

whether it was not Ext. 18. One thing, however the court specifically notes that none of the canon books filed on Mar Gheevarghese's side in the Vattipanam Case were produced in the Arthot Case where he admittedly figured as witness. Then after a very detailed discussion of the evidence in the case and the works on Church History and Government referred to in the case, the Full Bench finally said:-

"After having carefully considered the arguments advanced on both sides in regard to Ext. A and Ext 18, we are unable to agree with the District Judge on this point, and are clearly of opinion that not only have no proper grounds been shown for our preferring Ext. A to Ext. 18 but that on the other hand the evidence undoubtedly leads to the conclusion that Ext. 18 version is the version that has been treated and accepted as true by the Malankara Jacobite Syrian church from the time of Ext. R suit." (Para 80 of 41 T. L. R. 1)
Ext. R suit is the one where Ext. B74 judgment was delivered. 10

On the other hand, Ext. A16 says:

"(i) that no Hudaya canon book approved as authentic 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. 20

(ii) After the date of the Mulanthuruthu 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. BP (filed in the Arthot 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 30 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 40 versions which were even then in vogue and in use in the community. These manuscripts Ext. 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 50

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. Ext. 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." (Para 196).

Justice Nokes said about this finding in 1946 T. L. R. 683 (Rt. Rev. 30
Mar Poulse Athanasius v. Moran Mar Basselios Catholicos):-

"Although the relevant finding in 41 T. L. R., which was left unaffected on the merits by 45 T. L. R., is not binding on the parties, the conclusions reached in the former appeal cannot be lightly ignored. The point was argued by two distinguished advocates, and it was decided by the highest judicial tribunal in this State. Unless, therefore, the trial Judge in this case had new evidence of overwhelming cogency which led to a different conclusion, it might have been expected that he would have taken the same view as a Full Bench of this court. However, the learned Judge decided that six manuscript copies of the canon newly produced in this case (Exhibits 104, 153, 156, 157, 217 and 218) supported the genuineness of Exhibit 26, on the grounds that one (Exhibit 153) was very old, and that the others were the same in material respects as both Exhibit 153 and Exhibit 26 (judgment, paragraphs 188, 191, 192, 194; and see Exhibit 263). He did not enquire by what chance the later manuscripts tallied with the printed book (Exhibit 26), which was a compilation from manuscripts in Europe by a Roman Catholic scholar (see Exhibit FM), and proclaimed that the Patriarch of Rome was the great chief of 50

all the Patriarchs (chapter vii, Section 1, of Nicea). The Judge also decided that a copy of the canon purporting to be authenticated by the Patriarch (Exhibit BO), but held not to be that referred to in a letter by him (Exhibit CC), was not so authenticated (Paragraph 186). He further held that a deceased witness in earlier litigation had suppressed Exhibit 153 and propounded Exhibit BP, which was of questionable origin (paragraphs 189, 196). The former conclusions may have been correct but the latter was totally unwarranted by any credible evidence. In any event, all these conclusions were irrelevant.

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The relevant question was, which version was recognised by the church in Malabar before disputes arose as to the canon. The Judge's finding that Exhibit 26 was freely used in Malabar after its publication in Paris in 1898 (paragraph 196) is no doubt accurate, but it does not touch the real point. The recognition of Exhibit BP was amply shown by the Exhibits produced in the earlier litigation, and exhaustively discussed in 41 T. L. R. Even if the Judge's interpretation (paragraphs 172, 173) of the judgment of this court in that appeal were not perverse, and if his criticism (end of paragraph 190) of one passage were not refuted by reference to the earlier part of the same paragraph (at 49), the general conclusion of this court would remain unaffected. The same arguments as were addressed to this court on the previous occasion were repeated in this appeal; and on due consideration there appears to be no ground for abandoning the reasoning and conclusion expressed in 41 T. L. R. On the documents re-exhibited in this case, even considered with the new documentary evidence, as supplemented by the oral evidence, it is clear that the canon recognised in the Jacobite Church in Travancore at all material times was that contained in Exhibit BP (or 18 in the former suit).

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In the translation of the written constitution (Exhibit AM, Article 5) "the canon printed in Paris in 1898", that is, Exhibit 26, is stated to be the canon of the defendants' church. It is true, as pointed out by the lower court (paragraph 176), that the plaintiffs did not make this a ground of complaint, and that it was the defendants who charged the plaintiffs with adhering to the wrong version of the canon (written statement, paragraph 45; issue paper, No. 124). But as the defendants have raised the question of the accepted version, they cannot reasonably complain if it is held that, well—knowing that this court had decided in favour of the plaintiffs' version, they deliberately incorporated the

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rejected version in their constitution."

237. The evidence in the present litigation being mainly on the conclusions in the earlier cases it will be hazardous and not correct on my part to come to a decision on the correct version of the canons accepted by the Malankara Church as a whole on wild surmises and conjectures, and that party which wants to rely on any canon given in the version he supports, cannot be allowed to do so in the absence of proof of the correct book of canons the Malankara Church has accepted.

238. A contention has been raised by Mr. Poti, learned counsel for

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the plaintiffs that Ext. A2 constitution passed by the Association at its meeting on 26-12-1934 has adopted Ext. XXVI in the Samudayam suit (Ext. A206 here) as the canons accepted by the Sabha. If the Association meeting was validly held and its proceedings are binding on the community that fact alone will be sufficient to hold that the said constitution is valid and binding. If the Association which it is alleged represents the entire church were to choose one of the two versions this act of Association cannot be characterised as either wrong or even improper. If a proceedings are binding on the entire church its choice will not be affected by the prior decision in 41 T. L. R. 1 because of the intervening event of a lawful proceedings of the community itself acting through its accredited organ. 10

239. It is difficult to agree with this contention. What are the objects of the Association. The resolution passed at the Mulanthuruthy Synod in this respect is to the following effect—

(a) That a Fund, out of public subscription in their community, should be formed for the purpose of meeting the expenses of litigation etc. to settle the dispute that has 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 ; 20

(b) That the committee had full authority subject to 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.

240. It will be rather too much to say the Association which is empowered in the above manner could alter any provision in the canons which is binding on the whole Jacobite Syrian Community not only of Malankara but in the other parts of the world. As is stated in Ext. A16, para 196, the then Patriarch Peter III, had undertaken at the Mulanthuruthu Synod that a Hudaya Canon book approved as authentic and genuine by the Patriarch would be supplied to the Malankara Sabha. Ext. A16 says that it had not been so supplied though we find that after the Mulanthuruthu Synod, Mar Joseph Dionysius, the President of the Association who had been specifically authorised by the Synod to carry on all litigation regarding religious and social matters of the church, producing a copy of the canons in the Arthot Case. Z. M. Paret in a book in Malayalam on the Mulanthuruthy Synod— 30

“മുള്ളത്തു സുന്നഹദോസ്” —(കാനോനാകൽ—വ്യാഖ്യാനം—ചരിത്രം) 40

quotes the following on the resolution passed by the Synod on the Canons, (This book is produced by the plaintiffs in O. S. No. 4 of 1979 and marked as Ext. A 151 in the case) at Page 102:-

“സ്കൂതി ചൊവ്വുകപ്പെട്ട വിശ്വാസത്തിലെ സ്ഥിരതക്കു വേണ്ടി ആവിശ്യപ്പെട്ട കാനോനും നടപടിയും അടങ്ങിയതായ പുസ്തകം സുറിയാനിയിലോ മലയാളത്തിലോ കല്പനപ്രകാരം അച്ചടിച്ചു മുദ്രയോടുകൂടി ഓരോ പുസ്തകം എല്ലാ പള്ളിയിലും കൊടുത്തു അതിൻ പ്രകാരം അല്ലാതെ മേൽ നടപ്പാൻ പാടില്ലെന്നു വച്ചാൽ എത്രയും നല്ലതെന്നു നിശ്ചയിച്ചു ഉറപ്പിച്ചു”.

These are indications that the Association cannot of its will change the Canons. I am not satisfied that the association meeting of 26-12-1934 50

had any authority to frame a constitution which amends the canons of the Jacobite Syrian Church. Nor has the Association the legal authority to declare which book of canons represents the correct version. The **Bharanaghatana** (Constitution) of the Malankara Church— How far Exts. A2, A9 and A1 valid and binding on the Community and the Parish Church?

241. The plaintiffs' (Catholicos side) case in the matter is that the original constitution of the Malankara Church is Ext. A2 which was passed by the Malankara Association at its meeting held on 26-12-1934/11-5-1110. This Constitution has undergone amendments twice, first at the Malankara Association meeting dated 17-5-1951 and amended version is Ext. A9. That came into force on its being approved by the Episcopal Synod at its meeting held on 29-3-1954. After the Supreme Court decision there was some process of unification of the warring groups. There was mutual acceptance of the Patriarch and the Catholicos on 16-12-1958. There was joint functioning afterwards for a period. At this stage some further amendments to the constitution was thought necessary and the managing committee referred the matter to a Rule Committee. This Committee suggested further amendments and the Managing Committee after deliberation passed the amended version of the Constitution in its meeting held on 14-4-1967. This Constitution is Ext. A1 and after approval by the Episcopal Synod on 21-4-1967, the same came into force.

242. In Ext. A2 the Constitution originally passed the rules or clauses relating to amendments are as follows:-

R. 120 “ഈ ഭരണഘടനയിൽ കാലസ്ഥിതി അനുസരിച്ചും, സൗകര്യം അനുസരിച്ചും ആവശ്യമായി വരാവുന്ന ഭേദഗതി വരുത്തുന്നതിലേക്കു അസോസിയേഷൻ മാനേജിംഗ് കമ്മിറ്റി നിയമിക്കുന്ന ഒരു റൂൾ കമ്മിറ്റി ഉണ്ടായിരിക്കുന്നതാകുന്നു. ഈ കമ്മിറ്റിയുടെ പ്രസിഡൻ്റ് ഒരു മേൽ പട്ടക്കാരൻ ആയിരിക്കുന്നതാകുന്നു.”

R. 121 “റൂൾ കമ്മിറ്റി ഭേദഗതികൾ അസോസിയേഷൻ മാനേജിംഗ് കമ്മിറ്റിയിൽ സമർപ്പിക്കേണ്ടതും, അസോസിയേഷൻ മാനേജിംഗ് കമ്മിറ്റി പാസ്സാക്കുന്ന നിശ്ചയങ്ങൾ അസോസിയേഷനും എപ്പിസ്കോപ്പൽ സിനഡും ഭേദപ്പെടുത്തുന്നതുവരെ നടപ്പിൽ ഇരിക്കേണ്ടതും ആകുന്നു.”

The plaintiffs have explained the manner in which the amendments were introduced in 1951. In the managing committee meeting held on 23-12-1120 / 7-7-1945, the Rule Committee convenor Sri. K. Cheriyan placed before the committee the report of the Rule Committee proposing amendments to the constitution. The minutes of the managing committee of that day is recorded in Ext. A5 the minutes book, pages 67-76, which proceedings are specifically marked as Ext. A5(a). The particular reference to the Rule Committee report as entered in the minutes is Ext. A5 (b) which reads as follows:-

“സഭാ ഭരണഘടനയിൽ വരുത്തേണ്ട ഭേദഗതികൾ ഉൾക്കൊള്ളുന്ന ഒരു റിപ്പോർട്ട് റൂൾ കമ്മിറ്റി കൺവീനർ മി. കെ. ചെറിയാൻ സമർപ്പിച്ചു. അതു അച്ചടിച്ചു എല്ലാ മാനേജിംഗ് കമ്മിറ്റി മെമ്പർമാർക്കും അയച്ചു കൊടുക്കാമെന്നു നിശ്ചയിച്ചു.”

pursuant to this decision the report was printed and circulated among managing committee members and Metropolitan. P. W. I the deputy secretary who is alleged to have attended the managing committee meeting

regularly says in his chief examination:-

“ഭരണഘടനാ ഭേദഗതി സംബന്ധിച്ച 72-ാം പേജിൽ, 5-ാം നമ്പർ തീരുമാനം Ext. A5(b). അതിൽ പറയുന്നതുപോലെ റൂൾ കമ്മിറ്റി റിപ്പോർട്ട് മാനേജിംഗ് കമ്മിറ്റി മെമ്പർമാർക്ക്, മെത്രാപ്പോലീത്താതിരുമേനിമാർക്ക് അയച്ചു കൊടുത്തു. 18-6-21 ലെ മിനിട്ട്സ് 78-ാം പേജിൽ അയച്ചുകൊടുത്ത വിധം രേഖപ്പെടുത്തിയിട്ടുണ്ട്. അത് Ext. A5(d),”

Ext. A5 (d) is as follows:-

“മാനേജിംഗ് കമ്മിറ്റിയിലേക്ക് മെമ്പർമാരെ തിരഞ്ഞെടുക്കുന്നതിനുള്ള ചട്ടങ്ങളും അവയെപ്പറ്റി റൂൾ കമ്മിറ്റി സമർപ്പിച്ച റിപ്പോർട്ടും, സഭാ ഭരണഘടനയിൽ വരുത്തണമെന്ന റൂൾ കമ്മിറ്റി നിശ്ചയിച്ച ഭേദഗതികളും അച്ചടിച്ച മെമ്പർമാർക്ക് അയച്ചുകൊടുത്തിട്ടുണ്ട്.” 10

The managing committee meeting held on 26-2-1114 decided as follows:-

“റൂൾ കമ്മിറ്റി മാനേജിംഗ് കമ്മിറ്റിയിൽ സമർപ്പിച്ച സഭാ ഭരണഘടനാ ഭേദഗതികളെപ്പറ്റി ആലോചിച്ചു. അടുത്ത മാനേജിംഗ് കമ്മിറ്റിയിൽ റിപ്പോർട്ട് ചെയ്യുന്നതിന് റൂൾ കമ്മിറ്റി അംഗങ്ങളേയും ദിവ്യശ്രീ. റി. എസ്. എബ്രഹാം കുത്തനാർ, മി. എം. പി. ജോസഫ്, മി. എം. എം. എബ്രഹാം, ഡോക്ടർ സി. റി. ഈപ്പൻ ഇവരെയും ഒരു സബ് കമ്മിറ്റി യായി നിയമിച്ചു. റൂൾ കമ്മിറ്റി അംഗങ്ങൾ ആരെല്ലാമാണെന്നുള്ളതിനെ പറ്റി ഒരു ചോദ്യം ഉന്നയിക്കപ്പെടുകയും റൂൾ കമ്മിറ്റി നിയമിച്ചതു സംബന്ധിച്ച മുൻ നിശ്ചയത്തെ പറ്റിയുള്ള വാദപ്രതിവാദങ്ങൾക്കു ശേഷം റൂൾ കമ്മിറ്റിയിൽ താഴെ പറയുന്നവർ അംഗങ്ങൾ ആണെന്ന ഒരു വിശദീകരണം ഉണ്ടാക്കുകയും ചെയ്തു.” 20

243. The next meeting of the Managing committee on 18-10-1125 again considered the matter of amendment of constitution as proposed by the rule committee and passing the proposed amendments, decided to present the constitution as amended in the next meeting. The plaitmfifs' counsel then refers to Exts. A6, A8 and A5 (k), that proper notice of the meeting has been given for the Association meeting in which the constitution of the Sabha is given as a specific item in the agenda and also for showing that the Managing Committe had provided for moving the necessary resolutions in the Association meeting. The circulated constitution incorporated the amendments framed by the managing committee. 30

244. In the Association meeting the amendments were duly moved by Sri. K. Cherian. The Association appointed in the morning session a committee to consider the proposed amendments and make a report in the afternoon session. In the afternoon session the committee appointed reported to the meeting. The meeting considered the report and unanimously passed the proposed amendments. The minutes of the Association meeting is Ext. A7. Ext. A7(a) is the resolution passed to appoint a committee to consider the amendments and report to the afternoon session. Ext. A 7(b) is the resolution passed unanimously accepting the proposed amendments. The evidence of P. W. 1 and P. W. 4 fully support the plaintiffs' case in the matter. 40

245. The notice of the Association meeting was published in the Malayala Manorama of 4-5-1961, and Ext. XI is a photostat copy of that issue which is duly proved by P. W. 6, Public Relations Officer of the Malayala Manorama, George Mathew.

246. The amendments thus passed in the Association meeting were approved by the Episcopal Synod in its meeting on 29-3-1954, the minutes 50

of which meeting is proved by P. W. 8 who was then a member of the Synod. Ext. A 152 (b) (Pages 84 to 89 of Ext. A152) are the relevant minutes in the matter. A printed copy of the amended constitution is Ext. A9. This was the amendment said to be in force in 1958 when the Catholicos accepted the Patriarch subject to the constitution.

247. After the apparent unity which was established in 1958 between the two factions of the Malankara Church in 1958, the constitution was again amended in 1966-67.

248. A rule committee was appointed on 18-2-1960 to propose amendments to the constitution. That is evident by the minutes of the managing committee on 18-2-1960. The whole minutes is marked as Ext. A5 (m) and the particular resolution appointing the rule committee is Ext. A5 (n). The rule committee so elected consisted of 3 Patriarchal men, according to the plaintiffs. The rule committee invited proposals for amendments, considered the proposals and then proposed some amendments to clause 6 to 44 of the constitution that is, to the provisions concerning administration of the parishes. The proposed amendments were incorporated at the relevant portions and it was got printed. The printed matter containing the amendments incorporated as above together with a report about the procedure adopted for suggesting the amendments and the nature of the amendments was placed before the managing committee. The report is Ext. A176 and draft with amendments incorporated is Ext. A77. P. W. 8 who was the president of the rule committee proves these.

249. The plaintiffs would further submit that the managing committee which consisted of former Patriarch supporters passed the amendments in two meetings of 30-8-1966 and 14-4-1967 with some slight amendments. (See Ext. A11 (c), A11 (d), A11 (e) and A11 (f). The resolutions and decisions of 14-4-1967 were approved by the Episcopal Synod in its meeting on 21-4-1967. Ext. A162 (f) (Page 71 of Ext. 162). The oral evidence on these is given by P. Ws. 1, 4 and 8. D. W. 2 who was a member of the managing committee has been questioned on this aspect in his cross examination.

250. Regarding the validity of Ext. A2, the plaintiffs would contend that Ext. A16 had upheld the validity of the Malankara Association meeting on 26-12-1934 and also that the said meeting had the competency to pass a Bharanaghatana binding on the entire church. In para 41 of Ext. A16 it is said:-

“The Malankara Jacobite Syrian Association set up by the Mulanthuruthy Synod was and is the representative body that has the right to bind the whole community and all the churches by its deliberations and actions.”

The plaintiffs would further add that when the matter came up before the Supreme Court against the judgment of the Kerala High Court reversing the trial court judgment, the Supreme Court allowed the appeal of the Catholicos party, reversed the judgment of the High Court and restored the decree of the trial court. According to them, not only has the Supreme Court held that the meeting wherein the constitution was passed was a valid meeting convened by proper authorities and notices issued to all the churches including the churches on the Patriarch

side, but also impliedly if not expressly determined the validity of the constitution adopted in the meeting. The validity of the provisions of Ext. AM Bharanaghatana (as marked in that case) was substantially in issue between the parties in that case as it had to be decided to determine the question whether the adoption of Ext. AM or any of the provisions of Ext. AM were such as to render the defendants schismatics or aliens. Learned counsel for the plaintiffs would also point out to Ext. A209 wherein the first defendant when he was a Ramban said (at page 148 of the book):—

“In Kerala also they have passed a new constitution and that is accepted by the civil court. Their administration now is according to the new constitution. In general the Syrians are democratic in their Church administration.” 10

251. The defendants on the other hand would contend that the constitution is ab initio void, without jurisdiction, against the usage and constitution that existed in the church and the basic structure of the church. It has not been approved by the Synod or by the Patriarch. The Supreme Court has not upheld the validity of the Constitution and the decision on it in Ext. A16 being unnecessary for the disposal of the suit in the nature of the decision taken by the Supreme Court, the same cannot in any manner be res judicata. The defendants would further contend that the Malankara Jacobite Syrian Christian Association is an association of churches. It is a voluntary independent organisation derived for fellowship and co-operation in common affairs. It has no ecclesiastical or other authority over parish churches. Parish church and association are two bodies distinct and separate one from the other. Association originated at the Mulanthuruthy Synod. It cannot have more powers than what the Synod conferred or intended to confer. It is further alleged that in 1934 M. D. Seminary meeting, the managing committee members also participated as seen from Ext. A208 minutes. They had no right to be there as admitted by p. W. 8 himself in his deposition. The defendants would point out that item 4 in the notice Ext. A4 convening the meeting, is in the following words:— 20 30

“മാനേജിംഗ് കമ്മിറ്റി പാസാക്കിയിട്ടുള്ള ഭരണഘടന പാസ്സാക്കുക.”

While in the body of the notice at the beginning it is also stated that the meeting is to consider:

“സമുദായം വക കാര്യങ്ങൾ”

There is not even a hint that any rules affecting the individual parish churches are included in the constitution passed by the managing committee. The managing committee has no jurisdiction over Metropolitan diocese or over parish churches. This, according to the defendants, have been admitted by P. W. 8 in his evidence. Therefore, no reasonable man will think that the managing committee has drafted a constitution for the individual parish churches. 40

252. The defendants would also contend that even assuming that the Association has power to frame rules for the administration of parish churches, such powers do not include a power to subvert or destroy fundamental and essential principles of the objects for which they are established. Their case is that by stripping the Patriarch of all his powers, the Association has destroyed the fundamental and

essential principles of the church. The Parish churches concerned are established for the worship of the people who have accepted the Patriarch as their spiritual head. The defendants would further plead that the Association is a body with a majority of laymen. In spiritual matters the church is episcopal and that being so the association would have no powers of legislation over spiritual matters. Provisions regarding faith, canon, powers of Patriarch, Catholicos, Metropolitans, Synod etc. are well beyond the jurisdiction of the Association. The defendants' counsel in their written submission have listed various matters indicating that by the constitution introduced in 1934 and subsequently by the amendments to the same, the Association has sought

- (i) to alter the basic structure of the Sabha;
- (ii) to curtail the powers of the Association given to it by the Mulanthuruthy Synod;
- (iii) to make the managing committee powerless;
- (iv) to alter the structure of parishes and Bhadrasanans and
- (v) to make the Malankara Metropolitan all powerful which is just what the Mulanthuruthy Synod wanted to avoid.

253. The defendants have also got the case that no Episcopal Synod has been adopted or approved the constitution of 1934 and 1951. The members of the Episcopal Synod are the Metropolitans in the Malankara Sabha irrespective of his jurisdiction of administration. Clause 96 of Ext. A2 states this. Metropolitans of the Patriarch Party were invited to the Synods of 26-12-1934 and of 29-3-1954 and they have not participated in those meetings. P. W. 8 admits this.

254. In respect of Ext. A9 Constitution as amended and adopted by the Association on 17-5-1951, the defendants would point out the association meeting was convened and held after 1946 T. L. R. 683 decision (which was rendered on 8-8-1946). By that decision the Catholicos Party had been declared as aliens and no member of the Patriarch's party could attend it. No notice had been really sent to them. Even if they are sent they are not bound to attend. Publication in news papers could be taken as a mode only if there were no prescribed rules. Therefore according to the defendants the whole proceedings of the meeting of 17-5-1951 are void. It is also said that there is no evidence to show that any other amendment was passed by the Managing Committee or suggested by the rule committee prior to 17-5-1951.

255. In respect of Ext A1, by which amendments made in 1967 are also incorporated, the defendants would submit that the 1967 amendments were not placed before the Malankara Association and they have not passed them. This was because of clauses 120 and 127 in Ext. A9. The rule committee suggested that the amendments and the amendments so suggested were approved by the managing committee on 30-8-1966 and 14-4-1967. Defendants would further contend that there is no evidence or Synod minutes to prove that the Synod has approved the managing committee resolution of 30-8-1966. Even the resolution of the managing committee of 14-4-1967 was not approved by the Synod for which the defendants would refer to page 71 of Ext. A162.

The defendants contend that clauses 126 and 127 are void since the Mulanthuruthy Synod resolution has not authorised such delegation by the Association to the committee. P. W.8 it is submitted had admitted that it was on the delegated authority that the amendments were passed. Moreover, the Association meeting of 17-5-1951 after passing Ext.A9 constitution had passed another resolution by which it appointed a committee to report to the Managing Committee on amendments to Ext. A9 constitution. The defendants' plea on the point is that when the Association itself has appointed a committee to suggest the amendments, it must be that only on the basis of such a committee's report amendment could be effected. Another plea put forward is that the Episcopal Synod had approved Ext. A9 only conditionally. The condition was that when Ext. A9 is amended, previous amendments suggested by the Synod should also be considered. They would refer to page 85 of Ext. A152. One of the amendments which was previously suggested by the Synod on 10-7-1953 related to rule 127 of Ext. A9 which suggestion was to the effect that amendments passed by the Managing Committee should be approved by the Association as well as the Synod. This has not been followed in bringing into force Ext. A1. The contention is also taken that the Association or the committee cannot in any way interfere with the administration of the parish churches, the constitution of which can only be made or altered by the respective general body meeting of the parishioners.

256. I have already held that the findings as such in Ext. A16 will not constitute res judicata in these suits. Only the points on which the Supreme Court said that the Samudayam suit should be dismissed would constitute res judicata here. The validity or otherwise of the constitution Ext. A2 has not been considered at all by the Supreme Court. No doubt the defendants cannot take up the contention that by passing the constitution the Catholicos side had become heretics or gone out of the Church. This was a point that should have been taken up in the Samudayam suit and the Supreme Court has found that on the pleadings in that case such a contention was not raised. Therefore, there would be the bar of constructive res judicata to prevent the Patriarch side taking up a position in these suits that by passing Ext.A2, the Catholicos side should be treated as heretics or of having gone out of the Malankara Church. But this is entirely different from contending that Ext. A2 in respect of many of its provisions is invalid as having gone beyond the powers of the Association.

257. As Mr. Justice Raman Nair pointed out in Ext. B322, the Sabha or Association meeting had no authority to frame a constitution for the parish churches. The Association or Sabha was constituted by the Mulanthuruthy Synod, a Synod convened by Patriarch Peter III to curb the powers of the metropolitans by vesting the powers in the congregation; it was for this purpose the Association was constituted. Whether one looks at the short summary of the resolutions of the Mulanthuruthy Synod as given in Ext. B74, para 85 or at Ext. B168 or in Z. M. Parat's book Ext. A151, it is clear that the Association was framed for curbing the powers of the Bishops and safeguarding the churches from their autocracy. As it was not feasible for all members

of the Association to transact the business, a Chief Committee or managing committee was also constituted. The fact that the committee was entrusted with the responsibility and management for matters connected with common religious and communal affairs of the Syrian Jacobite Community does not mean that the committee could interfere with the existing religious practices and with the properties of the parish churches or regulate the administration of parish churches vested in the general body of the parishioners. I have no hesitation in expressing my respectful agreement with Mr. Justice Raman Nair's (as he then was) observation in Ext. B322 which I had quoted earlier but at the risk of repetition for making the matter clear would again extract: 10

"13. Reliance is placed on the observations of the Supreme Court in **Mar Basselios Catholicos v. Mar Poulouse Athanasius** (1954 K. L. T. 385 at 387) and **Moran Mar Basselios Catholicos v. Avira** (1958 K. L. T. 721 at 723) to the effect that the Malankara Syrian Christian Association was formed at the Mulanthuruthu Synod "to manage all the affairs of the churches and the community." The Samudayam suit in which those observations were made was, as we have seen, concerned only with the Jacobite Church and not with individual churches of the Jacobite faith. Whether or not the word, "churches" in the plural in the observations in question, instead of the word, "church" in the singular, was deliberately used so as to include within its scope all the individual churches of the Jacobite faith, we do not think that these observations in the introductory part of the judgments setting forth the historical background of the dispute can be regarded as findings relevant in the present case. We might also add that while the Supreme Court held in **Moran Mar Basselios Catholicos v. Avira** (1958 K. L. T. 721) that the M. D. Seminary meeting of 1934 was a duly convened and valid meeting of the Sabha, their Lordships said nothing in that decision about the competence of the Sabha to frame a constitution for the individual affiliated churches or about the validity or applicability of the constitution, Ext. P26, in relation to such churches. 20 30

(emphasis mine)

The parish churches are autonomous units so far as temporal matters are concerned, the power of management being vested in the trustees elected by the parishioners. The Association by enacting any constitution cannot make inroads into such management unless there has been a surrender of such autonomy by any particular church or churches by a positive and express decision. Nor could by any constitution it may adopt the Association or its managing committee adopt, alter or declare as the true one any essentially religious matter like the canons applicable to the church which will be common to the World Jacobite Community as such. It might be noted here that the Mulanthuruthu Synod resolutions represent a concurrence reached between the Patriarch who as per the Royal Court Judgment Ext. B74 had the power of general supervision over the spiritual government of the church, the Malankara Metropolitan heading the temporal and spiritual 40 50

government of the Malankara Church and the representatives of the Malankara Jacobite Syrian Community as such. It will be interesting here to quote the summons which the Patriarch issued to various churches which as sent to one of such churches is quoted in full in the minority judgment of Justice Ormsby in the Royal Court of Final Appeal which is marked as Ext. B75 here.

“By the sacred name of the Eternal being who is the Lord of everything, the Unbeginning and Endless and full with Essence, praise be unto Him. Peter III Ignatius Patriarch ruling on the Apostolic throne of Antioch and all the East.” 10

“May Divine mercy and celestial blessing come and dwell upon the foreheads of our children of the Formless the beloved priests and deacons and all blessed people of Our blessed parish of the Kunnikurudi Church.”

“May the blessing of the Lord God dwell upon them, upon their houses, upon their progeny, and upon everything that is theirs. And that by the prayer of Mary who brought forth God and of all the Saints. Amen.”

“Furthermore, We make known unto your love. It is about a year now since we arrived in your midst in this country. We very much regret that we have had no time in the meanwhile to call you together to meet in a Synod and to speak to you regarding spiritual matters. Therefore, what We now make known unto you is that the moment this writ of blessing reaches your hands, you should choose from among you a priest and two of the leading people, being such as are honest and trusted, to speak before the Synod on behalf of you all and send them entrusting to their charge your views, so that the matters that may be resolved upon at the Synod may be accepted by you. As this Synod (intended) to consult upon, and come to a conclusion regarding the spiritual affairs of Our Church in general is to (meet) at the Mulanthuruthu Church, founded in the name of Apostle Mar Thomas, appearance should be made before us on the 15th Mithunam ensuing. May it be granted that disputes and schisms existing in Our church may be removed, and that good order may be vouchsafed to our people by the deliberations that are to be held at this Synod which is to be held by Divine Grace. And you should not take part in (or, give room for) any disputes and quarrels. We wish in God that this Synod should meet in the sacred name of Jesus Messiah, Our Lord, so that the promise “wheresoever two or three may meet in my name there will I be in their midst”, may be fulfilled unto us by God. Just as in former days when Spiritual Synods met, the Holy Ghost spoke in them openly, even so, as in them, will the Holy Ghost, We confidently trust in God, speak to us if we proceed to our deliberations without any difference. This will suffice for the time for (considering) your knowledge. May the mercy and blessing of God ever multiply in you. Amen.” (Pages 53 and 54) 20 30 40

No doubt I do not find much force in the contentions raised by the 50

defendants which might cut at the root of the provisions in the constitution in regard to management and administration of the Common Trust properties.

Whether the Malankara Church is autocephalous. What is the legal effect of the establishment of a Catholicate in Malankara? What was the extent of the Patriarch's spiritual powers over the Malankara Church? How far such powers survive now?

258. These questions are of sufficient importance in this case and the answers to them to a great degree will resolve many of the important controversies in these suits. The plaintiffs (again I might point out that I am proceeding on the basis of the party array in O. S. No. 4 of 1979), the Catholicos side have built up their present case on the basis of a total independent Malankara Church, free from the shackles, according to them of the Patriarch's spiritual supremacy. That the Catholicos side has gone not one step but more steps further from the position they took up in the Samudayam Case, there cannot be much doubt. Though it is true that they contended that that a large chunk from the powers of the Patriarch in the spiritual field had become vested with the Catholicos on the establishment of what they term the Catholicate of the East in Malankara, there was no contention put forward then as is now being sought to be done that head of the Malankara Church, the Catholicos cum Malankara Metropolitan is the head of a totally independent church, in no way subordinate to the Patriarch and in communion with other Orthodox Churches. It might be noted that in the first case after the controversy arose regarding the establishment of the Catholicate, namely the Vattipanam Case, both sides admitted that administration of the temporalities of the Syrian Jacobite Church in Malankara is with the local Metropolitan and the other Metrans and that the Patriarch has some right of supervision though the Catholicos side did not indicate the extent of such right; the Patriarch side contended that the right of supervision may involve and interference with the internal administration of the church "where the mismanagement or misappropriation over the temporalities of the church by those ordinarily vested with the management thereof makes them liable to canon law in spiritual punishment, he (the Patriarch) has the right to visit them with the punishment." Chief Justice Chatfield in his leading judgment said that for the purpose of the appeal before the Full Bench this view might be accepted, it being understood that "mismanagement" is practically equivalent in the above passage to "misappropriation" or at least something similar to it. (See para 15 - Page 151 of 45 T. L. R. 116). On the basis of the wording in the summarisation of the net result of this judgment in the Supreme Court case at para 30 of 1958 K. L. T. 721, Mr. Poti had said that 45 T. L. R. 116 had proceeded on the basis that the establishment of the Catholicate with power to Catholicos for the time being to ordain Metropolitans and to consecrate Morone, reduced the power of the Patriarch to a vanishing point. Nowhere in 45 T. L. R. 116 the judges had said that Chief Justice Chatfield in para 34 of his judgment (45 T. L. R. 116 at 186) refers to the contention on behalf of the Patriarch side that this action weakened the tie between the Malankara

Church and the See of Antioch almost to a vanishing point, as the Patriarch would ordinarily have no occasion in the future to intervene in Malankara, that the then Metropolitan Mar Geevarghese Dionysius and his partisans had all along desired this separation from the See of Antioch, that they had at least succeeded in their attempt etc. In respect of these allegations, Chief Justice Chatfield finally said that the Patriarch side conceded that if Patriarch Abdulla had done the act of creation of the Catholicate etc., there would have been no objection and therefore the whole matter resolved itself into a personal dispute between two claimants to the Patriarchate in which it was said, 10
Mar Geevarghese deserted the Patriarch who had created him Metropolitan and supported his rival. Such conduct might amount to an ecclesiastical offence for which the offender could be deprived of by his ecclesiastical superior but it could not be an offence for which the civil courts could try him or express any opinion as to his guilt.

259. In the second case, namely the Samudayam Suit, while stating that the re-establishment of the Catholicate in the Malankara Church was in pursuance of the long cherished desire and progress of the Malankara Church, the Catholicos side plainly took up the position that such re-establishment was intended to cement and perpetuate the connection with the Patriarch of Antioch. It had been 20
contended that they had not done anything to negate the authority of the Throne of Antioch. While stoutly denying that they had separated from the Jacobite Syrian Church and established a new Church, they had taken up the plea that no action attributed to them by the plaintiffs in the suit - namely the supporters of the Patriarch were such as would deny or repudiate the Patriarch of Antioch and the powers pertaining to him under the law and the canons. It was stoutly denied that they had made any arrangement enabling them to carry on 30
independently of the patriarch.

260. It might here be noted that in what is known as Seminary Case (Ext. B74 judgment in that case), it had been held by the Royal Court of Appeal of Travancore - the same view being taken by the Royal Court of Appeal of Cochin in Ext. B110 that Patriarch of Antioch has got general power of supervision in the spiritual field over the Malankara Church.

261. Now the present claim of the plaintiffs is that the Malankara Church is autocephalous. What is meant by autocephalous? In the New English Dictionary on historical principles by Sir James Murray L. L. D. 'autocephalous' is defined at page 573 as "Independent, having 40
a head or Chief of its own; independent of archi-episcopal or patriarchal jurisdiction". No doubt, the claim of autocephaly has to be examined with reference to the applicable ecclesiastical law and facts proved in the case, as correctly put forth by the plaintiffs. The term was used in the early Church to describe Bishops who were independent of a superior authority and now used to describe the independent Orthodox Churches of Constantinople, Antioch, Alexandria, Jerusalem, Cyprus, Russia, Greece, Rumania, Yugoslavia, Bulgaria, Albania, Georgia and Poland. An interesting book on the subject written by Alexander A. Bogolepov, D. D. who is Professor of Canon Law, 50

St. Vladimir's Theological Seminary Crestwood, New York, and who was a former Professor of Law at St. Petersburg University, Russia, before he left Russia in 1922, has been cited before me by the learned counsel for the plaintiffs on the question. The book is styled "Toward An American Orthodox Church." The author would say in his "Introduction that the establishment of a new autocephalous church is one of the basic problems of the Orthodox Canon Law. The Ecumenical Councils of the fourth to eighth centuries recognized six independent churches: Rome, Constantinople, Alexandria, Antioch, Jerusalem and Cyprus. After the separation of East and West, the five Eastern Churches remained in unity. The Florentine Union of 1439 led to the proclamation of the independence of the Russian Church from Constantinople (in 1448). With the disintegration of the Ottoman Empire, the Churches of Greece, Serbia, Romania, Bulgaria and Albania also left the one great church of Constantinople and became independent. After the First World War, more new Churches were founded, growing mainly out of the Russian Church. This is how the autocephalous Georgian, Polish and Czechoslovak churches came into being. As a result of all these changes, the total number of autocephalous Orthodox Churches had risen to 14 by the middle of the 20th century. The unprecedented emigration following the First and Second World Wars resulted in the formation of new Orthodox Church groups desiring their own administration independent of the Mother Church, which had the misfortune to fall under the control of Communist Government. This situation became especially acute in America where parishes, missions, and dioceses of the autocephalous Orthodox Churches of Europe and Asia had been established since the latter part of the 18th century.

261. The learned author therefore says that there has been an acute need, then, for the regulation of the conditions and manner in which new autocephalous Orthodox Churches can, and should, be established. This problem was, and is, all the more complicated and difficult because the circumstances at the time of the founding of any new Church in the 19th and 20th centuries have been radically different from those of the epoch of the first Ecumenical Councils especially in the countries of the New World, populated by immigrants under unprecedented political and religious conditions.

262. Prof. Bogolepov then points out that the way in which new Orthodox Local Churches are established is of special significance for Orthodox Canon Law. As a legal problem, the establishment of a new Church is not significant, although for opposite reasons, either to Roman Catholicism or to Protestantism. According to Roman Catholic teaching, the Church is one, not only because all its members profess the same faith and join in a common worship, but also because they are united by the guidance of the infallible successor of St. Peter, the Roman Pontiff. The unity of the Roman Catholic Church eliminates the possibility of any lawful separation from it. No new Church can be organised from a part of the Roman Church and legitimately become independent. From the Roman point of view, the true Christian Church can exist only under the authority of the Pope of Rome, the Visible Head of the Church and Christ's Vicar on Earth.

Unlike Roman Catholics, Protestants generally recognize the possibility of organizing new communities. Since preaching the Word of God is considered the basic task of the Church, each group of believers may, in its struggle for the right understanding of the Gospel, organise its own community with its own clergy. In Protestant practice, the establishment of a new body of clergy presents no canonical difficulties. It can be established by the community itself. Since Protestantism recognizes the absolute supremacy of the Word, the Church is considered as founded on the teaching of Christ, that is "on Christ" but not "by Christ" and his Apostles.

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263. According to the Orthodox Church, which retains the concept of Church unity which existed during the time of the early Ecumenical Councils, the unity is one in plurality of sister Churches, only some of which can have the privileges of honor. Its unity does not consist in the subordination to one single head. Orthodoxy recognizes no one to have been empowered by Christ to be His Vicar on earth and to have an indisputable authority over the whole of His Church. The deep spiritual unity of the sister churches consists in the unity of faith, church tradition, basic features of canonical structure and divine services, as well as in the recognition of only that hierarchy which inherited its authority from the Apostles—from all the Apostles and not just from Peter. The Orthodox Church greatly values the connection of its hierarchy with the Apostles, and through them, with Christ Himself, and it firmly retains the principle of Apostolic Succession of hierarchal authority. With regard to the administration of internal affairs, the sister Churches enjoy equally the right of self-government and have independent ruling bodies. Administrative independence is provided for by difference in local usages but it is connected with a strong adherence of the basic principles of faith and Church order. The Highest expressions of the Church's unity were the Ecumenical Councils.

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264. Bogolepov would also point out that the Ecumenical Councils have provided for the establishment of new local churches whose number has never been limited. These local churches which are autocephalous meaning self-governing independent churches have two distinguishing marks—

(1) The right to resolve all internal problems on its own authority, independently of all other Churches, and

(2) The right to appoint its own bishops, among them the head of the Church.

265. Here the learned Professor would make an important distinction between autocephalous churches and autonomous churches. In organisation they differ substantially. The autocephalous church is a self-governing and administratively independent church, whereas the autonomous church has restricted self-government. Administratively, the latter depends upon an autocephalous church, under whose protection it stands. The distinguishing quality of an autonomous church is that it cannot have its own independent Head. Its head can be elected by the local ecclesiastical bodies, but the election becomes valid only after it is confirmed by the Highest Authority of the autocephalous church (Administration and Head here obviously mean the spiritual administration

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and spiritual Head). The latter usually also has the right to supervise the activities of the autonomous church and to judge its bishops. Only an autocephalous church can be an immediate member of the community of Orthodox Sister churches. (See Page 15—Chapter II of the book).

266. Prof. Bogolepov also points out to the requirements for establishing an autocephalous church out of an existing Orthodox Church (Pages 15 and 16 of Chapter II). (1) The local church must be sufficiently mature to organise its own ecclesiastical life; it must have a sufficient number of parishes and parishioners; the possibility of training new clergymen, and a hierarchy canonically capable of making subsequent appointments of new bishops. 10

(2) As the authority to appoint and consecrate a new bishop exists only when there are three ruling bishops of an ecclesiastical region, at least the number of bishops must be available in the new church.

(3) The region of the new local church must be in a State independent of that of its own mother church. According to Mr. Poti, the learned counsel for the plaintiffs, all these requirements are satisfied in the case of the Malankara Church.

267. The learned author would state that if a church meets all the canonical requirements for autocephalous status, then justice requires that its claim be recognized and that it be included in the number of autocephalous churches. "Rights" always correspond with "duties" of others to act according to these rights. However, it is significant to note that the learned professor does not deal with a situation if a considerable section in the church itself resist the claim of autocephaly. 20

268. Bogolepov then deals with the devices by which autocephaly could be realised. One is recognition by the Mother Church, the other is recognition by the Patriarch of the church, and the third is by proclamation of its own independence by the new church. In Chapter VII of the book, the learned professor gives several instances by which a new church in spite of the resistance by the Mother Church has achieved its independent status. Such instances are: (1) Church of Greece in 1850 (17 years after such declaration of independence of its status). (2) the Romanian Church in 1885 (20 years after) (3) the Albanian Church in 1937 (15 years after) (4) the Bulgarian Church in 1945 (72 years after), (5) the Serbian Church in the 14th century (30 years after), (6) the Russian Church in 1448 (140 years after) and the Finnish Church in 1958 (35 years after). The learned author goes on to state that the mother church usually regarded separation from itself as arbitrary and uncanonical, but it must be noted that even the largest local churches had to use the same arbitrary methods when separating from the Church of Constantinople. This historical fact deprives them, in turn, of any right to condemn similar arbitrary separations of their own parts. Even the lack of formal recognition did not prevent some sister Churches from maintaining liturgical and canonical communion with a new Church. In other words, although not recognised de jure, a new Church may enjoy de facto recognition by other autocephalous local churches. 30 40

269. On the basis of the author's discussion Mr. Poti submitted that the Malankara Church has become an autocephalous Church. The 50

Church itself in the early stages was an independent church in the matter of administration of temporalities. By the establishment of the Catholicate, a substitute for the Patriarch has been formed for general supervision of spiritual matters apart from ordination of metropolitans and consecration of morone for which the Catholicos can admittedly act. By the establishment of the Catholicate which was the revival of the Catholicate of the East, the Patriarch's powers were reduced to the vanishing point. He would also submit that at the same time the canonical requirements to entitle the church to be autocephalous is beyond dispute, namely (1) the necessity of more than three bishops, (2) its own ecclesiastical life and (3) the location in a political state other than the home of the Mother Church with the additional requirements mentioned by Patriarch Alexis of the Russian Orthodox Church, namely (1) racial, cultural and social difference, (2) long tradition of autonomy for centuries, (3) acceptance by sister churches and (4) even the fact that dependence of this Church on the Patriarch of Antioch had been only for ordination of bishops and consecration of morone and even the ordination Antioch was only intermittent as several times ordinations had been obtained from the Patriarchs like Alexandria, Babylon, Jerusalem and the Maphrian or Catholicos in Persia etc. Mr. Poti would contend that the dependence on Antioch originated only from the desire to have apostolic succession of the bishops and trace it back to the apostles and not made to give any jurisdiction by reason of the ordination. The learned counsel for the plaintiffs would further contend that the Malankara Church founded by St. Thomas was not founded by Antioch or as a part of the Antiochean See. It is by way of accident during the course of its long life that it had its connection with Antioch. The basic faith of the church is only the Orthodox faith in communion with the Orthodox Churches of the East as different from the Catholic Church or several other churches which have come into existence in Christianity like Protestantism, Anglicanism etc. Mr. Poti would lay strong stress, probably as part of his argument, on para 131 of Ext. A16 judgment where the learned Judge in disposing of the Samudayam Case had said:

"The position which Mar Geevarghese Dionysius's party and subsequently the first defendant's Party has taken up is that the Malankara Jacobite Church is an autocephalous church with the Catholicos as its head. The position that Mar Geevarghese took up was with the special object of meeting in some easy and constitutional way the stand that Mathew Athanasius took up."

270. The defendants' case with regard to this claim of autocephaly is that too much reliance as such cannot be relied on Prof. Bogolepov's book. He is a member of the Russian Orthodox Church and now residing in America. He accepts as is clear from his book the first seven Ecumenical Synods, including the Synod of Chalcedon. The Syrian Orthodox Church which includes the Malankara Church accepts only the first three synods. The 4th Synod known as the Chalcedon Synod is particularly repudiated by this Church. The defendants would further plead that in this case one is not concerned with the theoretical or academical question as to how and in what circumstances a church can become

autocephalous. Nor are we concerned with the question as to what this church ought to be. The question in the suits is as to what the Malankara Church actually is. Justice is done by giving people, not what fits them but what belongs to them.

271. The defence points out that though the Catholicate is claimed to have been established as early as in 1912, the contention that this church is autocephalous was not taken in O. S. No. 94 of 1088 or even in O. S. No. 111 of 1113 which suits commenced after the Catholicate was established. In the pleadings in O. S. No. 94 of 1088 extracted at page 22 of 41 T. L. R. 1 it is stated as follows:—

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“The Patriarch of Antioch is the supreme Spiritual Head of the Malankarai Church.” {Admitted.”

At page 101 of 41 T.L.R. 1 it is stated that the Patriarch of Antioch is as a matter of faith, regarded by the parties to the case as a successor of St. Peter and as the supreme head of the Jacobite Church.

272. At Page 164 of 1946 T.L.R. 683 it is stated as follows:- Both parties unqualifiedly admit that the Malankara Jacobite Syrian Church forms part of the entire Jacobite Syrian Church. In Ext. B34 dated 4-11-1091 which is a circular Kalpana issued by Mar Geevarghese Dionysius giving information about the demise of Patriarch Abdul Messiah and Abdulla. In the Kalpana both of them were described as “നമ്മുടെ സമുദായ മേലധികാരികൾ” and as “നമ്മുടെ സഭയുടെ പ്രധാന പുരോഹിതന്മാരായ ഈ വിശുദ്ധ പാത്രക്കന്മാർ” P. W. 8 in his evidence has admitted that on the date of the circular Kalpana Ext. B34 Patriarch was the spiritual head of the Malankara Church. Mar Geevarghese in his evidence in O.S.No. 94 of 1088 - P.W. 52-his deposition marked in this case as Ext. B154 has admitted that Patriarch of Antioch is the head of the Jacobite Syrian Church including the church in Malankara. He has also said that Malankara is a provincial diocese, the neighbouring diocese being at Syria. He was asked:-

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“34-ാം അക്കത്തിൽ 18-ാം വശത്തു സഭയുടെ പട്ടാഭിഷിക്ത അടുത്ത മേലധികാരി അന്തോഖ്യാസിംഹാസനത്തിന്മേൽ വാഴുന്ന സാർ ഇഗ്നാത്തിയോസ് പാത്രീയാക്സീസ് ബാവാ തിരുമനസ്സിലേക്കു ഇരിക്കുന്നതാകുന്നു എന്നു പറഞ്ഞിട്ടുള്ളതു ശരിയാണെന്നു അവിടുന്ന് ഇപ്പോഴും സമ്മതിക്കുന്നുണ്ടോ?”

In the answer he stated that the “മേലധികാരികൾ” of the church are the Patriarch of Antioch, the melpattakkars accepted by the Association and the Association Committee. The defendants would contend that these admissions by a Malankara Metropolitan who can well be described as the founder of the Catholicate will clearly show that the spiritual head of this church continued to be the Patriarch of Antioch in spite of the establishment of the Catholicate. That was the position taken up by Bassalios Geevarghese II who was both the Catholicos and the Malankara Metropolitan in his written statement in the Samudayam Suit marked in this case as Ext. B 307 and his sworn deposition in that case marked as Ext. B160. So also in his deposition in O. S. No. 315 of 1960 of the Munsiff’s Court, Kottayam, marked as Ext. B321. The present first plaintiff’s evidence in the Samudayam Case as D. W. 27—marked in this case as Ext. B61 also is on the same lines admitting that the Orthodox Syrian Church is the Church in which both he and

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the Patriarch are included. The defendants also refer to the letters Exts. B32, B47, B48, B49 and B50 sent by the first plaintiff after his consecration as Catholicos which indicate that he was writing to the Patriarch on the basis that the Catholicos is a subordinate to the Patriarch. Defendants would also refer to the oath taken by the first plaintiff on 22-5-1964 at the time of his consecration as Catholicos by the Patriarch (or installation?) as briefly stated in Ext. B59—Report in the Malayala Manorama and in Ext. B157 at page 22 of Ext. B157—Malankara Sabha an official organ of the church—which will indicate that he declared the spiritual dependence of this church to the Patriarch of Antioch.

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273. After hearing counsel on both sides and going through the evidence and authorities reported to me, it is difficult for me to accept the plaintiffs' contention that the Malankara Church is an autocephalous church. Even after the establishment of the Catholicate, the general supervision of spiritual Government still vests with the Patriarch. In para 220 at page 191 of 41 T. L. R. 1 it is stated:—

“Our conclusion on this point is that by virtue of the power of general supervision over the spiritual Government of the Church vested in the Patriarch as its ecclesiastical head under the judgment Ext. R, he could exercise that authority by awarding such spiritual punishment as he thinks fit in case of mismanagement or mis-appropriation of Church properties, which, apart from their temporal character, have also a spiritual side. This is substantially the defence plea on this point.”

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In 45 T. L. R. 116, as I noted earlier, as pointed out in Chief Justice Chatfield's judgment (to which I have already made a reference earlier) the court proceeded on the basis that the right of supervision vested in the Patriarch about which the parties were not at dispute there, might involve an interference with the internal administration of the church where there was mismanagement or misappropriation (mismanagement being understood in the sense as practically equivalent to misappropriation) over the temporalities of the Church. The learned Chief Justice further said that it may be accepted for the case that the Patriarch had the jurisdiction to try the metropolitan for an ecclesiastical offence and to impose any penalty which such offence might warrant.

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274. The installation of the Catholicate has at no time been considered as a cutting up of the links with the Patriarch. That was not considered as making an inroad into the spiritual suzerainty of the Patriarch though the local church was considered to be freed from the necessity of rushing up to Antioch for the purpose of ordaining the Metrans and consecrating the Morone. It might be noted that in the majority judgment in the Royal Court of Appeal Case (Ext. B74) after reference to Ittoop's Book and certain other historical records the court states that the Patriarch of Jerusalem (the word Patriarch being given there as a mark of distinction) and the Catholicos appointed to manage the affairs of the Eastern Churches at Tigris (Bagdad) were subject to Antioch. Webster's Third New International Dictionary has defined the word Catholicos as one used in Non-Greek Churches originally as honorary title given to certain exarchs or primates ranking below a Patriarch but before the Metropolitan. In a book written by Rev. P. T. Geevarghese M. A. who subsequently

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became a Metropolitan of the Malankara church and then joined the Catholic Church becoming Archbishop of Trivandrum, a learned and distinguished theologian and scholar under the heading **Were the Syrian Christians Nestorians?**, the Malayalam Translation of which is marked in this case as Ext. B166, the subordination of the Tigris Catholicos to the Patriarch of Antioch is specifically stated. Ext, B166(a)-Pages 5 and 6 of Ext. B166. This book also quotes from Gibbon from "Decline and Fall of the Roman Empire"—Chapter XLVV, Vol. III, Page 354. "The filial dependence of the Catholicos of Seleucia on the Patriarchs of Antioch is attested by the canons of the Oriental Church".

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275. The learned author of Ext. B166 also quotes from Neale's *History of the Holy Eastern Church*, Introduction Vol. 1, Page 125.

"In the early ages, the Catholicate of Chaldea was, as it were, a vicarial jurisdiction of the See of Antioch in the same manner that the Metran of Ethiopia was dependent on that of Alexandria. But when the Catholicos embraced Nestorianism (A. D. 488) that link was broken."

Further Geevarghese has stated in his book in para 15 that 'finding that the whole of Asia was more than the Patriarch of Antioch could possibly superintend, the indefatigable Zanzalus (Jacob Baraddaeus) ordained Achudemes (A. D. 559) Maphrian (i. e. Catholicos) of the East beyond Tigris and the new dignity bore the same relation to the Jacobite See of Antioch that the Catholicos of Seleucia originally did to the orthodox possessors of that Throne.'

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276. It might be noted that Father Geevarghese was a strong Catholicos partisan at the time and he had been examined as P. W. 51 in the Vattippanam Case—O. S. No. 94 of 1088. It might be further noted that the person who was one of those mainly instrumented in the creation of the Catholicate the then Malankara Metropolitan was the first defendant in the Vattippanam Case and he was examined as P. W. 52. His evidence in that case has been marked as Ext. B 154 in this case. He (Mar Gheevarghese Dionysius) died years back. It might be interesting to note what his views on the Catholicate are. He stated in page 1410 of Ext. B154:—

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"ചോ. മാർ ഇവാന്റിയോസിനെ കാതോലിക്ക ആക്കിയത് അന്ത്യോഖ്യാ സംബന്ധമില്ലാതെ ഇവിടെ തന്നെ മെത്രാപ്പോലീത്തന്മാരെ വാഴിച്ച കൊള്ളാമെന്നുള്ള ഉദ്ദേശത്തിന്മേലല്ലേ? ഉ. അന്ത്യോഖ്യാ സംബന്ധം വിടണമെന്ന ആരും ഉദ്ദേശിച്ചിരുന്നതായോ ഉദ്ദേശിക്കുന്നതായോ എനിക്കു യാതൊരു അറിവുമില്ല എന്നുത്തരം. ചോ. മാർ ഇവാന്റിയോസിനെ കാതോലിക്ക ആക്കിയതിൽ പിന്നീട് അദ്ദേഹത്തെ മലങ്കര സഭയുടെ തലവനായി അവിടുന്നു (സാക്ഷി) സ്വീകരിച്ചിട്ടില്ലേ? ഉ. ഇല്ല."

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That is why I said that it is difficult to come to the conclusion that with the establishment of the catholicos there was a snapping of the ties with the Patriarch and a totally independent church was created with full autonomy in the spiritual sphere also. And as I had explained at an earlier stage the Malankara Association by itself cannot by the adoption of the constitution etc. break the relation with Antioch which would bind the parish churches. And if these present suits and the contention taken up there are considered to be declaration by the

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Catholicos cum Malankara Metropolitan and his associates and the Association itself of the absolute independent status of the autocephaly of the church, that may be considered in deep. Are they entitled to do it on behalf of the whole church. How far it binds the parish churches etc.

277. To answer the questions properly, one will have to understand what exactly is the Orthodox Church of which the Jacobite Church is a part. In Encyclopedia Britannica (Vol. 16—1971 Edition) at page 1122 it is stated that “the Orthodox Church is the federation of 13 autocephalous Orthodox Churches chiefly in Greece, Rumania, Bulgaria, Yugoslavia, Cyprus, the U.S.S.R. and the Middle East. Together they compose about one-sixth of the world’s Christian population. As the lesser Eastern churches, regarded by other Christians as Monophysite, also lay claim to the title orthodox (“right believing”), the Orthodox Church needs to be distinguished from them by a further epithet. “Orthodox Eastern” is the most usual appellation, though it has become inadequate because of the growing numbers of this church in the west, especially in the United States.....The church which is the mystical body of Christ consists of all those who believe in him. As founded by Christ who is God it is a divine institution, but composed of human beings it is also a human one. The church’s mission is to bring all men to the truth revealed by Christ. By virtue of this mission the church is one, holy, catholic and apostolic, while its body is composed of both clergy and laity. This one church remains unchanged, although many separate churches were formed later, just as Jesus Christ, its founder is one and for ever the same. The Orthodox Church claims to be the unbroken continuation of this original and undivided church. The breaking away of Monophysites and Nestorians; the schism with the Latin church in the middle ages; and the Reformation which resulted in the development of a multitude of Protestant churches, did not affect, at least in theory, the oneness of the church. The Bible and holy tradition (to be distinguished from church tradition, which is liable to change) are the formal foundations of the church, while Word and sacraments are the means of God’s saving grace.”

278. The historical outline of the Orthodox Eastern Church is well traced out in the Encyclopedia Britannica at pages 1122 and 1123. The Church traces its origin back to Christ himself, its history begins with that of the early church. I need not dilate on the matter much here. It might be noted that the Christian truth was first radiated to the Western World through the then Greek towns of Antioch, Ephesus, Paphos, Philippi, Athens and Corinth.

279. The doctrine of the church is based on the Bible and holy tradition and was determined by the seven ecumenical councils (it has been contended before me that the Syrian Jacobite Church is bound by the first three councils). The first four of these (Nicea 325; Constantinople, 381; Ephesus, 431; and Chalcedon 451) decided on the doctrines of Holy Trinity and of the Person of Christ as formulated in the so-called Nicene creed and in the Chalcedonian definition. The next two ecumenical councils (Constantinople, 553 and 680-681) completed the doctrine in regard to the will and the energy of the

Second Person of the Trinity. I need not go into the doctrine of the Church in this case except to note here that there is a fundamental difference between what is called the Holy Tradition and Church Tradition. At page 1124 Encyclopedia Britannica—Vol. 16—1971 Edn.:

“Holy Tradition:- The Bible alone contains the truth revealed by Jesus Christ, while the authentic interpretation and explanation of this basic truth, given by the church itself (in the sense of I Cor. xi, 2; II Thess. ii, 15; iii, 6, 7), forms holy tradition. The instrument of holy tradition is the ecumenical council, which, once recognized, even tacitly, as such, represents the common consent of the whole church, clergy and laity. The doctrine, for instance, on the Trinity contained in the New Testament is authentically stated by the Nicene creed, which is an important part of the holy tradition. This conception of holy tradition leads to the rejection of the Filioque clause and of any new dogma, such as the immaculate conception and assumption of the Virgin Mary and the infallibility of the pope of Rome, proclaimed by the Roman Catholic Church.” 10

Church Tradition:- Church tradition, on the other hand, formed gradually throughout the centuries by the accumulation of customs and practices, concerns only the details of church life. This church tradition, although venerable as having in many instances, such as the Easter rites, its roots in the life of the early church, is neither unchangeable nor infallible. Such church customs, although often related to fundamental truths or practices contained in the Bible and in the holy tradition, are not an essential part of them. Holy orders, for instance, or baptism, instituted by Jesus Christ as stated in the New Testament and testified by holy tradition, are indispensable for the church; but the rites regarding them are subjects of church tradition and can be changed. A striking example of the changing practice in the church is the celibacy of bishops, which has been enforced only since the sixth ecumenical council (692), according to the conditions of the times as evaluated by the church; previously the bishop could be once married, as the Bible allows (I Tim. iii. 2). The same is true of the whole liturgical life, which is a subject of church tradition and can be altered by church authorities to accord with changed circumstances, as long as the teaching of the Bible and of holy tradition is not contravened.” 30 40

What is the organisation of the Orthodox Eastern church? The Encyclopedia Britannica states at page 1125:

“Organization:- The whole church in heaven and earth has Jesus Christ as its head, its Lord and its master. The church on earth is organized under him in autocephalous bodies chiefly according to countries.

Each autocephalous church is administered by its bishops and the clergy under them, elected by both clergy and laity. The Orthodox Church federation consists of the following autocephalous churches: the ecumenical patriarchate of Constanti- 50

nople; the patriarchates of Alexandria, Antioch and Jerusalem; the church of Cyprus; the Patriarchate of Moscow; the church of Greece; the patriarchates of Rumania, Serbia and Bulgaria; the church of Georgia; Albania; the church of Poland; the autonomous churches of Crete, Finland, Lithuania and Estonia; and the monasteries of Patmos and Sinai. (The other monasteries in the Orthodox Church, which are independent of one another, are under the jurisdiction of the local bishop, metropolitan or patriarch; see Monasticism; Athos, Mount). The Orthodox churches in the United States belong to several jurisdictions (see Orthodox Church in America). The ecumenical patriarch of Constantinople is the head of the federation but only as *primus inter pares*. (see separate articles on the autocephalous churches). 10

While all these autocephalous churches are ruled by the same canon law, those among them that are established by the state are also subject to special ecclesiastical state laws. The Orthodox Church, whether established or not in any particular country, avoids interference in political affairs but co-operates with the state for the welfare of its members. Wherever possible it rejects state interference in its internal affairs, to the extent that its members even face martyrdom, if necessary, as for example under totalitarian governments. 20

When matters of grave and general importance arise in the Orthodox Syrian Church an ecumenical council is convened by common consent. Once convened, the ecumenical council is the highest authority of the church and its decisions regarding faith are infallible. In matters of church order it may modify earlier canons or promulgate new ones, which can only be changed by another ecumenical council. For the final sanction of its authority, however, the ecumenical council depends upon the conscience of the church or the general consensus of both clergy and laity. The pan Orthodox conferences that took place on Rhodes in 1961 and thereafter, although not ecumenical councils, were of great value as a meeting between representatives of churches which, although united in one body, had for centuries had little opportunity to discuss their common problems and responsibilities." 30

280. Herbert Waddams, Canon of Canterbury, in a book called "Meeting the Orthodox Churches" published in 1964 says that besides the four ancient Patriarchates of Constantinople, Antioch (now domiciled in Damascus), Alexandria and Jerusalem 40

"The other Patriarchs in the Orthodox world are heads of independant Churches and their titles are of much later date than those of the four ancient Patriarchates. There are now Patriarchs of Moscow and All Russia, of the Serb Orthodox Church of Yugoslavia, of Rumania and of Bulgaria. The last two were not established without some difficulty about recognition from Constantinople, but they are all recognized now. There are also independent Churches which do not have 50

Patriarchs at their head, namely, Greece, Cyprus, Poland, Albania, Finland and Czechoslovakia. The word most used among the Orthodox for an independent Church is the word autocephalous, which means strictly 'self-heading', that is, a Church whose Primate is not under the jurisdiction of any other bishop. The Churches just named all claim to be autocephalous, though there is some dispute about Czechoslovakia. Besides autocephalous churches there are also semi-independent Churches, described as 'autonomous'. An autonomous Church is one which is not of sufficient size to be granted full autocephalous status, and which has its head appointed by another authority and is limited in certain other respects. 10

Although the pattern of relations between the various Churches is fairly clear, there are points of disagreement which sometimes cause tension between them. There is disagreement on a number of points between Constantinople and Moscow. It is sometimes interpreted as being caused by unjustified claims by Moscow with the aim of diminishing the authority of the Ecumenical Patriarch or of taking away his privileges. But the evidence does not always seem to support such allegations. There is probably a mixture of motives on both sides. Each Patriarchate is anxious to defend its own privileges and not averse, if opportunity offers, to increasing its power." 20

About the establishment of autocephalous churches in Non-Orthodox countries, the learned author states:-

"The tradition of the Orthodox Churches has been that each independent State should have its independent (autocephalous) Church, if it were larger than a minimum size, using as its language the language of the country, or something approximating to it, as for example Old Slavonic in Slav countries. On this principle it would seem natural that there should be one Orthodox Church in the U.S.A., using English as its liturgical language. There are, however, great obstacles to achieving this, and, while they remain, there is a danger of losing from Orthodoxy many of the younger generation. The most percipient Orthodox leaders in America clearly see the problem and its dangers and the present Greek Archbishop Jakovos has begun to take steps to move in a constructive direction, but there are long-standing political, national and sentimental difficulties which are far from being overcome. One of them is the unwillingness of the parent jurisdictions in Europe and the Near East to encourage among their people in America an independent approach to the problem, and there is also a shortage of Orthodox literature in English. Another is the identification of certain Orthodox Churches in North America with ethnic groups which wish to preserve their national identity and traditions. But although there will be many struggles and heart-rending tensions, it is probable that 30 40 50

in the long run an American Orthodox Church must come, if Orthodoxy is to make that contribution to Christendom in North and South America which could greatly enrich the life of Christendom as a whole.

In Orthodox world affairs a meeting of great importance took place in 1960 on the island of Rhodes: it was a fully representative official gathering of the Orthodox Churches throughout the world to decide the agenda and arrangements for a later formal Pan-Orthodox Synod, which would take decisions on a number of burning issues and be binding on all the Orthodox Churches. It was the first time that such an important and representative meeting had been held for many centuries, and it did much to revive the consciousness of the place and mission of the Orthodox Church in the world.” 10

281. It is not inconceivable that an autocephalous church embracing all the parish churches in Malankara in communion with the other Orthodox Churches could come up. But that could only be created at a representative gathering of all such parish churches and other organisations belonging to the Malankara Church called for the particular purpose with due notice. And there itself if a segment of the parish churches refuse to break the links with Antioch, I do not think they could be compelled to be part of the new Church. To the same extent that the new autocephalous church that might originate in such a gathering cannot be said to have deviated from the fundamental principles of Orthodoxy, those who want to continue within the Antiochian fold could also not be said to have violated any fundamental creed of the church. If the parishioners of a particular parish church would like to continue within the Syrian Jacobite Church with the Patriarch of Antioch as the head, with their right of religious freedom enshrined in the constitution and as they cannot be said to have violated any fundamental principles of the Orthodox Church, neither the new autonomous church nor the State could deprive them of their legal and religious right in the matter. 20 30

282. Even if a bare majority of the Syrian Jacobite population or of the parish churches opt for a new autocephalous church but then a considerable number of people and churches would like to retain their tie with the See of Antioch, can they be deprived of the churches where they have got a majority. Can the decisions of the parishioners be given the go by. It is true if a fundamental doctrine of the church is sought to be given up by a majority of parishioners they should not be allowed to do so. As the House of Lords said in the well-known case of **General Assembly of Free Church of Scotland and Others v. Lord Overtoun and Others** (1904) A. C. 515, the identity of a religious community described as a Church consists in the identity of its doctrines, creeds, confessions, formularies and tests. Even by a majority, the members of the church cannot alter or vary the doctrine of the church. The bond of union of a Christian Association may contain a power in some recognised body to control, alter or modify the tenets or principles at one time professed by the association, but the existence of such power must be proved. Lord Halsbury L. C. very pointedly pointed out 40 50

there in such controversies, it is to be remembered that a court of law has nothing to do with the soundness or unsoundness of a particular doctrine. Assuming there is nothing unlawful in the views held, the court has simply to ascertain what was the original purpose of the trust. The Lord Chancellor again pointed out that the court has no right to speculate as to what is or is not important in the views held. The question is what were, in fact, the views held, and what the founders of the trust thought important.

283. The Lord Chancellor quoted from Lord Eldon in Craigdallie v. Aikman (1813) 1 Dow, 1, 16: 10

“With respect to the doctrine of the English law on this subject, if property was given in trust for A., B., C., etc. forming a congregation for religious worship; if the instrument provided for the case of a schism, then the Court would act upon it; but if there was no such provision in the instrument, and the congregation happened to divide, he did not find that the law of England would execute the trust for a religious society, at the expense of a forfeiture of their property by the cestuis que trust, for adhering to the opinions and principles in which the congregation had originally united. He found 20 no case which authorized him to say that the Court would enforce such a trust, not for those who adhered to the original principles of the society, but merely with a reference to the majority; and much less, if those who changed their opinions, instead of being a majority, did not form one in ten of those who had originally contributed; which was the principle here. He had met with no case that would enable him to say, that the adherents to the original opinions should, under such circumstances, for that adherence forfeit their rights.

“If it were distinctly intended that the Synod should 30 direct the use of the property, that ought to have been matter of contract, and then the Court might act upon it; but there must be evidence of such a contract, and here he could find none. He proposed, therefore, that the cause should be sent back with two findings, of this nature: (1) That the ground appeared to have been purchased and the house built for a society united, and proposing to continue united in religious opinion.

(2) That it did not in point of fact appear how this property was to be applied, in case the society should happen to differ 40 and separate.”

He makes another quotation – a strongly worded one from Dill v. Watson (1836) 2 Jones Rep. (Ir. Ex.) 48, 91, where Smith B said:-

“Again, I do not conceive that I appeal from the word of God to that of man, by proclaiming or attesting by my signature, that I concur in the interpretation given by a numerous body of my fellow Christians to certain passages of Scripture. They agree with me, I agree with them in construction and consequent creed; but neither take their belief upon the authority of those others. Both draw their faith from the Bible as 50

its common source; both consider the Bible as containing the only rule of, and furnishing the only unerring guide to a true faith; each, with God's assistance and the subordinate and pious aid of human instruction, interprets as well as man's infirmity will permit; both coincide in the same interpretation that interpretation regulates their faith; and all who thus coincide become members of the same religion. And thirdly, we do not coerce our neighbour by calling for his signature to our profession or articles of faith. We leave him free to adopt or to repudiate that faith, according as his reason, his conscience, and the grace of god may direct him. We but say to him, if you agree with us affix your signature to certain articles, or in some way notify your recognition of their truth; or if you disagree, withhold such signature or declaration. And we say of him, in the former case, that he is, and in the latter case that he is not of our religion. We do not compel him to hold our faith; we but ask him to inform us, by certain acts, whether he does hold it or does not; and we ask this, only if he claim to be enrolled as one of our body, and to be in religious communion with us. In the absence of such a test, our Establishment would not be a rock, cemented into solidity by harmonious uniformity of opinion, it would be a mere incongruous heap of, as it were, grains of sand, thrown together without being united, each of these intellectual and isolated grains differing from every other, and the whole forming a but nominally united while really unconnected mass; fraught with nothing but internal dissimilitude, and mutual and reciprocal contradiction and dissention. *Hic dextrorsum abit; ille sinistrorsum.* This indeed I should hold to be, in the language of a late prelate, 'a Church without a religion'." 10 20 30

Lord Halsbury then states:-

"The principles for decision thus propounded have been recognised and acted upon ever since, and it would seem that it may be laid down that no question of the majority of persons can affect the question, but the original purposes of the trust must be the guide."

284. No doubt these are with regard to the fundamental tenets. If with regard to fundamental tenets there is no difference as such but there is cleavage with regard to certain important factors, neither of the parties could be said to have deviated from the church and thus gone out of the church. But this cleavage on the particular factor though not on any essential doctrine or faith of the church but still a vital one like the continued association as in this case desired by the patriarch side with the Antiochean See, which has its roots in church history and tradition which might have naturally given rise to emotional and sentimental attachment to the Antiochean Throne with apostolic succession claimed through St. Peter cannot be ignored and that party asked to give up what they consider to be something amounting almost or akin to an article of faith. It might be noted here that some of the distinguished judges who had to deal with the relationship between the 40 50

Patriarch of Antioch and the Malankara Church have gone to the extent of saying that the spiritual supremacy of the Patriarch is a fundamental and essential part of the church government of Malankara. Justice Nokes says in 1946 T. L. R. 683 at 735:-

“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 this trust. But if such a doubt could exist, it is dispelled by the judgments of the Courts of Final Appeal.”

Sathyanesan J. also in that case takes the same view though in more stronger terms. After pointing out that Jacobite Church believed that Jacobite Patriarch of Antioch is the true successor of St. Peter, Sathyanesan J. points out that the Supreme Head of the Jacobite Syrian Church cannot be one sort of head of the rest of the Church because of the unity of the Church, a test for the identity of the churches, depends on the headship of the Patriarch as much as anything else. Therefore he concludes that no section of the Jacobite Church which openly repudiates the lawful authority of the Patriarch can cohere with the rest of that church. I think here Justice Sathyanesan has gone too far and may not be quite correct. He seems to equate the position of the Patriarch of Antioch in the Church to that of the Roman Pontiff in the Roman Catholic Church. I do not think the Jacobite Church as well as the other Orthodox Churches (I do not think that there is any controversy that the Jacobite Church is also an Orthodox Church, laying stress on the term Orthodox meaning right believing) believe that the true Christian Church can exist only under the authority of the Head of that church as the Visible Head of the Church and Christ's Vicar on Earth. As other Orthodox Churches, it also retains the concept of church unity which existed during the time of the early Ecumenical Councils. It is a unity in plurality of sister churches, only some of which can have the privileges of honour and such unity does not consist in the subordination to one single head. Therefore the formation of an autocephalous church with an independent Head no way depending upon the Patriarch of Antioch, cannot amount to a repudiation of Orthodox faith.

285. Some features of the Jacobite creed which to some extent makes a difference between the other Orthodox churches and the Jacobite Syrian Churches would not in any way matter in this context. With regard to the origin of the creed known as Jacobite creed there is some difference of opinion among the Missionary Christians themselves. Ext. B74 would state (at para 58):

“Rev. Howard says that it takes its name from James Baradaeus an eminent promoter of their tenets, though Eutyches is regarded as the founder of the doctrine. While Dr. Days says that it is derived from Jacob of Uraha who in A. D. 656 was consecrated Bishop of Uraha. Mr. Ittoop almost agrees with Dr. Day.”

I am only referring to this because some stress has been laid on the difference between the Jacobite Church and the other Orthodox Churches by the Patriarch side with reference to the doctrinal conflict

that happened at Chalcedon ecumenical council in 451 A. D. That Council adopted the doctrine that Christ has two distinct natures – human and divine. According to them it is like oil poured in water. This was not accepted by some of the Eastern churches which held that the two natures in Christ-human and divine – are mixed as water poured in wine. The latter were thus known as monophysites and the former diophysites. The origins of the doctrines of Monophysitism, how the decision of the ecumenical council of Chalcedon against Monophysitism rallied a large body of Christians in Syria and adjacent areas who were against Greek dominance, the activities of Severus, Patriarch of Antioch (512–518) and John Bar Qursos (John of Tella) and the reorganisation of the Syrian Church under Jacob Burdana (Baradaeus) are things of history and has been dealt with in detail under the heading, “Eastern Christianity, Independent Churches of” Pages 136–137 of Vol. 6, the New Encyclopedia Britannica – 15th Edition. There is no necessity to delve deep into those matters here. With the difference in the doctrine regarding the Nature and Person of Christ, we are not concerned in this case. 10

286. Suffice it to say, these suits bring to light something which had been lying low till the recent past. A good number of the members of the Malankara Church are now for an autocephalous church. The Mother Church of Antioch is resisting it, opposing it. That by itself will not be of any decisive significance. Because as Prof. Bogolepov points out obstacles to the reorganisation of a new church and unsuccessful attempts to obtain recognition from the Mother Church have usually resulted in a church itself proclaiming its own independence. That is what is the Catholicos side attemptsto do now here. If the proclamation is given in practical effect, that church becomes de facto, independent and self-governing enjoying the rights of an autocephalous church. It is also true that there are very few examples of a Mother Church granting autonomous or autocephalous status to a subsisting part of itself in a comparatively short time. (See page 45 of “Toward an American Orthodox Church”). However there is another factor here. A substantial number of members of the Malankara Church itself with considerable in many or at least some parish churches are strongly opposed to a breaking of the tie with Antioch. Morally and legally I do not find any hindrance in they being allowed to continue their tie with Antioch. What exactly is the strength of each faction in the Malankara Church there is no positive evidence before the court. The Malankara Jacobite Syrian Christian Association which has its birth in the consensus between the Patriarch, the local clergy and the laity at the time with the limit of its powers as delineated in the resolution of the Mulanthuruthy Synod has no legal right to resolve this controversy by a majority. The limitation of the powers of the Association, I have dealt with at an earlier stage. The Association by itself cannot add on its powers. 20 30 40

286. As Dennis Lloyd points out in his work on the Law Relating to Unincorporated Associations at page 99 (published by Sweet and Maxwell – 1938) “the creation of a voluntary society rests, then, on the agreement of the members. This means that so far as the law is 50

concerned the creation of such societies depends upon that branch of the law which deals with enforceable agreements, namely, the law of contract. In the same way the constitution of the society will only be enforceable in so far as it amounts to a binding agreement between the parties." In the nature of its formation, the binding agreement between the participants of the Synod at Mulanthuruthy the Association has no powers to snap the ties of the Malankara Church with the Patriarch. In any view such decision will not bind the individual churches and other autonomous organisations within the Malankara Church. It is the decision of the parishioners and the members of the organisation in 10 meeting duly convened and taken under rules of the parishes and organisation that would decide such matters.

Metropolitans ordained by Patriarch:-

287. Here also I would deal with the question as to how far the Metropolitans ordained by the Patriarch but not accepted by the Malankara Association now under the control of the Catholicos could act in the local dioceses or parish churches validly. As pointed out earlier, consent of the people or acceptance or acknowledgement by people before a Metropolitan could act though duly ordained by the Patriarch or his delegate is a 20 conception which had its origin at the time or before the controversy between Mar Joseph Dionysius and Mar Mathew Athanasius arose. (See para 244 of Ext. B74). The basis of this idea was to prevent foreigners sent out by the Patriarch from assuming management of the Church without the consent and against the wishes of the community. In Ext. B74 case in view of the decisions taken at the Mulanthuruthy Synod, it was concluded that Mar Joseph Dionysius had been duly accepted by the people. The learned Judges— the majority of the Royal Court of Appeal in Ext. B74— say that the Mulanthuruthy meeting is a general meeting of the Syrian Community to arrange the details of their further action to establish on a 30 firm basis, the supremacy of the Patriarch as well as to settle the ways and means to oust the trespasser and wrongful possessor of their church properties and to secure to their Metropolitan duly consecrated and appointed the undisturbed exercise of his episcopal and temporal functions. They further state that these were the sole objects of the proceedings of the meeting at Mulanthuruthy and also that at Parumalai (see para 241 of Ext. B74). In a later portion of the judgment at para 288, in regard to the contention raised on the appellant's side in that case that the Mulanthuruthy Synod did not afford any evidence of the election at the meeting of Mar Joseph as Metropolitan, the learned Judges observe that 40 this objection is wholly due to a mis-conception of Mar Joseph's case. The case is not that he was proposed as Metropolitan and accepted by the people at that meeting but that he had already been accepted in the sense that the majority of the members of the church was on his side as their Metropolitan duly consecrated and appointed by the Supreme Head of the church and that the acceptance was only emphasised by the several resolutions rendered at the meeting. The judges further say that election is misnomer for acceptance of the community.

288. Taking due note of the history of the Malankara Church and how this idea of acceptance by the people arose in respect of a 50

Metropolitan duly ordained by the Head of the Church, now we have to view the question in the light of large split in the community on account of the difference on an important question as to whether the Patriarch should continue as the Supreme Head of the Church with the powers of general superintendence vested in him in spiritual matters on account of that or whether the church should become an autocephalous church with the local Catholicos-cum-Malankara Metropolitan as the Supreme Head of the Church with communion with other Orthodox Churches including the Antiochian See which is what is attempted by the plaintiffs in the matter. In such circumstances it is only proper, just and correct that Metropolitans ordained by the Patriarch should have the right to act as due authority in dioceses and churches, which accept them. I proceed on the basis that non-acceptance of Patriarch of Antioch as the Supreme Head may not be a deviation from a fundamental element of faith as regards an Orthodox Church but something which a considerable section of the community consider a vital question of importance, deviation from which would be a deviation from the church traditions established over centuries. A situation arises when two factions of the members of the Malankara Church, both groups continuing in the Orthodox faith find it difficult to be in communion with each other. In such circumstances the views of a particular group cannot be dismissed as based on obstinacy of a recalcitrant minority. The court is not now in a position to know as to who form the majority and who the minority in the church. Apart from that in such questions, majority or minority may not matter. In matters of faith opinion gathered on the basis of history and tradition cannot be rejected off-hand. As Prof. Bogolepov stated there is an acute need for a canonical settlement for the regulation of the conditions and manner in which new autocephalous Orthodox Churches can and should be established and this problem was and is all the more complicated and difficult not only because of the circumstances at the time of the founding of any new church in the 19th and 20th centuries have been radically different from those of the epoch of the first Ecumenical Councils especially in countries of the New World, perpetuated by immigrants under unprecedented political and religious conditions but also because of circumstances where as in the Malankara Church there may be stiff opposition in the local church itself for creation of a new independent church. One finds in U.S.A. different autocephalous churches clinging to the Orthodox faith springing up when according to tradition there should have been only one such church. This development is due to long standing political, national and sentimental reasons as pointed out by Herbert Waddams, the Canon of Canterbury. I may here point out the following passage occurring in the new Encyclopedia Britannica--Vol. 6--in the subject relating to eastern orthodoxy at page 146:-

“Generally, but not always, the jurisdiction of each autocephalous synod coincides with national borders- the exceptions are numerous in the Middle East (e. g. jurisdiction of Constantinople over the Greek islands, jurisdiction of Antioch over several Arab states, etc.)—and concerns also the national dioceses of the Orthodox diaspora (e. g., Western Europe, Australia, America),

which frequently remain under the authority of their mother churches. The latter situation led to an uncanonical overlapping of Orthodox jurisdictions, all based on ethnic origins. Several factors, going back to the Middle Ages, have contributed to modern ecclesiastical nationalism in the Orthodox Church. These factors include the use of the vernacular in the liturgy and the subsequent identification of religion with national culture; this identification sometimes helps the survival of the church under adverse political conditions, but it also hampers missionary expansion and the sense of a specifically Christian identity of the faithful.”

(emphasis mine).

289. In the context and circumstances of the case, I have no hesitation in finding that the metropolitans on the Patriarch side, belonging to the Malankara Church and ordained by the Patriarch are entitled to act in dioceses and parish churches which accept them as such. Here I might also point out that I find it difficult to agree with the learned District Judge's finding in Ext. A16—trial court judgment in the Samudayam case that in respect of diocesan metropolitans also the ultimate deciding voice in respect of acceptance rests with the whole Malankara Church as represented by the Association. On the same principle which formed the basis of the necessity of the acceptance by the people of the Malankara Church, for the validity of the appointment of the Malankara Metropolitan in a congregationally controlled church like the Malankara Church, acceptance of the diocesan people is necessary for the diocesan Metropolitan to function. What was said in 41 T. L. R. 1 in respect of Edavaka Metrans that such Metrans must be accepted by the people of the respective Edavagais seems quite consistent with the principle of acceptance as laid down in Ext. B74 judgment. There is also some evidence in this case of two Diocesan Metropolitans appointed by Patriarch Peter III being not in a position to exercise jurisdiction over the dioceses having been not accepted by the people of the respective Dioceses. (See Page 18 of Ext. B160 the deposition of Bassalius Geevarghese II):—

“പത്രോസ് തൃതീയൻ വാഴിച്ചതിൽ ഭരണം കിട്ടാത്തതു ശമയോൻ ഭിവന്നാസ്യോസിനും യൂലിയോസിനും ആണ്. ഇവർ രണ്ടുപേരും മരണം വരെ മലങ്കരയിൽ തന്നെയായിരുന്നു. അവർ രണ്ടുപേരും പ്രാർത്ഥിച്ചു. ഭാരോ സ്ഥലങ്ങളിൽ കർമ്മങ്ങൾ നടത്തിയും ഇരുന്നിരുന്നു.... ഈ ആറുപേരെയും മെത്രാന്മാരായി വാഴിക്കുന്നതിനു മുളയ്ക്കുത്തി സുന്നഹദോസിൽ വെച്ചു ചിന്നിച്ച് അസോസിയേഷൻ യോഗം കൂടിയോ തിരഞ്ഞെടുത്തില്ല. വാഴിച്ച ആറു മെത്രാന്മാരിൽ നാലുപേരെ മാത്രം സ്വീകരിക്കുകയും അവർ എടവകഭരണം നടത്തുകയും ചെയ്തു എന്നു പറഞ്ഞല്ലോ. അങ്ങിനെ അവരെ സ്വീകരിക്കുന്നതിനായി മലങ്കര അസോസിയേഷൻ അല്ലെങ്കിൽ പള്ളി പ്രതിപുരസ്കരണേം കൂടിട്ടുണ്ടോ. ചോ. മലങ്കര മെത്രാപ്പോലീത്തയായിരുന്ന മാർ ജോസഫ് ഭിവന്നാസ്യോസ് അവരെ സ്വീകരിച്ചിട്ടുണ്ട്. അവരെ സ്വീകരിക്കുന്നതിനായി മലങ്കര അസോസിയേഷൻ കൂടിട്ടുള്ളതായി അറിവില്ല. അതാതു എടവകകളിൽ യോഗം കൂടി അവരെ സ്വീകരിച്ചിട്ടുണ്ടോ എന്നറിഞ്ഞുകൂടാ.

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At page 19.....ഇങ്ങനെ ആറുപേർ കൂടി എടവകതിരിച്ചു സുന്നഹദോസ് കോൺ കൊടുത്തശേഷം. ഇതിൽ രണ്ടു മെത്രാന്മാർ എടവകഭരണം കിട്ടാതിരിക്കാൻ വല്ല കാരണവുമുണ്ടോ. ചോ. ആ എടവക ജനങ്ങൾക്ക്

അവരുടെമേൽ തൃപ്തിയില്ലാത്തതു കൊണ്ടാണ്. ഉ. ആ തൃപ്തികേട് ആ എടവക ജനങ്ങൾ വെളിപ്പെടുത്തിയതു് ആ മെത്രാന്മാരെ ആ എടവകകളിൽ സ്വീകരിക്കുകയോ അവരുടെ അധികാരം ചെലുത്താൻ സമ്മതിക്കുകയോ ചെയ്യാത്തതാണ്.”

In Ext. A16 rather an exaggerated importance has been given to the Malankara Association and its powers. The Malankara Association was born at Mulanthuruthy meeting which was held for the sole object to arrange the details of the community's further action to establish on a firm basis, the supremacy of the Patriarch as well as to settle the ways and means to oust the trespasser and wrongful possessor of the church properties and to secure to their Metropolitan duly consecrated and appointed the undisturbed exercise of his episcopal and temporal functions (quoting again from para 241—Ext. B74). And at para 284 the summary of the resolutions passed at the Synod are given which negative the rather wide powers that the Association wants to possess including to act on behalf of the community in the acceptance of the Diocesan Metropolitan irrespective of the wishes of the diocesan people. I find much force in the contention raised on behalf of the defendants, on the facts and circumstances of the case as borne out by evidence that the Malankara Common Trust, Diocesan Trust and each Parish Trust are independent Trusts. A diocesan Metropolitan becomes the trustee of the diocesan trust by virtue of his appointment and by acceptance by the people of the diocese who are the beneficiaries of the diocesan Trust of the particular diocese. I find accordingly. 10
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Whether the plaintiffs or their partisans have committed any breach of faith by doing any act or omission as alleged by the defendants? Is the alleged excommunication of plaintiffs 1 and 2 valid ?

290. A preliminary contention has been raised in this case by the plaintiffs contending that in the light of the Supreme Court decision in the Samudayam Case the defendants cannot contend that plaintiffs or their partisans have committed any breach of faith by doing any act or omission. It is pointed out that by the decision in the Samudayam suit by the trial court and the Supreme Court and for that matter the decision 45 T. L. R. 116 upholding the Catholicate could not have been rendered legitimately or rationally without at the same time and in the same breath, so to speak determining that those acts or omissions of the defendants in the Samudayam suit do not amount to a loss of faith or a heretical act or a voluntary giving up of the right of the membership of the church. In this connection Mr. Poti would refer to the passage in para 193 of Spencer-Bower's book on Res Judicata where the learned author states (at page 152—Turner's Edition—Second Edition) that where the decision set up as a res judicata necessarily involves a judicial determination of some question of law or issue of fact, in the sense that the decision could not have been legitimately or rationally pronounced by the tribunal without at the same time and in the same breath, so to speak, determining that question or issue in a particular way, such determination, even though not declared on the face of the recorded decision, is deemed to constitute an integral part of it as effectively as if it had been made so in express terms: but, beyond these limits, there can be no such 30
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thing as a *res judicata* by implication. Mr. Poti would point out that Justice Sankaran pronouncing the judgment in 1957 K. L. T. 63, definitely stated that these acts amounted to a repudiation or defiance of the Patriarch of Antioch and a complete severance with all existing ties with Antioch and bringing into existence a new church outside the ecclesiastical supremacy of the Patriarch. The learned counsel refers in this connection to paragraphs 14, 17, 18, 20, 21, 28, 50 and 54 of the High Court judgment. In paragraph 21 it was said that whether the acts complained of constitute heresy depend mainly on the validity or otherwise of the Catholicate stated to have been established at Malankara, and that this again depends on the question whether Abdul Messiah was the ruling Patriarch at the time of the establishment of the Catholicate. He disposes of the question against the defendants by holding that the Catholicate was not validly established and Abdul Messiah was not the Canonical Patriarch. To the argument that in 45 T. L. R. the establishment of the Catholicate has not been held to be an act of heresy the learned Judge answered that there was only an installation of the Catholicate and in the Samudayam Suit the complaint is that the Catholicate has been established by the provisions of Ext. AM and therefore, the unlawful act is not covered by the earlier decision. In paragraph 51, the learned Judge takes Ext. AM and discusses each of the provisions to hold that the Patriarch's high position has been wiped out by the provisions of the Bharanaghatana. Mr. Poti would point out that it is on all these findings that the learned Judge has allowed the appeal. This has been reversed by the Supreme Court which according to Mr. Poti upheld the Catholicate and repelled all contentions levelled by the plaintiffs in the Samudayam Suit as acts of heresy and also stated in clear terms that any other provisions of the constitution which might have been used by the plaintiffs to substantiate heresy are also deemed to have been concluded by the principles of *res judicata*. According to the plaintiffs' learned counsel, the Supreme Court took this view presumably because the establishment of the Catholicate is something which is warranted by the law of the church as laid down in the Nicean Canons and the automatic and natural result of the establishment of the Catholicate in an area is *pro tanto* the reduction of the powers of the Patriarch of Antioch and the process of reduction of such powers would not therefore involve any breach of faith, or deviation from the fundamental principles of the religious organisation.

291. I would say Mr. Poti's argument is good in parts. What the Supreme Court decided is that on the question of heresy or voluntary separation of the Catholicos Party from the Church by setting up a new church are concluded by the decision in 45 T.L.R.116. That cannot be reopened. They never went into the question of the validity of the Bharanaghatana as regards the church as a whole or the parish churches. That was not necessary for the case. The Supreme Court said that the specific provisions in the Constitution which according to the Patriarch's party had made the defendants in that suit heretics were matters relied on disentitling disqualification in the earlier suit. The court specifically pointed out that the plaintiffs are disentitled to take up the case at the appellate stage that by the mere fact of the adoption of the

new Constitution or any particular clause thereof other than those referred to in the pleadings. They said that the issues cannot be permitted to be stretched to cover matters which are not on a reasonable construction, on the pleading on which they were founded. We have now to look into what 45 T.L.R. 116 said.

292. The Travancore High Court in that case was of the opinion that acts and conduct alleged to have been committed by the Catholicos side could be related to a personal dispute between two claimants to Patriarchate in which the first defendant there deserted the Patriarch who had created him Metropolitan and supported his rival. Such conduct might amount to an ecclesiastical offence for which the offender could be deprived by his ecclesiastical superior but it could not be an offence for which the civil court could try him or express any opinion as to his guilt. Chief Justice Chatfield in his leading judgment further said that besides it seems hard to ascertain on the evidence before the court that the person recognised by the first defendant as the Patriarch had no claims to be regarded as such. The possible existence of two Patriarchs at the same time is recognised by the Canon irrespective of any dispute as to matters of faith. One of them should sit idle but as to what will happen if he does not but does such acts as consecrating Morone or ordaining Metropolitan there are no means of knowing. It may be that in such cases the acts done will not be ab initio invalid and may become fully valid if recognised by the Senior Patriarch. All this would be mere surmise. As by that time both Abdulla and Abdul Messiah were dead and a new Patriarch ruled at Antioch, no recognition that could have been given to either of the rivals could materially affect the church. Therefore in the circumstances it could not be that the church to which defendants 1 to 3 in that case belonged is a different church. Consequently the court said no question of any loss or forfeiture of trusteeship by the first defendant there would arise. The court came to the conclusion that no question had ever been raised as to the ordination of the first defendant being invalid and as there was no doubt that before the Patriarch's order of excommunication (which was found to be invalid on account of the violation of the principles of natural justice) he was Malankara Metropolitan and therefore Malankara Trustee. He did not forfeit these positions by heresy and schism. The Chief Justice's view was substantially concurred by the other two judges.

293. Therefore in the present case the defendants may not be able to contend, on the basis of alleged facts which were available for being taken up in the previous cases for contending that the partisans on the Catholicos side had become heretics or had gone out of the church, that they are heretics or have gone out of the church. That does not however mean that there is a decision by the court that the establishment of the Catholicate and other things done by the Catholicos side are something which are warranted by the law of the church. However, going by the Orthodox faith it is rather difficult to say that actions attributed to the Catholicos side are fundamentally opposed to such faith. Their attempt is to establish an autocephalous church or get it declared that the Malankara Church is an autocephalous church. What

they may be doing might be against the church tradition of ties with the Antiochian See. And while they may not be able to impose their views on the dioceses and parishes which would like to retain those ties, they in their turn cannot be compelled to retain such relationship with the Patriarch.

294. Though as I said earlier the Malankara Church as such has not become autocephalous, from the time of Mar Geevarghese Dionysius, a big section of the church which was in control of the Common Trust had been taking step by step to throw out the supervisory powers which the Patriarch of Antioch was having over the Malankara Church. That has now finally culminated in the outspoken attitude taken up in the present 10 proceedings by the Catholicos side that the church has become autocephalous—a completely independent church free from any spiritual supervisory power of the Patriarch of Antioch. And at the same time, an opposing section—a considerable one though there is no evidence in this case for the court to come to a definite conclusion as to who is majority on the basis of members or parish churches under control, was, and is attempting to keep the antiochian tie intact. This has naturally resulted in the proceedings of Ext. 180, A196, A197, A202 and A204 of the Patriarch and Ext. A223 of 16-6-1975, proceedings of the Universal Synod of the Syrian Orthodox Church expelling the plaintiffs from the church and suspending 20 their Metropolitans. In the light of the contentions of the Catholicos side, naturally they have to and have taken up the contentions that these proceedings are void being actions taken without jurisdiction and malafide. They have taken up the position that without the junction of the Metropolitans of other Orthodox Churches with whom the Jacobite Syrian Church is in communion, in a properly convened Synod they cannot be excommunicated or suspended from the Church. Consistent with the view that I have taken in regard to the cleavage in the church that it is one affecting the historical and basic church tradition affecting the Malankara Church and not on fundamental tenets of Orthodox faith, I do not think 30 that such proceedings could have any validity as regards the dioceses and parish churches which accept the plaintiffs though they the plaintiffs, may not be able to enforce their spiritual or temporal powers over the dioceses and parishes which do not accept them or disown them. And whether the dioceses or parishes have accepted or not will depend on decision taken by the dioceses or parishes in accordance with the constitution which binds them. As I stated earlier unless there is a specific decision taken by a diocese or parish that Ext. A2, A9 or A1 binds them, it cannot be taken that the same which has been framed by the Malankara Association bind such dioceses or parishes. We have to have a look at 40 the history of this split. Ever since the Patriarch and Catholicos parties came into being, they were functioning almost as two churches, one calling itself the Jacobite Church, probably to emphasise its connection with the Patriarch of Antioch and the other the Orthodox Syrian Church, the head of which is said to be the Catholicos considering itself virtually independent. And, finally in these suits, the Catholicos side had come out with their case of their completely independent church—a new autocephalous church. In the light of this finding, I think it is unnecessary to go into the other controversies raised regarding the apostacy of the plaintiffs.

295. And, unfortunately, a controversy has been raised in this case 50

whether St. Thomas has established a Throne or not and whether Spiritual Grace emanates therefrom. The defendants would have it that the Jacobite Syrian Church believes in only one throne which is the throne of St. Peter. One of the charges raised against the Catholicos by the Patriarch which has resulted in his expulsion is on the question whether St. Thomas, one of the disciples of Jesus Christ has established a 'Throne' and whether Spiritual Grace emanates therefrom. It is alleged that the origin and transmission of spiritual grace is a matter of fundamental faith of the church. According to the defendants, the enquiries made by the Patriarch on the point was not satisfactorily answered by the Catholicos. Hence for this and other points, the defendants would contend that it had become necessary for the Patriarch as head of the church and as the guardian of the faith to convene the Synod for a final decision on this matter. 10

295. If the matter of headship of the church is a question relating to fundamental tenet of the church, there is some basis for the defendants' plea. But as I have stated earlier this is not a question of faith as such as far as the Orthodox Church is concerned. Throne might relate to successive episcopacy. Though Antiochian See claims through St. Peter, some other Orthodox Churches have traced apostolic succession through other apostles. Whether St. Thomas could have a throne because on the basis of interpretation of certain passages in the Bible is not for this Court to decide. A secular court cannot take a proper decision on that. What is unfortunate is St. Thomas's name has been drawn into the matter when both sides besides the other churches of the land cannot but have the highest regard for the apostle who as per tradition brought Christianity to India. 20

296. A very natural but unfortunate product of schism in the church is that each rival group would like to make out that it is different from the other and the other has gone against the fundamental faith. And blame is sought to be thrown upon a Patriarch who is pictured as the worst of all schemers or on a Malankara Metropolitan who is described by the rival side as a conspirator. And stress is sought to be laid by one side on national sentiments by describing the other as foreign dominated while the other wants to make out that its rival have gone against the faith. The court will naturally have to sail in these troubled waters with care and skill so as not to be drawn into controversies which may not be very material for resolving the issues at hand, at the same time recognising that honest differences are bound to arise in any religious community when forces which want to effect some change which according to them are necessary to bring the church in conformity with the new set up of things, clash with rival forces who insist on giving top priority to tradition, many facets of the tradition having grown themselves as important tenets. 30 40

St. Antony's Educational Society and the Evangelistic Association of the East.

296. Some churches listed in O. S. No. 4 of 1979 belong to these societies which are really organisations in the Jacobite Church. St. Antony's Church, Mangalore which is item 1040 in the list belongs to St. Antony's Educational Society at Honovar. This Society is a religious and charitable endowment registered under the Societies Registration Act of 1860 and 50

also under the Bombay Public Trust Act of 1950. The society is known as the west Coast Syrian Mission. The Society as such is not impleaded in the suit. The 17th defendant in O. S. No. 4 of 1979 is the vicar general of the suit but he is not impleaded to represent the Society. The Society has got its own Memorandum of Association and Articles of Association which is marked as Ext. B261 in the case. The Society is alleged to be under the control and superintendence of the Patriarch in all its religious, moral, secular and educational matters. The main objects for which the Society has been constituted is to establish churches for the propagation of Syrian Orthodox faith and also to conduct schools, orphanages etc. 10

297. St. Antony's Church at Mangalore was established by the Society on property purchased on its behalf by Fr. Pinto George. It was founded for the use of the Jacobite Syrian Christians residing in the Mangalore City.

298. The 17th defendant's contentions in the suit are obviously supported by Ext. B262 judgment of the Court of the Civil judge of Mangalore where in a series of suits where both the factions in the Syrian Jacobite Church were parties, common decision was taken. No doubt, the matter is now pending appeal in the Karnataka High Court. 20
There at page 123 of the judgment it is found:-

"From the evidence placed on record it is clear that the Patriarch of Antioch who is the Supreme Head for all the Syrian Church to whom the defendant has owed his allegiance. There is nothing on record to show that the defendant at any owed allegiance to the Catholicos or the Catholicos has recognised this church as belonging to its faith or sect."

299. I need here only point out to Articles 1 and 11 (b) of Ext. B261, Memorandum of Association of the St. Antony's Educational Society. It states:- 30

"Article 1. Name and Description:-

The name of this organisation founded by brother P. George now Reverend Father George in January, 1922 is "The St. Anthony's Educational society", a Religious Order and its headquarters shall be at Honavar in India. The Society shall be a Religious Association in accordance with the provisions of the Canon Law of the - Holy Orthodox Catholic and Apostolic Syrian Church of Antioch and shall in all religious, moral, secular and educational matters be subject to the control and superintendence of His Holiness Moran Mar Ignatius Ephraim I, the Prince Patriarch of Antioch and all the East and His successors on the Throne of Antioch (hereinafter - called the Patriarch) through the Delegate in Malabar of the See of Antioch for the time being or other authority specially nominated by the Patriarch for the purpose. The Society has been registered at Bombay under the Societies Registration Act XXI of 1860. 40

Article 11, Objects:-

.....
(a).....

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(b) To establish, maintain, improve and conduct Schools, Workshops, or institutions calculated to promote the diffusion of religious or useful knowledge and manual arts and crafts generally without distinction of nationality caste or creed and in particular among the poor of the Kanara Districts (North and South) and for any of the objects aforesaid to engage and enlist the services of persons of any community or creed on such terms as the Governing Body of the Society may think fit and to beg for, collect and receive gifts, donations, or contributions in money or kind from individuals, firms, corporations or institutions.” 10

In view of this Article the plaintiffs could have no sort of claim over the institutions belonging to the Society. Headship of an Orthodox Church may not be in canonical sense an article of faith with the church. But if some religious society make the same an article of faith, the court cannot interfere. As Lord Halsbury pointed out in (1904) A.C. 515 **Free Church of Scotland Case**, a Court of law has nothing to do with the soundness of a particular doctrine. Lord Davey said in emphatic terms in the same case at pages 644-645:

“My lords, I disclaim altogether any right in this or any other Civil Court of this realm to discuss the truth or reasonableness of any of the doctrines of this or any other religious association, or to say whether any of them are or are not based on a just interpretation of the language of Scripture, or whether the contradictions or antinomies between different statements of doctrine are or are not real or apparent only, or whether such contradictions do or do not proceed only from an imperfect and finite conception of a perfect and infinite Being, or any similar question. The more humble, but not useless, function of the Civil Court is to determine whether the trusts imposed upon property by the founders of the trust are being duly observed. I appreciate, and if I may properly say so, I sympathise with the effort made by men of great intelligence and sound learning to escape from the fetters forged by an earlier generation. But sitting on appeal from a Court of law, I am not at liberty to take any such matter into consideration. 20 30

The question in each case is, What were the religious tenets and principles which formed the bond of union of the association for whose benefit the trust was created? I do not think that the Court has any test or touchstone by which it can pronounce that any tenet forming part of the body of doctrine professed by the association is not vital, essential, or fundamental, unless the parties have themselves declared it not to be so. The bond of union, however, may contain within itself a power in some recognised body to control, alter, or modify the tenets and principles at one time professed by the association. But the existence of such a power would have to be proved like any other tenet or principle of the association.” 40

Therefore, the plaintiffs could have no claim in respect of churches 50

belonging to St. Antony's Society.

300. As regards the Evangelistic Association of the East, the Association generally known as Samajam has been impleaded as additional 18th defendant in O. S. No. 4 of 1979. Item Nos. 897 to 912 and 950 in the list appended to the plaint (various churches) belong to the Samajam. The Samajam is also the second defendant in O. S. No. 2 of 1979, the first defendant being its Missionary Metropolitan. In this latter suit, the first item in the schedule appended to the plaint is "Patriarch Elias Memorial High School" at Thiruvananthapuram, Kottayam, which belongs to the Samajam. No relief is claimed against the Samajam as such in the suit. In O. S. No. 6 of 1979 the Missionary Metropolitan of the Samajam is the first defendant and item 8 in the plaint is alleged to be a church owned and administered by the Samajam. This is the same church mentioned as item 901 in the list appended to the plaint in O. S. No. 4 of 1979. Samajam itself is not a party in O. S. No. 6 of 1979. The reliefs claimed in the suit are for a declaration that the first defendant and two other metropolitans D2 and D3 are not entitled to function as metropolitans or even as priests in the Malabar diocese of the Malankara Church.

301. Even before the Malankara Association framed its constitution Ext. A2, the Samajam which is a religious, educational and philanthropic society owning churches, schools and orphanages had framed its constitution. Clauses 4, 6 and 12 of the Constitution so framed were as follows:-

"4. ഈ സമാജത്തിന്റെ പ്രധാന ഉദ്ദേശം വി: അന്തോഖ്യാ സിംഹാസനത്തിൽ കീഴുള്ള യാക്കോബായ സുറിയാനി സഭയിലെ അംഗങ്ങളിൽ ആത്മീകാഭിവൃദ്ധിക്കായി പ്രവർത്തിക്കുക, സ്വദേശത്തും വിദേശത്തുമുള്ള അക്രൈസ്തവരുടെ ഇടയിൽ സുവിശേഷവേല ചെയ്ത് അവരെ പ: സഭയുടെ അംഗങ്ങളാക്കി ചേർത്ത് സഭയുടെ ആത്മീകമായും സാമൂഹ്യമായും ഉള്ള വളർച്ചയ്ക്കായി പ്രവർത്തിക്കുക.

6, യാക്കോബായ സുറിയാനി സഭയുടെ വിശ്വാസ സംഗതികളെ കൈക്കൊള്ളുകയും, ആ സഭയുടെ മേലധ്യക്ഷന്മാരുടെ അധികാരത്തെ സമ്മതിക്കുകയും ചെയ്യുന്ന ഏതൊരുത്തർക്കും.....സമാജികനായിരിക്കാവുന്നതാണ്.

12. അന്തോഖ്യാ സിംഹാസനത്തിൽ അതതു കാലത്തു വാണിരുന്ന നി: വ, ടി. മ. മ. ശ്രീ മോറാൻ മാർ ഇഗ്നാത്തിയോസ് പാത്രിയർക്കീസ് ബാവാ തിരുമനസ്സുകൊണ്ട് ഈ സമാജത്തിന്റെ പരമ രക്ഷാധികാരിയും, അദ്ദേഹത്താൽ സ്വീകരിക്കപ്പെടുന്ന എല്ലാ മെത്രാപ്പോലീത്തന്മാരും ഉപരക്ഷാധികാരികളും സമാജത്തിന്റെ അപേക്ഷ അനുസരിച്ച് പ: പാത്രിയർക്കീസ് ബാവാമാർ നിശ്ചയിക്കപ്പെടുന്ന ആരം രക്ഷാധികാരിയും ആയിരിക്കുന്നതാണ്.

(Pages 8 & 9 of Ext. B119)

302. In the Memorandum of Association also, in its objects it is specifically stated that the Association is to work for the spiritual and social growth of the Jacobite Syrian Church under the Holy See of Antioch (Page 1 - Ext. B118). The Constitution of the Samajam was registered first at the Sub Registry, Perumbavoor. Subsequently on 19-4-1949 the Samajam was registered at Kozhikode under the Societies Registration Act. Ext. B125 is the copy of the constitution with the Certificate of Registration attested by the Assistant Registrar of Joint

Stock Companies, Kozhikode under the Societies Registration Act. **Ext. B125** Constitution was amended in 1966 (**Ext. B121** pages 116-117) and sub clauses 7 (b) and 9 (b) were added to clauses 7 and 9 respectively. By this the Catholicos was made the Patron with the Patriarch of Antioch as the Supreme Patron. The Constitution was again amended on 28-12-1972 (**Ext. B122** - pages 60-61.) This amendment was also registered. **Ext. B123** is the copy of the certificate of registration. **Ext. B124** is the copy of the constitution containing the amendment. By the subsequent amendment evidenced by **Ext. B124** the Patriarch is to be the Supreme Patron and the Catholicose approved by the Patriarch, the Patron. Clause 8 would read that Metropolitans elected by the committee from among those who are accepted as Metropolitans by the Supreme Patron or the Patron shall be the vice-Patrons of the Association.

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303. It is well known that a Society registered under the Societies Registration Act, though not a Corporation has privileges analogous to that of a Corporation. The internal management of the Society is controlled by its Constitution.

304. According to the plaintiffs (O. S. No. 4 of 1979) the Samajam is a missionary organisation conducted under the auspices or supervision of the Malankara Sabha and they have got the authority to control its affairs. This claim cannot be accepted in view of the constitution of the Sabha. It does not appear to be a wing of the Malankara Church as such.

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305. The Samajam has established the School and some churches. There is no evidence that the Samajam has surrendered its powers of management of its institution to the plaintiffs or the Malankara Sabha. A church established for worship in accordance with the Jacobite faith does not come under the temporal authority of the Malankara Church as such. Its administration is vested in its trustees and parishioners. In the light of what I have said at the earlier stage, when the church has been divided into two opposing factions, the difference between the groups though not on a fundamental article of faith so as to enable the court to decide that one of the groups has ceased to be in the church but on questions of church tradition and long practice vitally touching the emotional and sentimental feeling of a particular group, the court cannot shut its eyes to that fact. It is certainly true that taking into account the division of jurisdiction at the Nicean Council and the tradition of the Orthodox Churches, it is rather anomalous that in one country there should be more than one Orthodox Church. But even recent history is proof positive that on account of long standing political, national and sentimental difficulties different Orthodox Churches exist in one State. It is a fact that in many countries there is an uncanonical overlapping of Orthodox jurisdiction. And with the constitutional guarantee that has been given to every citizen of India in regard to religious freedom, if the autonomous organisations and parishes within the Jacobite Syrian Church give its loyalty to one or other of the two rival groups in the Church, I do not find there would be any act of illegality there about which the other side could ask for any redress in any court of law.

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306. In regard to the legal position of the Samajam and its institutions vis-a-vis the Malankara Church, I may refer to the following passage in Corpus Juris Secundum Vol. 76, page 786 cited before me by the counsel for the Samajam:-

“A religious society may be independent of any church. Its relations to a church or to a denomination are such as it chooses. It may choose none, and be governed by its own rules. Having made a choice, it may later change it, if it has not irrevocably surrendered its right to do so.”

307. P. W. 8 in his deposition has stated that the churches of the Samajam are not invited to Association meetings and that the Samajam has no representation in the Managing Committee. The Metropolitan of the Samajam was for a long period Mar Julius, a foreign national who was the delegate of the Patriarch. He was so till his death in 1962. In the light of Ext. B74 judgment he could not have been Metropolitan of any church in the Malankara Sabha. Therefore the Samajam or its churches cannot be considered to be constituents of the Malankara Sabha. That Samajam owns the churches is clear from the Synod (of the Malankara Church) resolutions. In Ext. A149 – page 26 it is stated “സമാജം വക പള്ളികൾ”. In Ext. A149 pages 49-50 it is pointed out “പൗരസ്ത്യസുവിശേഷം വക പള്ളികൾ”. 10 20

308. In the absence of any evidence that the Samajam relinquished its right over the institutions belonging to them in its general body meeting, no resolution or decision of the Malankara Synod, Sabha or Catholicose could have legal validity as far as it affects such institutions. I am not shown any provision in the constitution of the Samajam which would enable its Patron the Catholicos to deprive the Samajam of any of its legal right. Especially so when there is a Supreme Patron – the Patriarch and the Patron's actions are not concurred in by the Supreme Patron. I find that the plaintiffs are not entitled to any reliefs against the Samajam or its institutions. 30

Simhasana Pallies

309. In the light of my finding that Parish Churches are independent trusts and in the matter of temporal affairs and also that in regard to their loyalty to the particular faction in the present cleavage in the Malankara Church, it is the decision of the parishioners of the church concerned, which is the deciding factor, there cannot be such scope for controversy in regard to Simhasana Churches also. However I have to point out that the plaintiffs have a much more difficult question to face in regard to Simhasana Pallies. The very object of the foundation of these churches was the necessity, the founders thought of having churches where all powers are vested in the Patriarch and his delegates. These churches were established after the quarrel between the Catholicos and Patriarch side arose. Regarding these churches Catholicos Bassalius Gheevarghese II had stated in his deposition in the earlier case – marked in this case as Ext. B160. He states at pages 14 and 15:- 40

“110-ലും സിംഹാസനപള്ളികൾ എന്ന പേരിൽ ചില പള്ളികൾ മലങ്കരയ്ക്കായിരുന്നു. ആ പള്ളികൾക്ക് എം. ഡി. സിമിനാരിയിലെ 110 ധനുവിലെ പള്ളി പ്രതിപുരുഷയോഗത്തിന് നോട്ടീസയച്ചിട്ടില്ലാ. 50

ആ പള്ളികൾ മലങ്കരയുള്ള മേൽപട്ടക്കാരുടെ അധികാരത്തിന് കീഴിൽ അല്ലാത്തതുകൊണ്ടാണ് ആ പള്ളികൾക്ക് നോട്ടീസയക്കാത്തത്. ആ പള്ളികൾ മലങ്കര മെത്രാപ്പോലീത്തായുടെ അധികാരത്തിന് കീഴിലും ഉൾപ്പെട്ടവയല്ല. അവർ പറയുന്നതു പാത്രിയർക്കീസിന്റെ നേരെ കീഴിലാണെന്നാണ്. ജൂലിയോസ് മെത്രാന്റെ വരുതിയിൽ ആ പള്ളികൾ നിലക്കുന്നു എന്നാണ് പറയുന്നത്. മാർ ജൂലിയോസ് മെത്രാൻ മലങ്കര ഒരു എടവകയും ഭരണമില്ല. മലങ്കരയിൽ യാതൊരു എടവകയും മെത്രാനായി അദ്ദേഹത്തെ തിരഞ്ഞെടുക്കുകയോ സ്വീകരിക്കുകയോ ചെയ്തിട്ടില്ല. സിംഹാസനപള്ളി എന്ന പേരിൽ ചില പള്ളികൾ മാർ ഒസ്താന്ത്യോസിന്റെ അവസാന കാലം മുതൽ സ്ഥാപിച്ച തുടങ്ങി എന്നാണ് എന്റെ അറിവ്. ആ പള്ളികളെ മലങ്കര സഭയിൽപ്പെട്ട പള്ളികളാണെന്നു മലങ്കര മെത്രാപ്പോലീത്തമാർ സ്വീകരിച്ചിട്ടില്ല. ആ സിംഹാസന പള്ളികൾ എടവക പള്ളി അല്ല". 10

He again said at page 102 of the deposition Ext. B160 that Simhasana Church is a different Trust and it is not a Trust in the Malankara Church.

310. In para 7 of the plaint in O. S. No. 2 of 1979, the plaintiffs (the Catholicos side) state:

"During the pendency of the dispute which ended as aforesaid, the Patriarch of Antioch had been exercising administrative functions over certain churches in Malankara known as Simhasana Churches." 20

Therefore taking into account the intention of the founders of this church and the principle of law enunciated in (1904) A. C. 515 where it has been said that a court of law has nothing to do with the soundness of a particular doctrine and even a matter of polity can be made as one of the distinctive and fundamental doctrines (at page 682), it is too much for the Catholicos side to try to get at these churches. It might be noted here that the Kalpana issued by the Patriarch Ext. A54 dated 14-6-1964 was only a delegation of his powers to the Catholicos as an interim arrangement till as he thought at that time the churches came in due course under the respective dioceses in which they are situated. That it was only a delegation of powers is clear from Ext. B31 also, the reply sent by Catholicos to Ext. B54 where he requested that the title and ownership of the Dairos and the Simhasana Churches should be transferred to the Malankara Episcopal Synod. There has been no such transfer. And, moreover, Patriarch, who is only a trustee cannot himself take a decision unless it is concurred by the members of the church, in regard to that church. Ext. B54 was subsequently withdrawn by the Patriarch as per Ext. B190 of 24-6-1975. Therefore, the plaintiffs' claim in regard to Simhasana Pallies should fail. 30

Knanaya Community:-

311. It is difficult if not impossible to accept the contention raised on behalf of the 19th defendant that Knanaya Samudayam is an absolutely independent community not forming a part of the Malankara Sabha and theirs is an independent and separate diocese directly under the Patriarch. It is also claimed that they do not have any connection with the Jacobite Syrian Church of Malankara. It is not disputed that racially and ethnically they form a distinct separate group. They do not intermarry with the rest of the Jacobite Syrians. But that does not mean that they are not part and parcel of the religious community known as the Jacobite Syrian Church of Malabar. In fact in the 50

famous Koonan Cross Oath at Mattanchery in 1654 A. D. one of the leaders of the church representing the whole community was a Knanayite – Anjilmoottil Itty Thomman Kathanar. **Ext. B155** the history of the church “മാർ തോമ്മാപ്പിള്ളിപ്പാലയുടെ ഇൻഡക്സ് സഭ” written by a prominent Knanite leader Mr. E. M. Philip would indicate how this group had always identified with the other Jacobite Syrians in Malankara in matters of religion. In Ittoop’s history **Ext. B106** Knanayites are treated as part of the Jacobite Sabha. Another evidence on the matter is **Ext. A106** reply of Mar Joseph Dionysius to the address presented by the Knanites. There is ample evidence in the case that the Knanite Churches were represented at the Karingasra meeting called by the Patriarch side and the community stood with the Patriarch faction throughout the Samudayam suit. In the meeting, called as per the High Court’s direction in its judgment, of the Malankara Association by the commissioner appointed by the Kottayam District Court, Advocate Sri. Yegneswara Iyer, the Knanaya churches were represented (See **Ext. A92**). In that meeting the Metropolitan of the Knanaya Diocese Mar Clemis was elected as the Malankara Metropolitan. 10

312. The subsequent conduct of the Metropolitan of the Knanaya diocese also indicates that the said diocese is considered to be part of the Malankara Church, no doubt with the autonomy in temporal matters. Knanaya churches were represented at the Malankara Association meetings held in 1959, 1962, 1965 and 1970 – See **Exts. A47 (h), A50(h) and A53(h)**. Leading members of the community like M/s. V. O. Markose, V. O. Abraham, Thamarappally Kuruvilla Thomas, V. I. Idikkula, P. P. Cheriyan, P. Jacob Stephen, Fr. Mathew Konnakal, Fr. Edavazhikkal Thomas were elected as members of the Managing Committee. Mar Clemis functioned as a member of the Malankara Sabha. In the face of this evidence, **Ext. A85** by itself, accepting such a communication has been sent on the date will not be sufficient to come to the conclusion that the Knanaya Sabha is not part of Malankara Church. No doubt it has its own autonomy in temporal spheres. And in the nature of the present split in the Malankara Sabha, in the light of what I have said earlier, it is for the Knanaya Diocese and the Knanaya Churches themselves to decide in what set up they should function—the tie with the Antiochean See continued or not. 20 30

Unification:

312. An important contention raised by the plaintiffs in the case is that there was an unification (or reunification) of the two opposing forces after the Supreme Court decision and the defendants are not entitled to go back and raise the old pleas afresh. It is urged that soon after the Supreme Court rendered its decision on the Samudayam Case, instead of having to enforce the legal declarations made in the decision, such coercive proceedings were avoided by the members of the church standing by the Patriarch side themselves coming forward to accept the decision of the court and bury the hatchet. Mr. Poti would contend that several discussions and negotiations were carried on after the Supreme Court decision, as evidenced in the case. In these Metropolitans of both sides, leading clergy on both sides besides leading members of the church of both shades of opinion took. It is 40 50

alleged that out of the discussion an unanimous opinion was evolved which recognised that peace could effectively be established only by a formal acknowledgement of each other by the Patriarch of Antioch and the Catholicos. Consequent on this Patriarch issued Ext. A19 of 9-12-1958 and the Catholicos Ext. A20 (original of which is Ext. B13). On the basis of these Kalpanas, the learned counsel for the plaintiffs would submit, unification of the two groups was complete and thereafter for a period of 14 years there was complete peace in the church and the government of the church was carried on in accordance with the constitution and as per the final decision of the Supreme Court in the Samudayam Case. He would in this connection rely on the evidence of the plaintiffs' witnesses P. W. 1, P. W. 4 and P. W. 8. – their chief examination. 10

313. Mr. Poti also lays stress on the meetings of the Association held in 1958, 1959, 1962, 1965 and 1970 convened with notice to churches and attended by representatives of churches of both sides. He points out to the meetings of Synod attended by the Metropolitans of the Patriarch side (as indicated by the minutes of the Synod), the letters executed by the Metropolitans of the Patriarch side to the Catholicos undertaking to obey the Catholicos and the constitution of the church. 20
Ext. A37 dated 22-12-1958 is executed by Mar Phelixenos and Ext. A154 of the same date executed by Mar Sevarios. The learned counsel would also lay emphasis on a petition by 30 persons all of whom, formerly members of the Patriarch Party including some members of the Knanaya Diocese on 12-2-1959 to the Catholicos marked as Ext. A36 in the case in which they desired the Catholicos to inform every one very clearly that the Bharanaghatana is binding on the entire church and at the same time pointing out to him that as no election has been held to this managing committee the existing committee was representing only one party and therefore steps be taken to make the committee more representative. 30
In consequence of this petition a meeting of the Malankara Association was convened to be held on 15-9-1959 which was attended by 394 priest delegates and 1031 lay delegates representing 561 churches. After passing a resolution thanking the Patriarch and the Catholicos for having brought about peace, the Association resolved to increase the strength of the Managing Committee to 90, out of which 72 were to be elected by the Association and 18 nominated by the Malankara Metropolitan. It is further alleged that in order to make the committee more representative it was resolved to appoint committees for each diocese who were to suggest the name for their dioceses. 40
The Association meeting was adjourned for this purpose and the committees suggested 72 names which were accepted by the Association and elected as the Managing Committee members. These members consisted of both sides. It is also said that the members of the Managing Committee took the oath in the form of Ext. A99 to act as per the constitution. Oath was taken by all the members including those who were on the Patriarch side. The minutes of the Association meeting are contained in Ext. A43 and Ext. A179.

314. It is also pointed out that in the Association meeting of 50

17-5-1962 which was held to elect a successor to the Catholicos and Malankara Metropolitan as the then incumbent was getting old, the resolution for the purpose was moved and supported by two members of the Patriarch side. Augen Thimothios was elected to the office. I need not go into the details of all the succeeding meetings where also members of both factions attended and participated in the deliberations. Similarly in the Synod meetings, Patriarch side Metropolitans Mar Phelixenos (Kandanad) Abraham Mar Clemis (Knanaya), Abraham Mar Sevarios (Cochin) and Geevarghese Mar Gregoriose (Angamaly) had all attended (except for a brief period when Poulouse Mar phelixenos who was alleged to have taken a leading part in a dissident movement was directed as disciplinary measure to keep himself in the monastery and not to exercise any power as a Bishop) and co-operated without a hitch in coming to decisions. These are evidenced by Exts. A149, A153 and A162, Minutes books of the Malankara Synod and A205 the attendance register for the Synod meetings. Ext. A149 (g) is particularly referred to. In the meeting of the Synod held on 13-1-1972 unanimous request was made by the Synod communicated by cable to Patriarch not to send any delegate to Malankara as rumoured. This was attended by poulouse Mar Phelixenos and Abraham Mar Clemis who were the only surviving Metropolitans of the former Patriarch side, the other two namely, Poulouse Mar Sevarios and Geevarghese Mar Gregorios having died in 1962 and 1966 respectively. When despite this request by the Synod the Patriarch sent his delegate Aphrem Mar Thimothios, the full Synod including the two Metropolitans mentioned above, met on 18-2-1972 and expressed its objections to the act of the Patriarch and requested him to recall his delegate as his presence will unsettle the peace that has been established. Therefore Mr. Poti very strongly contended that the church functioned as one till 1972 and the Patriarch side now cannot go back to the old stand.

315. What Mr. Poti points out only indicate honest, brave and sincere attempts made on both sides to reunify the church which attempts finally again crashed on the question of the Patriarch's powers. It might be noted that after the Patriarch accepted the Catholicos, the latter accepted Patriarch subject to the constitution. This really amounted only to a formal acceptance in words because the constitution had completely deprived the Patriarch of all his powers of spiritual superintendence over the Malankara Church. Acceptance subject to constitution was questioned by the Patriarch in his letter Ext. A23 dated 8-4-1959 and Ext. A25 dated 16-7-1960. The Catholicos gives his replies to the same as per Ext. A24 of 8-6-1959 and Ext. A26 of 13-8-1960. It is to the credit of the Patriarch that he did not want his followers to rake up the quarrel. In his reply to the Catholicos for the invitation tendered to him to visit Malankara, he points to the bitterness of some persons and, I would say graciously, states that his coming here at the time, if it does not help him in the matter of restoring unity, it would be unfortunate and if any action is taken against those who are bitter they may depart from the fold of the church. Therefore, he was deciding to postpone the trip to another occasion. However,

he came in 1964 to preside over the Synod meeting for installing Augen I as Catholicos. Till 1970, one finds the Patriarch refusing to rekindle the flame which was simmering below in spite of the apparent unity on the surface. It might be noted that in the meanwhile none of the parish churches on the Patriarch side had accepted the constitution. I will take one instance, the Kothamangalam Mar Thoma Cheria Pally, a very ancient church which is involved in the suit O. S. No 1 of 1979. When that church got a kalpana from the Catholicos along with a copy of the Sabha constitution for implementation in the administration of the church, the Managing Committee held its meeting on 29-10-1967. After consideration then and at a subsequent meeting, it was decided to place the Catholicos's order before a General Body meeting of the Parishioners. In the general body meeting accordingly held on 3-12-1967, it was decided to appoint a sub committee to study the question, get legal advice from Mr. P. J. Varkey Advocate and submit a report to the General Body Meeting to be held on 17-12-1967 (See Ext. B14 (a) which is page 64 of Ext. B14, the minutes book). In the meeting held on 17-12-1967 we find the following decision taken. 10

“പ്രാർത്ഥനാസഭ, 3-12-1967 ലെ ഇടവകയോഗത്തിൽ തിരഞ്ഞെടുക്കപ്പെട്ട സബ് കമ്മിറ്റി സമർപ്പിച്ച റിപ്പോർട്ട് വായിച്ചുകേട്ടു ചർച്ചചെയ്തു പ്രസ്തുത റിപ്പോർട്ടിൽ നിന്നും ഭരണഘടനയിൽ ഭേദഗതി വരുത്താതെ പുതിയ ഭരണഘടന ഈ പള്ളിയുടെ പരിതഃസ്ഥിതി അനുസരിച്ചു നടപ്പിലാക്കാൻ വൈഷമ്യമുണ്ടെന്നും, ഭേദഗതികൾ വരുത്തിയിട്ടുള്ളതിന് ടി റിപ്പോർട്ടിന്റെ അച്ചടിച്ച ശരിപകർപ്പുകൾ പ: കാതോലിക്കാബാവ തിരുമനസ്സിലേക്കും, അഭിവന്ദ്യ ഇടവക മെത്രാപ്പോലീത്ത തിരുമനസ്സിലേക്കും അഭിവന്ദ്യ സിനഡ് അംഗങ്ങൾക്കും അയച്ചുകൊടുക്കണമെന്നും തീരുമാനിച്ചു. ആയതിന് ബ. വികാരിയെ ചുമതലപ്പെടുത്തി. (Ext. B14 (b)) 20

It is clear from the subsequent general body meeting of church parishioners held in 1968 itself, Ext. B14 (c) and Ext. B14 (d) that the church was resisting any inroad that would be made into its autonomous nature by acceptance of the constitution Ext. A2. 30

316. One also finds in the constitution framed for the Mulanthuruthy Church, by the District Court, Ernakulam, in a scheme suit Ext. B269, autonomy being preserved for the parish church despite objection filed to adoption of such constitution by the Catholicos-cum-Malankara Metropolitan and the Diocesan Metropolitan. Before the District Court adopted the constitution, draft constitution had been forwarded to them. As per notice from the court the Catholicos and Diocesan Metropolitan appeared before Court through counsel and filed objection contending that the Malankara Sabha has got a constitution making provision for parish churches and hence no separate constitution need be passed. They produced a copy of the Sabha constitution and canon. On behalf of both of them, an affidavit was sworn to by Sri. P. N. Ninan who is P. W. 1. in the case. The court apparently did not accept these objections and decree was passed. Exts. B270 and B282 are the relevant documents with regard to that. As per Ext. B303, a constitution had been adopted for Kallumgathara St. George Church which is at variance with the constitution framed by the Sabha. 40

317. I am referring to these just to show that during the period from 1958 to 1970 in spite of attempts to unify the church, the two 50