issues and that the parties to this suit went to trial with that understanding. We do not consider this argument to be well founded at all. A reference to the pleadings will indicate how and why the Hoodaya canon came to be pleaded and discussed in this case. The plaintiffs impute certain acts and conduct to the defendants and contend that by reason thereof the defendants have become heretics or aliens or have gone out of the Church. These imputations form the subject matter of issues 14 and 15 and the conclusions to be drawn from the finding on those issues are the subject matter of issues Nos. 16 and 17. The defendants, on the other hand, impute certain acts and conduct to the plaintiffs as a result of which, they contend, the plaintiffs have separated from the Church and constituted a new Church. Issues 19 and 20 are directed to this counter charge. In order