

Copy of JUDGMENT

in

ORIGINAL SUITS 1, 2, 3, 4, 5, 6, 7 & 8/79

Dated 6—6—1980

DELIVERED BY THE HON'BLE MR. JUSTICE

T. CHANDRASEKHARA MENON

HIGH COURT OF KERALA

ERNAKULAM—COCHIN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

The Hon'ble Mr. Justice T. Chandrasekhara Menon
Friday, the 6th June, 1980/16th Jyaistha, 1902
O. S. Nos. 1, 2, 3, 4, 5, 6, 7 & 8 of 1979

O. S. No. 1 of 1979

O. S. No. 12 of 1977 of the I Additional District Court, Ernakulam.

O. S. No. 308/1974 of the Munsiff's court, Moovattupuzha.

Plaintiffs:

1. C. Philip Ancheril, Thankalam Kara, Kothamangalam village, Kothamangalam taluk. 10
 2. P. V. Chacko, Puthenpurackal, Kothamangalam Kara, do. village, do. Taluk.
- By Advocate Sri. M. Abraham.

Defendants:

1. Rev. Fr. K. C. Zachariah, Vicar, Mar Thoma Cheriya Pally, Kothamangalam.
 2. Rev. Fr. P. M. Kuriakose, Pookunnel, Kothamangalam.
 3. Rev. Fr. K. C. Mathew, Koopanassery, Karimattom, Randon, Moovattupuzha. 20
 4. Rev. Fr. C. A. Habel, Chettalathinkara, Kothamangalam.
 5. Gheevarghese, S/o. Yuyakim Kathanar, Thekilakad House, Angadi Kara, Kothamangalam.
 6. Kunjikuru Kuriakose, Palakadan House, Thangalam Kara, Kothamangalam village.
 7. Ittiavirah Varkey, Kattanganal House, do.
 8. Mathew Yohannan, Malil House, Venduvazhi Kara, Kothamangalam.
 9. Kuruvila Paulose, Anachira House, Elembra Kara, Kothamangalam.
 10. Chacko Kunjappan, Nadukudiyil House, do. do.
 11. Varkey Paily, Palappilly, Karukidom, Kothamangalam. 30
 12. Paily Paulose, Kunnasseril House, Karukidam, do.
 13. N. V. Kuriakose, Nadukuzhy, Ramalloor, do.
 14. K. I. Thomas Koorppillil, Kothamangalam.
 15. K. V. Eldos, Kulapuram, Kothamangalam.
- By Advocates M/s. S. Easwara Iyer, T. T. Uthup & C. S. Ananthakrishna Iyer.

O. S. No. 2 of 1979

O. S. No. 77 of 1977 of the I Additional District Court, Ernakulam.

O. S. No. 274/1973 of the Sub Court, Kottayam.

Plaintiffs:

1. Moran Mar Baselios Ougen I, Catholicos of the East and Malankara Metropolitan, Catholice Aramana, Muttampalam, Kottayam.
2. Mathews Mar Ivanios, Metropolitan of Kottayam Diocese of the Malankara Church, Mar Kuriakos Diara, Pampady, Kottayam.
3. Mathews Mar Athanasios Metropolitan appointed as Asst. and elected as successor of 1st Plaintiff residing at M. D. Seminary Kottayam.

By Advocates M/s. P. T. Mathew & K. George

Defendants:

1. Most Rev. Poullose Mar Athanasius, Metropolitan, Evangelistic Association via East Iringole, Perumbavoor. 50
2. The Evangelistic Association of the East, represented by its General Secretary Rev. Fr. Geevarghese Aathunkal, Priest,

Aathunkal Building, Kuruppumpadi, Perumbavoor.
By Advocate Sri. P. P. John

O. S. No. 3 of 1979

O. S. No. 78 of 1977 of the I Additional District Court, Ernakulam.

O. S. No. 347/1973 of the Sub Court, Kottayam

Plaintiffs:

1. Philipose, S/o. Kurian, Puthen Veettil House, Manganam Kara, Vijayapuram.
2. Joseph, S/o. Chandy, Kochettaya Mathilakathu House, Velloor, Kottayam. 10
By Advocates M/s. P. P. John & E. V. Abraham.

Defendants:

1. Mathews Mar Athanasius Metropolitan, M. D. Seminary, Kottayam.
2. Moran Mar Baselius Ougen I, Catholicos of the East, Malankara Metropolitan Trustee, Devalokam, Muttampalam, Kottayam.
3. Rev. Fr. T. S. Abraham, Priest Trustee, Thengumthottathil, Cherukopuzha, Iyloor village, Tiruvalla.
4. Kurian Abraham, Lay Trustee, Uppoottil House, Kottayam.
By Advocate Sri. P. T. Mathew.

O. S. No. 4 of 1979

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O. S. No. 81 of 1977 of the I Additional District Court, Ernakulam.

O. S. No. 142/1974 of the Sub Court, Kottayam

Plaintiffs:

1. Catholicos of the East and Malankara Metropolitan Morn Mar Baselius Ougen I (died)
2. Mathews Mar Athanasios appointed Assistant of 1st plaintiff and elected Successor to the Catholicos of the East and Malankara Metropolitan, now, Moran Mar Baselius Marthoma Mathews I. 2nd plaintiff is the legal representative of 1st plaintiff.
By Advocates M/s. S. Narayanan Potti, M. Abraham, P. T. Mathew, A. K. Chinnan, C. T. Joseph & K. George. 30

Defendants:

1. Most Rev. Poullose Mar Athanasios, Metropolitan, residing at the building of the Evangelistic Association via East Iringol kara, Perumbavoor Village, Kunnathunadu Taluk.
2. Most Rev. Thomas Mar Dionysius Metropolitan, residing at Valiapally Church, Kothamangalam.
3. Most Rev. Geevarghese Mar Gregorios, Metropolitan residing at St. George Orthodox Church, Perumpally Kara, Mulanthurithi Village, Kanayannur Taluk. 40
4. Rev. Fr. A. V. Zacharia, S/o. Varghese, Aruparachirayil, Thiruvappu, Kottayam.
5. Rev. Fr. K. C. Anthrayose, S/o. Chacko, Kodumpoor from Kollamparambil, East Pampady, Pampady village, Kottayam.
6. Rev. Fr. Roy Paul, S/o. Poullose Kathanar, Vellikattil, Neduvadesom, Edakattuvayal, Kanayannur Taluk.
7. Rev. Fr. P. P. Thomas, S/o. Poullose, Paruthuvayalil, Keezhillam Kara, Rayamangalam, Kunnathunadu.
8. Kuriakose Deacon, S/o. Mathai, Kodimattathil, Edakattuvayal desom, Kanayannur Taluk. 50
9. M. A. Kuriakose Deacon, S/o. Anthrayose, Mylayil House, Vazhappally village, Cheeranchira, Changanacherry.
10. Alex Thomas Deacon, S/o. Thomas, Kunumpurathu, Pampady,

Kottayam.

11. Rev. Fr. Abraham Madavana, St. George Jacobite Syrian Church, Mananthavady.
12. Rev. Fr. Alexander, Mangattampillil. S/o. Thomas, Cheruvappalasery Kara, Kothakulangara, Angamali. (died)
13. Rev. Fr. Skaria Palakattil, S/o. Skaria Kathanar, Thiruvankulam, Kanayannur.
14. Rev. Fr. Alexander Muranthookil, Chittalakattu, S/o. Varkey, Mulakulam Thekkekara, Mulakulam, Vaikom.
15. Rev. Fr. Punnose, Vaithra, S/o. Ipe, Kumarakom, Kottayam. 10
16. Rev. Fr. Kuriakose, Elavilamanil, S/o, Skaria Kathanar, Manjinkara, Omalloor, Pathanamthitta.
17. Very Rev. Jacob Kuriakal, Korepiscopa, S/o. Abraham, Mazhukeer Kara, Thiruvannamnoor, Chengannoor, now at Banatwala building, 1st Dhobitalo Lane, Kalbadevi, Bombay-2.

Additional

18. The Evangelistic Association of the East, Head Office at Perumbavoor, represented by its General Secretary Rev. Fr. Geevarghese, Arathinkal, Vengoor village, Puzhukkadu kara.
19. Malankara Suriyani Knanaya Samudayam, represented by its Trustees Fr. K. I. Abraham, Kizhakkemuriyil, Pazhavangady P. O., Ranni & T. D. Kuruvilla Thomas, Papalil, Nattakari, Kottayam. 20
Addl. 18 and 19 impleaded as per order on I. As. 2029 and 2050 of 1974 respectively dated 4-6-1975.
By Advocates M/s. T. N. Subramonia Iyer, P. P. John, R. Krishnaswamy Iyer & P. J. Philip for defendants 1, 4, 5, 8, 9, 10, 15, 17 & 18.
Defendants 2 and 3 by Advocates, M/s. T. T. Uthup and P. V. Ayyappan.
By Advocates M/s. C. K. Sivasankara Panicker, K. Vasudevan Nair, T. R. Raman Pillai, T. K. M. Unnithan and T. R. Ramachandran Nair, for defendant 19 30

O. S. No. 5 of 1979

O. S. No. 82 of 1977 of the I Additional District Court, Ernakulam

O. S. No. 29 of 1975 of the Sub Court, Kottayam

Plaintiffs:

1. Mathews Mar Ivanios, Metropolitan of the Kottayam Diocese, residing at Mar Kuriakose Diara, Pothampuram, Pampady.
2. Rev. Fr. P. K. Geevarghese, residing at Pampady Kandathil House, Pampady. 40
By Advocate Sri. P. T. Mathew.

Defendants:

1. P. T. Mathai residing at Karakakuzhi House, Pampady.
2. P. K. Varghese, Teacher, residing at Puthuparambil House, do.
3. C. V. Kuruvilla, residing at Chackalakal House, do.
4. C. P. Kuriakose, Teacher, Chirayil House, do.
5. K. George, Teacher, residing at Kulangara House, Pampady.
6. P. T. Philip, residing at Karimpil House, Pampady.
7. Skaria Cherian, residing at Palathunkal House, Pampady. 50
By Advocate Sri. P. P. John.

O. S. No. 6 of 1979

O. S. No. 85 of 1977 of the 1st Additional District Court, Ernakulam

O. S. No. 285 of 1975 of the Sub Court, Kottayam

O. S. No. 94 of 1974 of the Sub Court, Kozhikode.

Plaintiffs:

1. Moran Mar Baselios Ougen I, Catholicos of the East and Malankara Metropolitan, Catholicate Aramana, Muttambalam, Kottayam-4.
2. Thomas Mar Themothios, Metropolitan of the Malabar Diocese, Mount Hermon Aramana, Chathamangalam Regional Engineering College Post, Calicut.
By Advocate Sri M. Abraham.

Defendants:

1. The Most Rev. Poulose Mar Athanasios Metropolitan, Evangelistic Association of the East, Iringole Kara, Perumbavoor, Kunnathunad. 10
2. Thomas Mar Dionysius Metropolitan, Valiapally Church, Kothamangalam Village, Kothamangalam.
3. Gheevarghese Mar Gregorios Metropolitan, St. George Orthodox Church, Perumpilly, Mulanthuruthy village, Kanayannur taluk.
By Advocate Sri. P. P. John.

O. S. No. 7 of 1979

O. S. No. 91 of 1977 of the 1st Addl. District Court, Ernakulam

O. S. No. 35 of 1976 of the Sub Court, Kottayam

Plaintiffs:

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1. Moran Mar Basilius Marthoma Mathews I, Catholicos of the East & Malankara Metropolitan.
2. Mathews Mar Ivanios Metropolitan, Diocese of Kottayam, residing at Mar Kuriakose Diara, Pothenpuram, Pampady P. O., Kottayam.
3. Daniel Mar Philexinos, Metropolitan, Diocese of Thumpamon, Basil Aramana, Pathanamthitta.
4. Mathews Mar Coorilose, Metropolitan, Diocese of Quilon, Bishop's House, Cross Junction, Quilon.
5. Yohanon Mar Serverios, Metropolitan of Diocese of Cochin, Sion Seminary, Koratty. 30
6. Philipose Mar Theophilos, Metropolitan, Diocese of Angamali, Thrikunnathu Seminary, Alwaye.
7. Thomas Mar Themothios, Metropolitan, Diocese of Malabar, Mount Hermon Aramana, Chathamangalam, Regional Engineering College Post, Calicut.
By Advocate Sri. P. T. Mathew.

Defendant:

Fr. C. G. Samuel, Cherivuvilayil, Konni, now known as Samuel Mar Philexinos, Parakadavil near St. Sehion Church, Pakil, Pallam, Kottayam. 40
By Advocate Sri. E. V. Abraham.

O. S. No. 8 of 1979

O. S. No. 192 of 1977 of 1st Additional District Court, Ernakulam

O. S. No. 79 of 1974 of the Sub Court, Alleppey

Plaintiffs:

1. Catholicos of the East and Malankara Metropolitan Moran Mar Basilius Ougen I (died)
2. Mathews Mar Athanasios, appointed Assistant of 1st plff. and elected successor to the Catholicos of the East & Malankara Metropolitan. 50
(Nobody impleaded for Plaintiff No. 1.)
By Abvocates M/s. S. Narayanan Potti, M. Abraham, C. T. Joseph and A. K. Chinnan for 2nd Plaintiff.

Defendant:

Kuriakose Mar Kurilos formerly named Fr. George Kurian religious dignitary, Poothikottu Payikandathil, Mepral Muri. Peringara village, Mepral, Tiruvalla.

By Advocate Sri. P. P. John.

These Original suits having been finally heard on 17-3-1980, the Court on 6-6-1980 delivered the following:

JUDGMENT

The unfortunate schism in the Malankara Church has given rise to these suits. More than 200 and odd suits are now pending regarding the disputes in the Church. The Supreme Court in its order in Civil Appeal No. 2222 of 1979 directed that these 8 suits be transferred to the High Court and tried from the stage at which they are then, post-haste. The Supreme Court said that expeditious termination of the suits is the driving force behind the order of transfer. The Court also said:—

“We leave this *lis* with the deep wish that the High Court will give the suits high priority in its agenda of postings and finish this unhappy chapter, if persuasively possible, by both sides burying the hatchet, abjuring litigative pugilistics and restoring a *modus vivendi* which will heal old wounds, bring new harmony and please the Spirit of Christ. That is the highest justice the several lakhs of good Christians now locked in long years of suits and appeals, sincerely hunger for.”

2. I might at the outset state that a happy ending of this deep factional war within that great Church could only be arrived at with satisfaction to all, by a settlement out of court amongst the parties themselves. And I am not a little surprised as to why this dispute could not be settled by the leaders of this community, which has given birth to men of stature in almost every walk of life. But, probably the old wounds are so deep for such healing by a settlement of the dispute. A resolution of the disputes between the two factions in the Church by a court by application of logic and law might not be able to give a quietus to the unfortunate quarrel within the community, when lakhs of people are seen charged with emotion and excitement awaiting the ultimate decision. The fate of a thousand churches is to be settled by the adjudication and one can very well understand the deep feelings that may be generated in thousands of people with their deep attachments to their religious institutions. I can only approach the questions with humility hoping that the decision that I render may at least indicate the road for the end of the long drawn out litigation in the community.

3. I will deal with the pleadings in each case now:—

O. S. No. 1 of 1979:—

4. This was originally filed as O. S. No. 308 of 1974 in the Munsiff's Court of Muvattupuzha. It relates to the Kothamangalam Mar Thoma Cheriapally. Defendants 1 to 4 are priests, defendants 5 to 12 are members of the Working Committee (Pravarthaka Sanghom) of the said Church, and defendants 13 to 15 are those assisting the priests, namely defendants 1 to 4 in the religious services in the plaintiff Church. Defendants 1 to 12 constitute the working committee. Defendants 1 to 12 are also the members of the Managing Committee of the Church.

Defendants 1 and 5 to 12 are sued as representing the Church and its Working Committee in charge of the management of the same. Plaintiffs are parishioners and members of the Parish (Edavaka) Yogam of the said Church. The said Church is founded, dedicated, consecrated and administered althrough as a constituent parish church of the Malankara Jacobite church, referred to herein below as Malankara Church. Plaintiffs' case is stated as follows:-

Plaintiffs' Case:-

5. The Malankara Church is an episcopal church. Till about the year 1876 there was only one Metropolitan for the entire Malankara Church, and all administration, spiritual, temporal and ecclesiastical over the entire Malankara Church and its parish churches was exercised by the Malankara Metropolitan for the time being. In the year 1876, the Malankara Church was sub-divided into seven Dioceses each with a Diocesan Metropolitan exercising episcopal authority over the parish churches included in each Diocese subordinated to the Malankara Metropolitan. The plaintiffs in this connection refer to the decision rendered by the Royal Courts of Final Appeal in Travancore and Cochin in the years 1889 and 1905 respectively. The plaintiff church is included in the Angamali Diocese. The plaintiffs would then state that for about a few centuries the Patriarch of Antioch had over the Malankara Church the right to ordain metropolitans, consecrate morone and general supervision over the spiritual government. In 1912, the Catholicate of the East, an institution which had its headquarters in Persia with exclusive authority to ordain Metropolitans and consecrate morone and supervision over the church under its territorial jurisdiction, and which had fallen into disuse for sometime, was revived in the Malankara church. There were disputes as to the authority of the catholicate so revived over the Malankara Church. But such disputes were finally decided in a representative suit by the Travancore High Court reported in **Mathan Malpan V. Oolahannan Geevarghese** (45 T. L. R. 116) upholding the authority of the Catholicate so revived over the Malankara Church. In 1934, the Malankara Association, the representative and authoritative body of the Malankara church consisting of elected and authorised representatives from all parish churches of the Malankara church framed a constitution for the administration of the Malankara church and its constituent parish churches and delimiting the relationship of the Malankara church under the Catholicate with the Patriarch of Antioch in the light of the decision of the Travancore High Court and making other provisions. The episcopal Synod of the Malankara church alleged to be entitled to the episcopal authority over the Malankara church accepted the same for their administration of the Malankara church and its constituent parish churches and institutions. The plaintiffs then refer to a suit filed by a section of the community challenging and questioning the binding effect of the constitution. The suit was filed as a representative suit, O. S. No. 111 of 1113, in the Kottayam District Court. The said suit was dismissed by the Supreme Court of India upholding the provisions of the Constitution. The decision was given on 12-9-1958. From 1912 to 1958 there were disputes as to who is the proper Malankara Metropolitan of the Malankara church and such disputes were also settled in the above decision. Thereafter, on 16-12-1958, the Patriarch accepted the Catholicos and

the Catholicos accepted the Patriarch in their respective offices with such privileges and powers as are provided for each under the above-said Constitution. Geevarghese Mar Gregorios who was then claiming episcopal authority over the plaint church as the Metropolitan of the Angamali Diocese, is also alleged to have submitted to the authority of the catholicate and the Malankara church Constitution. In 1959 February, the plaintiffs proceed to state, the Catholicos under powers vested under the Constitution of the Malankara church and in compliance with the procedure laid down in the said Constitution appointed Geevarghese Mar Gregorios as the Diocesan Metropolitan of Angamali, 10 and ever since then he was exercising episcopal authority over the plaint church as the proper Angamali Diocesan Metropolitan under the said Constitution. On the demise of the said Metropolitan Gheevarghese Mar Gregorios, for sometime, the episcopal administration of the Angamali Diocese including the plaint church was carried on directly by the Catholicos-Malankara Metropolitan himself. Afterwards, Metropolitan Philipose Mar Theophilus was appointed by the Catholicos in 1966 under the powers and procedure of the said Constitution, to carry on the episcopal administration of the Angamali Diocese including the plaint church. 20

6. The plaintiffs would then state that the plaint church had been founded more than five centuries ago as a parish church of the Malankara church. Under the Canons and principles of the Malankara church at the foundation of the plaint church, the administration, spiritual and temporal powers vested in the Malankara Metropolitan. The administration is to be only in such form as is approved by the episcopal authority. No one has the right to curtail or deny the episcopal authority over the plaint church which include the right to appoint Vicars and priests to conduct the religious worship in the plaint church and to regulate and control the temporal affairs of the plaint church. The 30 plaint church is a public charitable institution forming part of Malankara church. The parishioners constitute merely the beneficiaries of the trust and have no power in themselves either individually or collectively to do away with the fundamental episcopal character and principles of the trust. Schemes had been formulated with the concurrence of the episcopal authority for the administration of the plaint church. They include schemes covered by deeds registered as Deed No. 16 of 1065, 29 of 1066, 23 of 1108, 60 of 1109 and 45 of 1110. All such schemes recognised the episcopal authority over the plaint church and were operative only to the extent concurred by the episcopal authority. The 40 plaintiffs state that on 12-9-1958, the date of the Supreme Court decision, the scheme provided under registered deed No. 45 of 1110 to the extent concurred by the Metropolitan exercising episcopal authority was operative in the plaint church. The episcopal authority was regulated by the Canons and Constitution of the Malankara church as alleged to be exercised over the plaint church, subsequent to the decision of the Supreme Court. The plaintiffs' case is that the provisions of the scheme under registered deed No. 45 of 1110 is operative and binding on the plaint church to the extent approved by the Diocesan Metropolitan. On 12-11-1964, the then Angamali Diocesan Metropolitan under Order 50 No. 190 retired all the then Vicars and priests of the plaint church with effect from 15-11-1964 and appointed Kuttipuzha Joseph Kathanar and

Olapura George Kathanar as Vicars on a salary basis to the plaint church. All matters of religious worship are carried on thereafter only by Vicars and priests appointed by the Angamali Diocesan Metropolitans. The temporal administration of the plaint church, according to the plaintiffs, is carried on under the authority of the Diocesan Metropolitan by the Vicars appointed by the Diocesan Metropolitan conjointly with two other laymen fixed upon by rotation for each year from a panel of eight elected by the parish yogam for a period of four years and approved by the Diocesan Metropolitan. ✓

7. The plaintiffs' grievance in the case is that in 1973 some members of the Malankara church formed themselves into an organisation called the Malankara Jacobite Syrian Christian Association with the object of taking out the parish churches and other institutions of the Malankara church from out of the Malankara church and its hierarchial authority. With that object they sent one Kadavil Paul Ramban to the Patriarch of Antioch and got him ordained Metropolitan under name Paulose Mar Athanasius. On his return to India, he tried to interfere with the administration of parish churches and institutions of the Malankara Church. However such unlawful attempts to interfere in the worship and administration of the Malankara Churches and institutions were prevented by court orders of injunction. The Jacobite Association later sent two priests, one C. M. Thomas Kathanar and one Gheevarghese Kathanar to the Patriarch of Antioch and got them ordained as Metropolitans under names Thomas Mar Dionysius and Gheevarghese Mar Gregorios. On their return to India, they tried to interfere in the worship and administration of several of the Malankara Churches and institutions. But they were prevented by court orders of injunction obtained in the various courts in Kerala. Then the Jacobite Association sent one Kurien Kathanar, a priest of the Malankara church to the Patriarch of Antioch, who is said to have got him ordained as Metropolitan under the name Kuriakose Mar Kurilos. According to the plaintiffs, none of the Metropolitans, Paulose Mar Athanasius, Thomas Dionysius, Gheevarghese Gregorios or Kuriakose Mar Kurilos are Metropolitans entitled to any episcopal authority over any church or institution of the Malankara church.

8. The Plaintiffs would state that to become a Metropolitan of the Malankara church or to be entitled to any episcopal authority over any parish churches or other institutions of the Malankara church, it is essential that such persons should be elected by the entire Malankara church as represented by the Malankara Association, that such election be approved by the Episcopal Synod of the Malankara church, that he should execute Shalmoosa or agreement declaring his allegiance to the faith and constitution of the Malankara church, that he should be ordained by the Catholicos and that he should be appointed to office by the Catholicos in compliance with the procedure laid down in the Constitution of the Malankara church. The afore-said Metropolitans are said to have none of the above-said qualifications. Besides the episcopal Synod of the Malankara church considering their unlawful intentions decided, and the Catholicos has under Circular Kalpanas called upon, all parish churches and institutions and members of the Malankara church not to associate with them in any matter pertaining

to the worship or administration of the Malankara church or its parish churches or its institutions. The plaintiffs would state that the plaint church and all parishioners thereof are in duty bound to obey the said directions. Quite recently, most of defendants 2 onwards have joined the Malankara Jacobite Syrian Christian Association and are intent on taking out the plaint church and its institutions from out of the Malankara church and its control. With that object they prevailed on the 2nd defendant, a priest appointed to the plaint church by the Ankamali Diocesan Metropolitan Philipose Mar Theophilus to assume the office of Vicar and to call together meeting of some of the parishioners of the plaint church under pretext of calling together a meeting of the parish General Body on 1—3—1974, 25—3—1974 and 4—8—1974 and are purported to have taken certain decisions taking away the plaint church and its institutions, which have been detailed in the plaint from out of the Malankara church and the control of the Catholicos Malankara Metropolitan and the Ankamali Diocesan Metropolitan Philipos Mar Theophilus and subjecting the same to the episcopal authority of the Metropolitan, Thomas Dionysius, who, the plaintiffs would contend, has no episcopal authority over the Malankara church or the plaint church and who has already been prohibited from being received or accepted by any member or parish of the Malankara church by the Episcopal Synod and the Catholicos Malankara Metropolitan as well as by Court injunctions. The plaintiffs would allege that decisions have been taken in the meetings to the effect that the right to appoint Vicars and priests for the plaint church is vested in the managing Committee of the plaint church. A decision was also taken on 4—8—1974, to remove the 1st defendant from his office as priest of the plaint church.

9. According to the plaintiffs these decisions are illegal and do not bind the plaint church, which has been founded as a parish church of the Malankara church. It is also bound to remain under the Canonical authority of the Metropolitans of the Malankara church. The parishioners are merely the beneficiaries of the plaint trust and they have no right in themselves to alter the scheme of management spiritual or temporal. The decisions taken at the meetings, referred to earlier, constitute a departure from the fundamental principles of the foundation of the plaint church and really constitute breach of trust. No parishioner can deny the authorities of the Catholicos Malankara Metropolitan and the Ankamali Diocesan Metropolitan Philipose Mar Theophilus and it will be unlawful and breach of trust for the defendants who are in administration of the plaint church or working committee members thereof to do away with the authority under which they were put to office, to accept the authority of others who have no claim to any such authority or to assume in themselves the right to remove the priests or appoint priests for the plaint church.

10. It is alleged that the practice from the very inception of the plaint church is to declare and remember the name of the episcopal authority over the plaint church in the Thubden during the religious service of Holy Qurbana in the plaint church. The name of the Ankamali Diocesan Metropolitan Philipose Mar Theophilus was being declared and remembered till now. But the defendants have given up that and are instead declaring and remembering the name of Mar Thomas Dionysius referred to above. It is also

alleged that defendants are expending the funds of the plaint church for the unlawful objects as decided upon by them in the meetings referred to earlier. The plaintiffs proceed to state that the 2nd defendant had called a meeting purporting to be of the parish yogam of the plaint church on 4—8—1974 with the object of implementing the unlawful decisions already taken and removing some of the present priests of the church and assuming the power to appoint new Vicars and priests, to fix their salaries, or even not to pay such salaries to them and to expend the funds of the plaint church in furtherance of the unlawful decisions already purported to be taken. The plaint alleges that these persons have no authority to do so. Suit is brought forward in a representative capacity for the reliefs sought for on behalf of the numerous others in the plaint parish besides the plaintiffs, interested in preserving the plaint church and institutions for the purposes and under the principles for which it was founded and administered. The cause of action for the suit is said to have arisen in Kothamangalam Village on 11—3—1974, 25—3—1974 and 4—8—1974, when the decisions have been taken to deviate from the principles of the trust.

11. The prayer asked for in the plaint is for declaring that the decisions taken in the plaint parish meetings of 11—3—1974, 25—3—1974 and 4—8—1974 and the committee meetings dated 5—4—1974 and 3—8—1974 insofar as they affect the episcopal rights of the Catholicos Malankara Metropolitan and the Diocesan Metropolitan Philipose Mar Theophilus over the plaint church, and their right to appoint Vicars or priests and control religious worship and administration of the plaint church, are illegal and do not bind the plaint church. The second prayer is for restraining the defendants by an injunction from denying the episcopal authority of the Catholicos Malankara Metropolitan and the Ankamaly Diocesan Metropolitan Philipose Mar Theophilus over the plaint church and institutions or accepting the episcopal authority of Thomas Mar Dionysius or any other Metropolitan not appointed by the Catholicos, over the plaint church or institution as well as from removing the name of Metropolitan Philipose Mar Theophilus from the Thubden during the Holy Service of Qurbana in the plaint church or substituting any other name therein, or expending any amounts from the funds of the plaint church for any purpose not permitted by the said Diocesan Metropolitan Philipose Mar Theophilus. There is also a prayer for restraining the defendants by an injunction from holding any meeting of the plaint parish yogam or taking any decision or actually removing, or retiring any of the priests of the plaint church or refusing to pay them their salaries or other emoluments, or refusing to pay the pension of the retired priests and from appointing or inducting in or allowing any priest or Deacon or other religious dignitary not permitted by the Catholicos and the said Diocesan Metropolitan Mar Theophilus to any way interfere in any matter of religious worship or administration in the plaint church. Then there is the usual prayer for costs and for granting such other reliefs as may be deemed just and necessary to protect the plaint trust and as may be applied for hereafter.

Plea of the Contesting Defendants:

12. In the joint written statement filed by defendants 2, 5 and 10, the plaint contentions are controverted. The maintainability of the suit itself is questioned on the ground that the plaintiffs have prayed for a

declaration not as to their own legal character, but of third parties. The suit is alleged to be one for direction for the administration of a Public Trust. The plaintiffs do not require a declaration of their rights in the plaint church, but it is a suit where they wanted enforcement of due performance of the duties of the Trustees or the Working or Managing Committee members in relation to the objects of the Trust. Therefore, according to these defendants, the suit is barred under Section 92 of the Code of Civil Procedure. It is also alleged that the 1st defendant was a priest in the plaint church. But, he has relinquished his office and he is no more a member of the Working Committee or Managing Committee of the church. Another contention raised is that the second plaintiff has disqualified himself from the membership of the Pothuyogam of the plaint church. He is a defaulter in the payment of the dues to the church and has consistently refused to take the Kumbasaram for the last few years. The first plaintiff is characterised as an enemy of the plaint church and he was removed from the membership of the Sub Committee of the church, as he was dragging the church into unnecessary litigations. These defendants deny the allegation that the plaint church was founded, dedicated, consecrated and administered all through as a constituent parish church of the Malankara Jacobite church. Nor is the Malankara church an episcopal church. It is a congregational church. The Malankara church is only an Archdiocese of the Syrian Orthodox Church under the Patriarch of Antioch and all the East. The function of the Metropolitan was purely spiritual. His function is only to preserve, protect and Maintain the true faith. Each Parish church is autonomous and the general society has no control over the local churches. No doubt, though autonomous, they are not isolated units. The Malankara Association was formed in 1876 at the Mulanthuruthy Synod convened by the Patriarch. This Association was devised for fellowship and co-operation in common affairs but without any ecclesiastical or other authority over the parish Churches. Till 1876, there was only one Metropolitan, but, in that year, the Patriarch divided the Malankara Archdiocese into seven Dioceses, each under a Metropolitan. The Diocesan Metropolitans are not subordinates of the Malankara Metropolitan. They are independent. The Malankara church consists of 3 separate and distinct trusts, namely, the Common Trust, the Diocesan Trusts and the Parish Trusts. All the Spiritual powers over the whole church is vested in the Patriarch. Defendants deny that Bassaliose Ougen I was the Catholicos at the time of filing the suit, nor is Philipose Mar Theophilus, the present Metropolitan of the Ankamali Diocese as they had deviated from the fundamental faith of the church and had been declared as Apostates by the Patriarch by his Kalpana dated 21-8-1975. These persons believed and propagated the theory that St. Thomas has established an Apostolic See and that the Catholicos is seated on it. They further proclaimed the Malankara church as independent of the Spiritual authority of the Patriarch and removed his name from the amalogya, thereby preventing the persons ordained from taking the oath of allegiance and loyalty to the Patriarch. They repudiated the authority of the Patriarch and his status as the Supreme Spiritual Head of the Malankara church which is a part of the Syrian Orthodox Church.

These deviations from the fundamental faith of the church were considered by the Universal Episcopal Synod of the Syrian Orthodox Church of which Malankara church is a part, on 16-6-1975 and subsequent days. Invitations had been sent to Bassaliose Ougen I and his Partisan Bishops to attend the said Synod, but they refused to attend it. The Synod unanimously decided that the only Apostolic See of the Syrian Orthodox church in the world is the Antiochean See of the Apostle St. Peter held by Patriarch, that the Malankara church is an indivisible part of the Syrian Orthodox Church, and dependent on the authority of the Patriarch in all spiritual affairs. Anyone receiving Priesthood or any other order should acknowledge his submission and allegiance to the Patriarch and that anyone who rebels against it thereafter shall be disqualified from his religious grade. The Synod found that Bassaliose Ougen I and his Partisan Bishops have deviated from the fundamental faith of the church and authorised the Patriarch to declare them as Apostates and to take all necessary actions. In consequence, the Patriarch issued notices on 23-6-1975 to Bassaliose Ougen I and his 7 (seven) Partisan Bishops including Philipose Mar Theophilus, calling them to return to the true faith and there was no response to the notices. Patriarch by his Kalpana dated 21-8-1975 declared them as Apostates as they have voluntarily separated themselves from the communion of the Syrian Orthodox church. Defendants contend that Bassaliose Ougen I, Philipose Mar Theophilus and their Partisans including the plaintiffs are now aliens to the Malankara church and they have no right, privilege or prerogative in the plaintiff church.

13. According to these defendants, the Mar Thoma Cheriapally was founded in or about 1343 A. D., i. e. nearly 631 years ago by the fore-fathers of its present parishioners, for the worship of God according to the faith, doctrine and practice of the Jacobite Syrian Christian church under the patriarch of Antioch and all the East. The object of the founders is that the religious services in the church should be conducted only by religious dignitaries who possess the spiritual grace and Apostolic Succession from the Patriarch or his delegates. It was established with the money and labour of the founders alone. There was no help or direction from the Metropolitan or from any of the similar sister churches in the country. The only Metropolitan at the time of the foundation of the church in this country to give guidance in the spiritual matters was Mar David, who had been sent to this country by the Patriarch of Antioch. The founders had established the church as a self-governing ecclesiastical institution. The original purpose of the foundation as far as the administration is concerned was to remain independent of any superior religious organisation and to be governed, managed and controlled by its own members or persons elected or accepted by them. This autonomy had never been surrendered to anybody at any time by the church. The defendants would further state that the church was administered by the parishioners according to the congregational principles of government in its temporal and ecclesiastical affairs. The rules had been codified and registered as document No. 16 of 1065. Some more clauses were added in 1066 and a document No. 29 of that year was registered. Some more rules were added in 1108 and 1109. The parishioners in their general body meeting had adopted a constitution for the government of the plaintiff church which had been registered

on 24-5-1110 at the Sub Registrar's Office at Kothamangalam. This constitution replaced all the prior rules and is in force in the plaint church. The defendants would contend that all the members and authorities of the church are bound by the terms of this constitution.

14. This Constitution provides for an Edavaka Yogam, a managing committee, a working committee and Thannandu Kaikars. The Edavaka Yogam is a sovereign body having all the powers in the administration. The managing committee is responsible for the Edavaka Yogam. In it is vested all the powers except the alienation of immovable trust properties of the church. The working committee is responsible to the Managing Committee and as per sections 20 and 21 of the constitution it is empowered to do all things in accordance with the direction of the managing committee. The present managing committee was elected in 1973 November and its term extended upto 31st December 1977. The Thannandu Kaikars, according to section 22 of the constitution is empowered to carry on the day to day administration of the church. The Diocesan Metropolitan has only supervisory authority all over spiritual matters and faith under the Patriarch of Antioch and all the East in these matters. He has no control or power over the finance of the church.

15. The Priests and Vicar functioning in the church are chosen and appointed by the managing committee of the church. The Custom that existed in the church was to select a person for being ordained as a priest by the managing committee and to send the selected persons with a kuri to the Metropolitan to be ordained by him as a priest for the church. After ordination and before entering into the office the priest used to execute an Udampady in favour of the church undertaking to owe allegiance and to perform the duties as prescribed in the constitution. These priests are known as Edavaka priests. The remuneration and perquisites for the priests are met fully from the funds of the church. Periodical changes in the quantum of the remuneration are being effected by the managing committee. As per the constitution, the vicar and priests are paid officers of the church and have the duty to perform the religious services and sacraments for the parishioners. In 1964 the Vicar and Priests became too old to continue in their offices, with the result that the plaint church had to get the services of priests from other churches through the Metropolitan. The Pothuyogam on the basis of a report of a Sub Committee decided that Vicar also has to be appointed by the managing committee due to the non-availability of persons for being deputed as priests from other churches. After pointing out that the Patriarch of Antioch had looked after the spiritual affairs of the Malankara church from the first century, the defendants deny that the Catholicate of the East was revived in the Malankara church in 1912. Abdul Messiah, a de-throned Patriarch was brought down to the country by some disgruntled people and this Patriarch had conferred the glory of the name of Catholicose on a retired Metropolitan by name Mar Evaniose. The Malankara church or its people never accepted him as the Catholicose of the East with any of his powers. The defendants would also deny that the decision in XLV T. L. R. 116, MATHAN MALPAN V. OOLAHANNAN GEEVAR-

GHESE, upheld the authority of the constitution. According to the defendants, the constitution alleged to have been adopted in 1934 is null and void and was never implemented. That was adopted by the Catholicose Party alone and the churches of the Patriarch Section particularly the plaint church was not represented at that meeting. They would also state that this adoption of the constitution in 1934 by the Catholicose was an experimental measure and none of its provisions were enforced. The Catholicose Party abandoned this constitution and adopted a fresh constitution in 1951, at a time when people belonging to this group had been declared as aliens to the Malankara Church by the Travancore High Court by judgment dated 8-8-1946 in A. S. No. 1 of 1119. Neither the plaint church nor any other church within the fold of Patriarch Section, had been invited to the meeting of the Catholicose Section which had adopted the fresh constitution. The defendants would deny that the constitution was framed for the Malankara church by any competent body, and they would characterise the provisions of the constitution as illegal, unreasonable, against custom and usage, and in violation of court decisions. The canon accepted in it is a version rejected by the court. They would also state that by the constitution the powers of the Malankara Metropolitan were increased beyond limits to make him an ecclesiastical dictator. The Malankara Association itself had been formed to curb the autocracy of the Malankara Metropolitan. It is also contended that in any case, the Malankara Association, has no jurisdiction to frame any rules for the Parish Churches and those churches were never previously informed that such rules were going to be adopted. The constitution has not been accepted in the plaint church till now, though several attempts had been made to impose this constitution in the administration of the plaint church by the Catholicose, by the Diocesan Bishop and through the first defendant as their agent. These attempts had been stoutly resisted by the Edavaka Yogam and the managing committee. By its meeting held on 17-12-1967, the Edavaka Yogam had held that the constitution relied on by the Catholicose is unsuitable for the administration of the plaint church, which fact was intimated to the Catholicose and all members of the Synod including the Diocesan Metropolitan, and the members of the managing committee. In 1972 and in 1969, similar attempts to impose the constitution on the plaint church had been resisted by the Church which rejected the constitution. The Metropolitan has no authority to accept the constitution on behalf of the plaint church. The Vicar is not the agent of the Bishop or the Bishop the agent of the Catholicose. The Catholicose is only a deputy of the Patriarch.

16. The Patriarch no doubt accepted the Catholicose by his Kalpana dated 9-12-1958. This acceptance was made with the hope that all differences between the two Sections in the Malankara church particularly relating to the religious questions will be settled without delay. By a Kalpana of 16-12-1958, the Catholicose had said that he had accepted the Patriarch subject to the provisions of a constitution relied on by him. A copy of this Circular Kalpana was sent to the Patriarch through his delegate. The patriarch refused to accept the constitution. It is also the defendants' case that the acceptance by Patriarch and by Catholicose was done without any consultation with the people on either side or with

the Malankara Associations of both sections. The religious differences between the two sections in the community also remained unsettled. Metropolitan Gheevarghese Mar Gregorious had not submitted to the authority of the Catholicose the constitution and even if there is any such submission, that will not bind the plaintiff church. It is denied the said Metropolitan was appointed by the Catholicose in February 1959. Mar Gregorious has not obtained any power over the plaintiff church on the basis of the said appointment. It is stoutly denied that the Malankara Metropolitan exercised episcopal functions in the plaintiff church after the demise of Mar Gregorious. Nor has Philipose Mar Theophilus exercised 10 such functions on the basis of the provisions in the constitution. His Kalpanas were mostly rejected by the Pothuyogam. Whatever power he had exercised was only in accordance with the provisions of the constitution of the plaintiff church dated 2-5-1110 (M.E.).

17. The defendants' case is that the Plaintiff church had been founded for the worship of God according to the faith of the Syrian church. The church edifice and all its assets belong to its parishioners. The Malankara Church Hierarchy or the Malankara Association or the Angamaly diocese have no council supervision or control or governmental authority of any kind over the plaintiff church. Its right to govern itself in accordance with its by-laws is not affected by its membership in the Malankara Association. The episcopal authority of the Malankara church cannot exercise any powers of administration over the plaintiff church which is vested in the Parishioners. The episcopal authority in relation to the plaintiff church will not include appointment of Vicars and Priests. The supreme authority to regulate and control the spiritual officers is the Patriarch. Any dignitary who rebels against this authority has no right to conduct any service in the plaintiff church. The version of the canon accepted in the plaintiff church is the one accepted by the Patriarch, which is Ext. 18 in O. S No. 94 of 1088 of the Trivandrum District Court. The defendants would stoutly deny that the rules 30 framed in their Pothuyogams are operative only to the extent concurred by the episcopal authority. On the other hand, the episcopal authority is operative in the plaintiff church only to the extent conceded by the Parishioners who had brought into existence the udampadies concerned. The Supreme Court decision of 12-9-1958 has not affected the constitution of the plaintiff church or its mode of administration. That decision relates only to the administration of the common trust properties. The approval of the Diocesan Metropolitan was not necessary for the validity of the udampady entered by the Edavaka Yogam. The Udampady of 1110 had been amended by the Edavaka Yogam, to which amendment 40 the 1st plaintiff was a participant. He has recorded his assent to it. He is stopped from contending that any other constitution is binding on the plaintiff church.

18. The church is not a member of the Malankara Jacobite Syrian Christian Association. This church was organised to preserve, protect and maintain the ancient true faith of the church. The defendants also contend that Metropolitans Paulose Mar Athanasious, Gheevarghese Mar Gregorious, Thomas Mar Dionysius, Kuriakose Mar Kurilose are all properly and validly consecrated by the Patriarch the Supreme Spiritual authority. They are entitled to conduct religious services in 50

the plaint church as well as in other parish churches. As and when they are accepted by the people, they are entitled to exercise spiritual administration in the churches. Thomas Mar Dionysius has been accepted in the plaint church as its Metropolitan. The Patriarch is the supreme spiritual head of the church and he has the power to consecrate Metropolitans anywhere in the world. The Catholicose is only a deputy of the Patriarch and has to be obedient to him. Neither the Catholicose nor his episcopal Synod has the authority to issue any orders preventing the Metropolitans consecrated by the Patriarch from entering the parish churches and conducting services therein. Such defiance of the spiritual powers of the Patriarch will entail forfeiture of membership of the church. It is pointed out that the 1st defendant while he was the Vicar of the plaint church has accepted Thomas Mar Dionysius as Metropolitan of the plaint church. 10

19. On 3-8-1974, the Managing Committee decided to relieve the first defendant from his post as priest of the church, after due notice to him. This decision was approved by the Pothuyogam on 4-8-1974. The first defendant accepted the decision as can be seen from his letter dated 6-8-1974 sent by him to the Vicar Rev. Fr. P. M. Kuriakose. The duties and functions of the 1st defendant as priest of the church were given to Rev. Fr. K. C. Mathai and Rev. Fr. C. A. Habel who took charge on 5-8-1974. He had been paid the remuneration including the allowance of Vicarship till 4-5-1974 and he has signed the acquittance roll. The salary and allowance due as Assistant Vicar are also paid to him and he has accepted it, and signed on the stamped receipt in the acquittance roll. 20

20. The 2nd defendant was appointed by Philipose Mar Theophilus on the nomination of the managing committee. The Pothuyogams of 7-4-1974, 21-4-1974 and 4-8-1974 are validly held and the decisions taken therein are valid and have been implemented. 30

21. It is asserted that the parishioners have every right to frame constitution for the administration of their church and to make amendments to it whenever found necessary. The allegation that the decisions taken at the meetings held on 7-4-1974, 21-4-1974 and 4-8-1974 are departures from the fundamental principles of the foundation is denied. Those decisions do not constitute breach of trust. The defendants state that they are maintaining true and proper accounts in the church which are duly audited by chartered accountants every year. The audited accounts are placed before the Pothuyogam for its approval. The defendants also state that the plaintiffs have no supporters in the plaint church. More than 95% of the Parishioners are opposing them. Therefore it is said that they are incompetent to represent the parishioners. It is said that the plaint church is one of the big churches in Malankara and in it is entombed Saintly Spiritual Father sent to this country by the Patriarch. The annual income of the church is utilised for the benefit of the Parishioners and for the general Public. It owns a High School, an Arts College and takes a leading part in the conduct of an Engineering College. A big Hospital is also under construction by the church. The plaintiffs have, according to the defendants, no cause of action in the suit. 40

ISSUES:-

22. The following issues have been framed in this case.
1. Whether the plaintiff schedule church is a constituent of the Malankara Orthodox Syrian Church and whether it is an episcopal church or congregational church?
 2. Whether the Malankara Metropolitan also ordained as Catholicos of the East is entitled to exercise powers of supervision over the diocesan Metropolitans?
 3. Whether Mar Baselius Ougen I (Catholicos of Malankara) and Philipose Mar Theophilose are the spiritual, temporal and administrative metropolitans who can exercise powers of supervision over the affairs of the plaintiff schedule church, or whether they are disqualified from exercising such powers by the reason of their ex-communication by the Patriarch of Antioch? 10
 4. Whether the plaintiffs are entitled to get an injunction restraining the defendants from denying the episcopal authority of the Catholicos and the Ankamaly diocesan Metropolitan Philipose Mar Theophilose over the plaintiff schedule church and its properties?
 5. Whether the plaintiffs are entitled to get an injunction restraining the defendants from accepting the episcopal authority of Thomas Mar Dionysius or any other metropolitan not appointed by the Catholicos over the plaintiff church or its institutions? 20
 6. Whether the plaintiffs are entitled by an injunction to suspend the decisions taken by the Parish meeting held on 11-3-1974, 25-3-1974 and 4-8-1974 and the committee meetings dated 5-4-1974 and 3-8-1974 denying the rights of the Catholicos and the diocesan Metropolitan Mar Theophilose over the plaintiff church and their right to appoint vicar or priests to and control religious worship and administration of the plaintiff church?
 7. Whether the plaintiff schedule Church and the institutions under it are religious? Whether the trusts enure to the benefit of the edavaka and the Diocesan Metropolitan and the Catholicos? 30
 8. Whether the plaintiff-mentioned Church is to be governed by the terms of the udampady dated 24-5-1110?
 9. Whether the constitution of the Malankara Sabha adopted in 1934 is valid and binding on the plaintiff schedule church and its institutions?
 10. Whether the Edavaka of the plaintiff schedule Church had accepted the same? If so, whether they are entitled to repudiate the same? 40
 11. Whether the plaintiff schedule Church represented by its kaikars and edavaka yogam are entitled to recognise as their superiors any other priests, Metropolitans or Catholicos ordained by the Patriarch without the concurrence of the Malankara Sabha and affiliate themselves to such dignitaries? If so, whether it is in violation of the Malankara Constitution adopted in 1934 and accepted by the Supreme Court in 1958 as valid and binding?
 12. Whether the Metropolitan Mar Theophilose had exercised episcopal and administrative functions over the plaintiff Church on the basis of the Malankara Sabha Constitution or whether he 50

was acting only in accordance with the provisions of the Church Constitution dated 24-5-1110?

13. Whether the Parishioners are bound to remember the name of Mar Theophilose in the 'Thubden'?
14. Whether the Civil Court is competent to enforce such a provision on the Parishioners by reason of an injunction?
15. Whether the declaration and injunction prayed for in the suit are allowable?
16. Reliefs and Costs?

O. S. No. 2 of 1979:—

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23. This suit had been filed in the first instance as O. S. No. 274 of 1973 in the Sub Court, Kottayam. Plaintiffs are Moran Mar Baselios Ougen I styled as Catholicos of the East and Malankara Metropolitan (since deceased), Mathews Mar Ivanios Metropolitan of Kottayam Diocese of the Malankara Church and Mathews Mar Athanasios Metropolitan appointed as Assistant and elected as successor of first plaintiff. Defendants described in the plaint are Most. Rev. Paulose Mar Athanasios Metropolitan residing at Perumbavoor and the Evangelistic Association of the East, represented by its General Secretary, Rev. Fr. Geevarghese Aathunkal, Priest, General Secretary of the Evangelistic Association of the East, also residing at Perumbavoor. 20

Plaintiffs' contentions:-

24. Plaintiffs' contentions are as follows. The Malankara Orthodox Syrian Church is a religious community with an aggregate present membership of about 15 lakhs of worshippers, worshipping in about thousand Parish churches and having other religious and charitable institutions in and outside India organised and administered by or under the authority of the Catholicos of the East and Malankara Metropolitan. The church was sub-divided into seven Dioceses in A. D. 1876 each with a Diocesan Metropolitan under the authority of the Malankara Metropolitan. Subsequently, the number of dioceses has been increased. In the wake of the Supreme Court decision, in Civil Appeal No. 267 of 1958, which was a continuation proceedings from O. S. No. 111 of 1113 of the Kottayam District Court, upholding the validity of the revival and re-establishment of the Catholicate of the East, as also the authority of the Catholicos of the East and Malankara Metropolitan over the Malankara Church, His Holiness the Patriarch of Antioch and all the East accepted in December 1958, the authority of the Catholicos of the East and Malankara Metropolitan over the Malankara Church to restore unity and peace. The then Catholicos of the East cum Malankara Metropolitan, who was the 1st plaintiff's predecessor responded and accepted His Holiness the Patriarch of Antioch and all the East as the Chief Head of the Universal Orthodox Syrian Church subject to the then current constitution of the Malankara Church. The then Metropolitans of the erstwhile Patriarchal party in the Malankara Church were also allowed to be inducted into the united Malankara Church under the authority of the Catholicos and Dioceses were re-distributed. There are now ten Dioceses in Malankara Church. Second plaintiff is the Diocesan Metropolitan of the Kottayam Diocese, one of the ten Dioceses of the Malankara Church. The 1st plaintiff being very aged, the 3rd plaintiff has been appointed as his assistant and has been duly elected as his successor, who was at that time 30 40 50

the Metropolitan of the Diocese of Outside Kerala.

25. According to the plaintiffs, the Patriarch and the Catholicos were the chief heads of the Orthodox Syrian Church, the former functioned from Syria and the latter from Persia with separate territorial jurisdictions. In the year 1912, the Catholicate was revived, transferred and re-established in the Malankara church. Since the revival of the Catholicate, the powers and authorities of the Catholicate of the east were questioned repeatedly by or at the instance of Patriarchs. Ultimately, all such disputes in Malankara church were finally settled by the Supreme Court decision referred to above and reported in *MORAN MAR BASSELIOS CATHOLICOS V. AVIRA* 10 (1958 K. L. T. 721). Following this, peace was restored at the initiative of the Patriarch of Antioch towards the close of the year 1958. Therefore, according to the plaintiffs, Catholicos of the East cum Malankara Metropolitan continued as the undisputed spiritual temporal and ecclesiastical head of the Malankara Church and thereafter there cannot be any office or institution of any category of the Malankara church otherwise than under the authority and control of the Catholicos cum Malankara Metropolitan. It is the plaintiffs' case that in 1964, on the eve of the installation of the 1st plaintiff as the Catholicos of the East, on the suggestion of the Patriarch of Antioch who was then in India at the invitation of the Holy Synod to 20 preside over the installation ceremony of the Catholicos, the Holy Synod of Malankara Church had met to re-define the territorial jurisdiction of the Catholicos of the East. This Synod has excluded certain western regions of Persian Gulf area subject to certain conditions from the territorial jurisdiction of the Catholicos of the East as desired by the Patriarch of Antioch. The plaintiffs would further state that during the pendency of the dispute which ended in the Supreme Court decision, the Patriarch of Antioch had been exercising administrative functions over certain churches in Malankara which are known as Simhasana Churches. The Patriarch was glad to accept the territorial re-adjustment of the respective jurisdictions 30 and had expressed his desire that administration of Simhasana Churches has also to be brought under the authority of the Catholicos of the East. The 1st plaintiff has in course of time assumed administration of Simhasana Churches without any demur.

26. The Malankara church has an Evangelistic Association by name the Evangelistic Association of the East. This has been registered under the Societies Registration Act, Act 21 of 1860. The Evangelistic Association of the East, the episcopal administration of which was under Bishops ordained by the Patriarch till 1964, was also brought under the Catholicos of the East by 27th July 1964. The Catholicos was made the 40 Patron of the Association and given power to exercise in the territories within the jurisdiction of the Catholicos. Amendments were made consequently in the Memorandum and Rules and Regulations of the Evangelistic Association of the East. The Catholicos took over the episcopal administration of the Association, either personally or through Metropolitans appointed by him. Though peace was restored and the Patriarch had been very keen in perfecting and maintaining the restored peace, a small section of the community organised themselves to work against the established authority of administration of the Catholicos attempting to create again foreign domination and divided loyalty, which, according to the plaintiffs, 50

if not checked, would affect the progress and discipline of the church. This group succeeded in creating a wrong impression in the mind of the Patriarch of Antioch that the Malankara church is secretly aiming to sever connection with the Holy See of Antioch and has made him hesitatingly inclined towards them.

27. The first defendant is a member of the North Parur Parish in Malankara church. He was till near the date of filing the suit a Dayaroyo or Remban in the monastic order of the church. He has no right to enter or officiate as priest in any of the parish churches or institutions of the Malankara church without the express sanction from the first plaintiff or from the respective diocesan Metropolitan. The plaintiffs would state that according to the rules governing the Malankara church and established by precedents, if any person is to be consecrated as a Bishop or Metropolitan, he should have been elected to such office by the Malankara Association on behalf of the community and such election must be approved by the Episcopal Synod. The candidate will have to be consecrated by the Catholicos with the co-operation of atleast two Bishops of the Synod. The person thus consecrated is bound to submit a statement regarding the faith and submission to Catholicos and the Catholicos in turn to give a certificate of Consecration to the prelate so consecrated. The plaintiffs' complaint is that the 1st defendant has got himself consecrated as a Metropolitan on 2-9-1973 under the name Mar Paulose Athanasios by the Patriarch of Antioch. He has not been elected by the Malankara Association to the office of the Metropolitan and there was no occasion for any approval of the Synod. The consecration was not from the hands of the Catholicos and the Catholicos has not given any certificate to the first defendant. The first defendant has not also given any statement regarding the faith and submission to the Catholicos. The plaintiffs would, therefore, contend that the first defendant is not competent to function as a Metropolitan of the Malankara church. The plaintiffs' apprehension is that the first defendant has been elevated to the rank of a Metropolitan by the Patriarch intending to act with the second defendant and the group referred to earlier, to test whether the Patriarch could take back the episcopal administration of the Evangelistic Association of the East and to try whether it could be used as a handle to interfere in the administration over the churches. The second defendant is the Evangelistic Association of the east represented by its General Secretary. The plaintiffs would contend that the first respondent has no locus standi to function within the jurisdiction of the Catholicate as a Metropolitan in Malankara church nor can he exercise any episcopal right in any institution of the Malankara church including the institutions of the Evangelistic Association of the East. The first defendant cannot even be recognised as a Titular Metropolitan of the Malankara church. The first defendant's consecration and his conduct was considered by the Episcopal Synod, the Supreme ecclesiastical governing body of the church on 11-9-1973. The Synod decided that the first defendant shall not be permitted to enter, officiate or interfere with the religious services and administration of the various dioceses, parish churches and other institutions of the Malankara church. Under a circular dated 15-9-1973, which was issued by the first plaintiff, directions have been given to all parish churches and members not to receive or associate the first defendant in matters of religious service and administration of the Malankara

church, its dioceses, parish churches or other institutions.

28. But, the first defendant, notwithstanding the circular by the 1st plaintiff, is bent upon entering and officiating in religious services and interfering in the administration of Malankara church especially in the scheduled churches of the Malankara church, which come under the Kottayam Diocese and functioning in the episcopal administration of the scheduled institutions of the Evangelistic Association of the East, the episcopal administration of which is with or under the first plaintiff. Though the first defendant was notified by the first plaintiff under letter dated 21-9-1973 enclosing the decisions of the Synod, the first defendant is not willing to comply with the requisition. The first defendant and the General Secretary of the Evangelistic Association of the East have joined hands and are secretly manipulating the records of the Association attempting to secure a footing to the first defendant. The plaintiffs would contend that the first defendant has no right or authority to enter in any church or other institution of the Malankara Church or any institution of the Evangelistic Association of the East. The cause of action which is said to have arisen on 2-9-1973, the date on which the first defendant claims to have been consecrated as a Metropolitan and on 11-9-1973 when the episcopal synod of the Malankara Church had declared the first defendant to be incompetent to exercise any episcopal authority in or over the Malankara church or its institutions including the institutions of the Evangelistic Association of the East. The plaintiffs pray

(i) to declare that the first defendant is not entitled to any episcopal right, spiritual, temporal or ecclesiastical in the Malankara Church, its constituent dioceses, parish churches or other institutions thereof including institutions of the Evangelistic Association of the East, and

(ii) for a permanent injunction to restrain the 1st defendant from entering and officiating as a Metropolitan in religious worship or in any way interfering with the administration of Malankara Church or its constituent dioceses, parishes or other institutions as also the institutions of the Evangelistic Association of the East and more particularly the churches and institutions scheduled to the plaint.

29. Two written statements had been filed in the matter, one by the 1st defendant and the other by the 2nd defendant.

1st defendant's contentions:-

30. This defendant pleads that the suit is not maintainable and the plaintiffs have no cause of action for instituting the suit. He is a life member of the 2nd defendant Association. He is also the Vice President, besides being a member of its Education Council. The Education Council has been formed under the provisions of the constitution of the Educational Institutions of the said Association which had been approved by the Government of Kerala. The second defendant Association was established in 1924. The constitution was first registered at the Registrar's Office at Perumbavoor in 1941. The Association was registered as an Association at Kozhikode on 19-4-1949 under The Societies Registration Act of 1860 (Act 21 of 1860) (Central Act) as No. 59. The 1st defendant is the first party in that document. The constitution was amended and such amendments were also registered from time to time. As per the consti-

tution the Patriarch of Antioch is the supreme patron of the Association. When the association was started there was no Catholicate accepted by the Patriarch in Malankara. Only in December 1958, the Patriarch accepted the Catholicate. The Catholicos, according to the accepted canons of the Church, is a subordinate to the Patriarch of Antioch and subject to his orders. The Malankara Jacobite Syrian Church has accepted the canon, which has been marked in the case and which had been finally decided by the Travancore High Court and reported in 41 T.L.R.

As per the canon law, the Catholicos cannot question the authority of a Metropolitan consecrated by the Patriarch and this fact had been admitted 10 by the predecessor of the 1st plaintiff in his written statement in O. S. No. 111 of 1113.

31. This defendant is a Parishioner of the Jacobite Syrian Church at Parur. In 1963, the General Secretary of the 2nd defendant-Association requested the Patriarch of Antioch to consecrate the defendant as the Missionary Metropolitan of the Association to carry on its missionary work. This was accepted. This request was repeated by the 2nd defendant Association in 1971. The Patriarch, after due enquiry and mature consideration, decided to consecrate the defendant as a Missionary Metropolitan of the Association. He was consecrated by the Holy Father on 2-9-1973 20 and he was appointed as the Missionary Metropolitan of the 2nd defendant by Kalpana No. 321 of 1973 on 4-9-1973 in exercise of his authority as the Supreme Patron of defendant No. 2 Association. The General Body of the Association welcomed and accepted the appointment of the defendant as its Metropolitan and conveyed its gratitude to the Supreme Patron. This defendant has been exercising the function of the Missionary Metropolitan of the Association ever since his return to Malankara on 20-9-1973.

32. It is only in 1964 that the Catholicos got connection with the Association when he was made a Patron of the Association and was authorised to exercise the authority of the Supreme Patron subject to the constitution of the Association. However, this power was terminated by a subsequent amendment in the constitution of the 2nd defendant Association duly passed on 28-12-1972 by the General Body of the Association. The amendment has also been got registered. The Catholicos therefore ceased to have any authority over the 2nd defendant Association after 28-12-1972. It is contended that the 2nd defendant Association is not part of the Malankara Church. The Association is administered solely by the General Body of the Association in accordance with its constitution. The Malankara Church or its hierarchy in Malankara, never exercised any administrative power over the Association, which is a 40 registered Society under the Societies Registration Act, 1860, with a legal personality of its own. Nor has the Malankara Church contributed any funds for the growth or working of the Association. Sixteen Churches have been established by the Association and they have been functioning independently and without reference to the Malankara church. The Parishioners of the sixteen churches have never been invited to the meeting of the Malankara Association. Therefore, the rules or the constitution of the Malankara church passed by the Malankara Association cannot in any way, bind the 2nd defendant Association. The Association is a philanthropic and religious body doing spiritual and social work throughout the world 50

under its Supreme Patron. The 1st defendant was consecrated to function as the Missionary Metropolitan of the Association to carry on general missionary work in Kerala, other parts of India and in all eastern and western countries. He is not appointed to function in any particular diocese. No doubt, if he is invited to function as such, he has the spiritual grace and authority for officiating in any parish church and he is in duty obliged to officiate when invited. His exercise of such episcopal and spiritual function anywhere in the Universal Jacobite Church under the Patriarch of Antioch cannot be questioned by the plaintiffs as is made clear in Section 2 of the constitution of the Association. 10

33. This defendant would contend that the Parish churches in Malankara are owned by the respective Parishioners and the temporal administration of the churches rests in the trustees appointed by the Parishioners. The several dioceses in Malankara are under the authority of the respective Metropolitans consecrated for the dioceses. Originally there was only one diocese in Malankara and the Metropolitan was called the Malankara Metropolitan. The East India Company instituted a Trust and invested 3000 Star Pagodas for the Malankara Church, making the Malankara Metropolitan a priest trustee and a lay trustee as joint trustees. The Malankara Metropolitan being one of the trustees appointed for the common properties of all the dioceses when other Metropolitans were appointed for those dioceses. The contention in the plaint that the Catholicate was revived or re-established in Malankara is denied. It is also urged that the consecration of the 1st plaintiff's predecessor as Catholicos was irregular and invalid till it was regularised by the Patriarch of Antioch in December 1958. The Patriarch does not require to be accepted by any other dignitary of the Church. The Catholicos is only a subordinate to the Patriarch of Antioch as prescribed by the canon law. The 3rd plaintiff's election as assistant and successor to the Catholicos is termed as not proper and valid. The Patriarch being the supreme head of the church has authority over the whole church. The Catholicos is always under the orders of the Patriarch. It is also contended in the course of the written statement that the Patriarch of Antioch as the Supreme head of the Malankara church was invited to consecrate the 1st plaintiff as Catholicos and not simply to preside over the installation ceremony as stated in the plaint. The western regions of the Persian Gulf area were never under the control or jurisdiction of the Catholicos and the averment in the plaint that territorial jurisdiction of the Catholicos was re-defined is denied. The Simhasana Churches were always under the administration of trustees appointed by the Parishioners. The Patriarch's delegate had supervisory powers over them. The individual churches have the liberty to accept their Metropolitan. The 1st plaintiff has no administrative powers over any of the churches. It is the 1st defendant's case which is reiterated again and again that the 2nd defendant Evangelistic Association never formed part of the Malankara Church and it was under the episcopal administration of the Patriarch alone. According to him, the Catholicos has been attempting to destroy the independent existence of the 2nd defendant Association and the churches and institutions administered by the Association. The Catholicos repudiated the spiritual headship of the 50

Patriarch contending that he is equal to the Patriarch and is seated on the throne of St. Thomas with a view to sever the ties existing with the Patriarch of Antioch, the Supreme head of the Malankara church. The 1st defendant also contends that it is a cardinal faith and belief of the Malankara Church that the Patriarch of Antioch is the Supreme Spiritual head of the Malankara Church which is quite different from foreign domination and divided loyalty. The adherence of the supreme authority of the Patriarch is not creating foreign domination. It is also contended that the plaintiffs have no possession of any of the individual parish churches in Malankara. Without impleading the authorities of the Parish churches, the plaintiffs cannot claim for any injunction against the 1st defendant's entry or worship in those churches. 10

2nd defendant's contentions:-

34. 2nd defendant's written statement also takes up similar contentions. The history of the Association is mentioned there. 2nd defendant Association is a Missionary organisation of the Universal Jacobite Syrian Church. This was formed in 1100 M. E. (1924 A. D.), its constitution was formulated in 1109 M. E. (1933 A. D.) and an Udampady was registered in 1117 M. E. (1941 A. D.) at Perumbavoor Sub-Registry Office incorporating the memorandum, rules and regulations of the Association. In 1949 the 2nd defendant was registered at Kozhikode as Society No. 59 of 1949 under The Societies Registration Act, 1860. The objects of the Association are to work for the spiritual and social growth of the Jacobite Syrian Church, under the Holy See of Antioch, to establish schools, hospitals, orphanages and other charitable institutions wherever they are required to propagate the gospel among the non-Christians, to raise funds, acquire properties and establish institutions for the above objects and administer them and to do all such other acts as are necessary for the fulfilment of the above objects. Any person who holds the faith of the Jacobite Syrian Church under the Holy See of Antioch can be a member of the Association provided he pays the membership fee, and does not offend any of the fundamentals of the society, or incur any disqualification mentioned in the constitution of the society. It is alleged that there are over 200 life members and over 130 ordinary members as individual members. The Parishioners of the churches of the second defendant are also members of the Association. Thus there are thousands of members in the Association. The management of the second defendant is vested in the members and exercised through the Managing Committee elected by them. The Patriarch of Antioch is, and shall always be, the Supreme Patron of the Association. Other patrons and vice patrons may be elected or accepted by the Association. The episcopal needs of the Association shall be administered by the President Metropolitan, if the President is a Metropolitan, and if not, by a Metropolitan or Episcopa selected by the Association from among the vice patrons. Women can also be members of the Association and they can be elected in the Managing Committee also. Similarly, citizens outside Kerala and even outside India can be members of the Association. Thus, Mar Athanasius Metropolitan of America, Aphreme Abudi Ramban (since consecrated as Mar Thimothios Metropolitan) of Iraq, Very Rev. Mosa Salama Ramban of Brazil etc. are members of the Association. The Evangelistic Association of the East is an independent 30 40 50

religious, charitable, Missionary Association which works throughout the world, and is not subject to the authority or administration of the Catholicos of the East or the Malankara Church or its Managing Committee or Synod. The Malankara Church has not at any time exercised any power over the second defendant, nor has it contributed any funds for the establishment, progress or working of the Samajam or its institutions. It has got 16 churches, 5 schools, an orphanage and other institutions. The episcopal needs of the Association have been administered only by prelates consecrated by the Holy See of Antioch.

35. The first plaintiff Catholicos had no connection whatever with the Association when he was made a Patron and Metropolitan of the defendant. But this authority was given only subject to the constitution of the Samajam as registered in 1949. This authority was terminated by subsequent amendment of the constitution of the Samajam duly passed on 28-12-1972 and duly registered with the Registrar of Kozhikode. Therefore, the Catholicos ceased to have any authority over the 2nd defendant from 28-12-1972. The other detailed contentions of the 2nd defendant, which more or less are the same as that taken by the 1st defendant are not herein detailed.

36. A replication was filed by the plaintiffs in the matter. While denying the correctness of some of the statements made in the written statements, it is stated that the plaintiffs do not propose to traverse such pleas which are extraneous matters beyond the scope of the suit. One such statement is regarding the validity of Canon Ext. A18 in 41 T. L. R. Another is regarding the status of the churches alleged to have been established by the 2nd defendant. The third is regarding the name of the throne of the 1st plaintiff. It is denied that the Catholicos of the East is subordinate to the Patriarch of Antioch. There is no superiority but only priority. It is also alleged that the contention of the defendant that first plaintiff ceased to be a Patron of the second defendant Association when once the second defendant had amended Section 7 B and 9 B of the rules and regulations on 28-12-1972 will not stand scrutiny, firstly because the resolutions themselves were not legally moved and passed with specific notice and secondly because the 2nd defendant was incompetent to change or alter the authority and status of the 1st plaintiff over the Association insofar as the Association works for the spread of the Malankara Orthodox Syrian Church and its religion of which the 1st plaintiff is the undisputed head as has been held by the Supreme Court and accepted by the Patriarch. It is said that the Patronship of a charitable institution is attached to the foundation. Notwithstanding the fact that the 2nd defendant is a juristic entity the very object of its formation and subsequent developments of 1958 has been for evangelistic work of the Orthodox Syrian Church of which the Catholicos of the East is the head in the Malankara hierarchy so that within this jurisdiction this Association cannot function or exist without the concurrence, approval and recognition of the head of the Church, the 1st plaintiff.

ISSUES:-

37. The following issues were framed for trial.

1. Is the suit maintainable?
2. Has the plaintiff a cause of action?

3. Has not the 1st plaintiff the inherent right to be the Patron of the 2nd defendant Association by virtue of his position?
4. Could the 2nd defendant Association exist and function in Malankara Church as an ecclesiastical Association attached to the Malankara Church without the permission and control of the 1st plaintiff?
5. Is not the 1st plaintiff irremovable from the Patronship of the 2nd defendant Association by virtue of his position?
6. Are the resolutions alleged to have been passed by the 2nd defendant Association purporting to remove the 1st plaintiff from the patronship properly passed in a validly held meeting? 10
Are not those resolutions invalid?
7. Is the 1st defendant entitled to enter any of the churches or institutions of Malankara Church without the permission of the 1st plaintiff or the concerned Metropolitan under the constitution of the Malankara church?
8. Is the 1st defendant competent to exercise any episcopal function touching or affecting the Malankara church?
9. Are the plaintiffs entitled to the declaration sought for?
10. Are the plaintiffs entitled to the injunction prayed for?
11. To what reliefs the plaintiffs are entitled? 20
12. Regarding costs „

O. S. No. 3 of 1979

38. The plaintiffs in O. S. No. 3 of 1979, which was first instituted as O. S. No. 347 of 1973 in the Sub Court, Kottayam, are two members of the Malankara Jacobite Syrian Christian Church, who have filed the suit under Order I Rule 8 of the C. P. C. on behalf of all the members of the Malankara Jacobite Syrian Community who support the prayers in the plaint. The defendants are impleaded to represent themselves and those who oppose the reliefs claimed therein. The first defendant is the Metropolitan of diocese outside Kerala (Bahya Kerala). The second 30
defendant, the Catholicos of the East and Malankara Metropolitan Trustee, is the President of the Malankara Jacobite Syrian Christian Association while the 3rd and 4th defendants are trustees of the common trust properties of the community and active supporters of the 1st defendant. The suit is for declaration that the alleged election by the Jacobite Syrian Christian Association of the 1st defendant as the successor of the Catholicos is invalid and for a perpetual injunction to restrain the first defendant from exercising any function on the basis of the said election.

Plaint allegations:-

39. The Jacobite Syrian Christians trace their origin to St. Peter, 40
an Apostle of Jesus Christ, who was authorised by Christ to establish his church and in compliance to the Command, the first church was built by him on 22-2-33 A. D. at Antioch where the followers of Christ first got the appellation of Christians. The successor of St. Peter is the Patriarch of Antioch. Later Christianity spread to this country by the evangelical labours of St. Thomas, another Apostle of Christ. At the Council of Nicea in 325 A. D. the jurisdiction of the patriarch of Antioch was determined as territories over all the East including India. He exercised jurisdiction by consecrating Metropolitans and sending the Holy Moron to this country known as Malankara. 50

40. The plaintiffs, case is that it is the fundamental faith of this Church that spiritual grace emanates from the throne of St. Peter and that such grace is absolutely essential to entitle a man to become a Metropolitan of the Church. It is considered absolutely necessary for the efficacy of their sacraments and religious services and this Church does not accept the grace from anywhere else. The Plaintiffs also contend that the churches in Malankara were established by groups of Christians residing scattered in different localities. These churches are autonomous in their administration and the common bond among them was the faith as stated above. In 1876, the then Patriarch of Antioch convened a meeting of all the then existing churches and that meeting decided to form an organisation called the Malankara Jacobite Syrian Christian Association representing the whole community to look after the common affairs. The Patriarch was the Patron and the Malankara Metropolitan its President. This Association used to be convened by the Malankara Metropolitan. The plaintiffs would state that originally the Association represented the community and one of its functions was to elect at the appropriate time the Malankara Metropolitan who is also a trustee of the Common Trust properties. The jurisdiction is confined to Malankara. 10

41. The second defendant convened a meeting purporting to be that of the Association on 31-12-1970 and announced that the first defendant is elected as his successor Catholicos and Malankara Metropolitan. The said meeting and alleged election of the 1st defendant are sought to be declared as illegal, ultra-vires and void for the following reasons:- 20

(a) Representatives from churches outside Malankara who have no right were invited and allowed to participate in the meeting. Three representatives from Kuwait, Behrien, Bombay etc. were invited and they participated in the meeting. At the same time, many churches in Malankara were not invited nor were representatives from such churches allowed to participate. 30

(b) The Association has no jurisdiction to elect a person for the post of Catholicos of the East, who has to function over all territories from the Middle East to Far East. Its jurisdiction is confined to Kerala. Malankara is only a part of it and part cannot act as a whole. The election of a person for the post of Catholicos is against usage also.

(c) Election of a person or persons for the post of Malankara Metropolitan or Catholicos of the East before vacancies occur is illegal and against the usage existing in the community.

(d) The Canon Law also prohibits the election of a successor during the life-time of the predecessor. 40

(e) The clubbing of two posts of Catholicos and Malankara Metran and election of one and the same person for both the posts is alleged to be illegal. The qualifications for the two posts are different. A non-Malayalee can be selected to the post of Catholicos while only a native of Malabar who is a Metropolitan is qualified to become a Malankara Metropolitan. By the method adopted, pious bachelor priests and laymen desirous of becoming the Catholicos were not given a chance.

(f) It is alleged that the office of the Catholicos who is the creator of Metropolitans cannot be clubbed together with that of the Metropolitans. The result of clubbing of the two offices is that the lower 50

dignitary Malankara Metropolitan will merge in the higher, the Catholicos. The Cochin Award of 1840 has stipulated the qualification of Malankara Metropolitan Trustee as the 'Metropolitan for the time being' and therefore the Metropolitan Trustee cannot belong to a higher or lower grade in the hierarchy of the church.

(g) According to the plaintiffs, the fundamental principle of acceptance of a church dignitary by the people has been corroded by the election of a successor before the vacancy opens. The electorate in 1970 will not be the same at the time when the vacancies actually occur.

(h) The election is also alleged to be neither free nor in accordance with the principles of natural justice. The presence and participation in the meeting of the second defendant have resulted in considerable amount of compulsion being brought to bear upon the prospective candidates. He coerced all the Metropolitans other than the first defendant and prevented them from filing their nomination as candidates. The members were not given the free choice of nomination or electing a person. 10

(i) The first defendant is disqualified to occupy the high spiritual office of the Catholicos or that of the Malankara Metropolitan. He had been punished by the customs authorities at Bombay on 13-5-1972 for illegal importation of valuable prohibited goods. 20

(j) The first defendant also does not believe that spiritual grace essential for a Metropolitan emanates from the throne of St. Peter alone. He believes that it proceeds from the mythical Throne of St. Thomas. This is against the fundamental faith of the Church.

(k) The first defendant is a person who has repudiated the spiritual powers of the Patriarch of Antioch in the Malankara Church and also the Canon of the Church accepted by the Court. A wrong Canon printed in Paris has been accepted by the defendants and even the provisions of this wrong Canon are violated by them. The provision in Chapter VII Passoca 3 prohibits the election of Catholicos who is a high priest, by a body dominated by the laity. 30

42. According to the plaintiffs, at the time when the Cochin Award was passed on 4-4-1840 and for a long time thereafter, the various churches had more or less equal members as its parishioners. As per the Cochin Award, the Malankara Metropolitan Trustee has to be elected by the Syrian Community. The Association was constituted by inviting three members from each church. Originally there were 176 churches. But, after the splitting of the community into Patriarchal Section and Catholicos Section, in order to gain an artificial majority in the Association, the Catholicos Section established innumerable bogus churches, many of which have no regular religious services and most of them have very few members. These churches had also been invited to the meeting of 31-12-1970 by the 2nd defendant and they were allowed to be represented by three representatives. At the same time, churches with more than five thousand and more members were also represented by only three representatives. The Association meeting of 31-12-1970 with such an unrealistic representation cannot become the meeting of the Syrian Community and the person alleged to be elected by such a meeting cannot become the person to be selected by the Syrian Community. The plaintiffs therefore pray in the suit for declaring that the alleged election of the 1st defendant to the post 40 50

of Catholicos and Malankara Metropolitan by the Malankara Jacobite Syrian Christian Association meeting held on 31-12-1970, is invalid and the first defendant is not entitled to any episcopal or other rights, spiritual, temporal or ecclesiastical in the Malankara Church or any part of it on the basis of the said election and for granting a permanent injunction restraining the 1st defendant from officiating as the Catholicos and/or Malankara Metropolitan of the Malankara Jacobite Syrian Christian Church and/or exercising any of the functions of those dignitaries.

Defendants' Contentions:-

43. The maintainability of the suit itself is questioned in the written statement filed by defendants 1 and 2. It is alleged that by reason of the dismissal of O. S. No. 125 of 1970 of the Ernakulam Sub Court, a similar representative suit instituted and conducted to obtain identical reliefs representing all the members of the Malankara Jacobite Syrian Community, the suit is not sustainable under Order II Rule 2 and Order IX Rule 9 of the Code of Civil Procedure. The suit is also barred by res judicata by reason of the final decision in O. S. No. 1 of 1963 of the District Court, Kottayam, and Civil Appeal No. 267 of 1958 of the Supreme Court. 10

44. These defendants would contend that there was no illegality or invalidity in either convening or conducting the election held on 31-12-1970 electing a successor to the Catholicos of the East and Malankara Metropolitan. The second defendant's authority to convene such a meeting is unquestionable. It is the long established practice ripened into custom having the force of law to fix up a successor to the office of the Malankara Metropolitan during the tenure in office of the predecessor. This rule had been followed after the revival and re-establishment of the Catholicos of the East in Malankara. The constitution of the Malankara Orthodox Syrian Church provides for election for both the offices of the Association and enables the same person to hold both the offices. The provisions in the constitution are binding on all the members of the community. These defendants further contend that the Malankara Orthodox Syrian Christians referred to as Jacobite Syrian Christians, as all Christians, trace their origin to Jesus Christ and his Apostles. It is not correct to state that St. Peter alone had the authority to establish the Church. Different Apostles preached gospel at different regions and St. Thomas, Apostle of Christ was chosen for India. It is an undisputable fact that St. Thomas arrived in Malankara in A. D. 51-52, preached christianity and made many converts. He built 7 churches at seven different places in this region establishing ecclesiastical administration in Malankara. This is the origin of Malankara Orthodox Syrian Christians, who were right from the beginning called 'St. Thomas Christians.' In the Council of Nicea held in 325 A. D. the Christians of India were represented by the Metropolitan of Persia and India and the Council of Nicea had expressly provided for the jurisdiction of the Catholicos. The Patriarchs of Antioch have at times extended spiritual functions for Malankara at the request of the Malankara Orthodox Christians necessitated when the office of the Catholicate of East which was exercising spiritual domination over Malankara, was not available. Spiritual grace of Metropolitans emanates in all episcopal successions. The contention raised in the plaint that 20 30 40 50

spiritual grace emanates from the throne of St. Peter and the church does not accept the grace from anywhere else are denied. The church is essentially an episcopal church. Efficacy of sacraments and religious services emanates when performed by person having such succession. Nearly, 1000 churches had been established at various places at various periods to suit the convenience of believers and each church whenever established became part and parcel of the Malankara Church. These churches have no existence apart from the Malankara Church and its hierarchy. They are not autonomous in their administration as the plaintiffs claimed. The common bond among the believers is the acceptance of all the religious doctrines, faith and tenets of the well established Holy Church and the submission to the authority of the Malankara Metropolitan. The fundamental faith is as enunciated in the constitution of the Malankara Orthodox Syrian Church. All the churches are under the spiritual, ecclesiastical and temporal administration of the Malankara Metropolitan and Diocesan Metropolitans are assistants to the Malankara Metropolitan. It is also alleged that the territorial jurisdiction of Malankara is not confined to Malayalam speaking area. The defendants deny that the present Malankara Association is a continuation of the Association alleged to have been formed after the meeting in 1876. By the rules in force the Malankara Metropolitan and Metropolitans to be consecrated are to be first elected by the Malankara Association which represents the Malankara Church. The defendants re-iterate that the meeting of 31-12-1970 had been convened validly by competent persons, notices were issued to all churches of the Malankara hierarchy and to no church outside the Malankara church. The jurisdiction of the Catholicate of the East and Malankara Metropolitan are co-extensive. Therefore, there is no sense in the contention that the offices of the Catholicos and Malankara Metropolitan cannot be held by a single person. No doubt, the powers and functions of the Catholicos of the East are distinct and different from those of the Malankara Metropolitan. The defendants would state that the plaintiffs are estopped to raise their present contentions since the entire community has expressly accepted the validity of the election and installation of the second defendant to both offices. The election of a successor by the Association is not a nomination by the predecessor and such election does not contravene any of the provisions of the Canon or usage or any other law. The Malankara Association has jurisdiction to elect the Catholicos and the Supreme Court has upheld the validity of holding the two offices by the same individual. The 2nd defendant is the President of the Malankara Syrian Christian Association and also the chief head of the Malankara Church. It is his duty and privilege to preside over the meeting of the Association and conduct the proceedings thereof. There has been precedents also. In fact the second defendant was elected as Catholicos and Malankara Metropolitan designate by a meeting of the Malankara Syrian Christian Association presided over by the then Malankara Metropolitan who was also the then Catholicos and the second defendant succeeded to the throne of St. Thomas on the demise of his predecessor.

45. The first defendant had been the Metropolitan of the Diocese

outside Kerala (Bahya Kerala) which is part and parcel of the Malankara Church. The election of the first defendant was a free election in accordance with all rules and regulations applicable for the convening and conducting of such a meeting. It will not be correct to state that the Catholicos is the creator of the Metropolitans and therefore not a Metropolitan. When all the provisions embodied in the constitution of the Malankara Church are satisfied for the consecration of a Metropolitan, the Catholicos consecrates the Metropolitan with the cooperation of the other metropolitans in pursuance of the decision of the Holy Synod and issues a certificate of consecration. The practice of the same individual holding the two offices does not in any way disqualify the Malankara Metropolitan to exercise his functions stated in the Cochin Award. The practice of holding the two offices by the same individual is conducive to the progress and prosperity of the community. The allegations in the plaint questioning the method of convening the meeting, proper representation at the meeting, the procedure of the meeting, the alleged premature holding of the election, the attributed undue influence or coercion alleged to have been exercised by the 2nd defendant etc, are all denied. It is also stated that the imposition of duty and redemption charge on gifted articles received by the first defendant from foreign countries will not amount to an offence much less an offence involving moral turpitude. It is stated that the raising of such a ground as a disqualification of the first defendant to succeed to the 2nd defendant is malafide and it is not the proper forum to moot such aspects.

46. It is asserted in the written statement that without in any way mitigating the position and status of the Patriarch and the rights, duties and privileges conferred on the Patriarch under the constitution of the Malankara Church, the second defendant has been enthroned on the Apostolic Throne of St. Thomas. The installation ceremony of the second defendant as Catholicos was led by the present Patriarch of Antioch. The throne of St. Thomas is neither a myth nor an invention and is not in rivalry to any other throne. It is stated that the contentions regarding the two thrones and the contention to eliminate the existence of thrones like the throne of St. Thomas in Malankara or the throne of St. Mark in Alexandria cannot stand scrutiny. It is also denied that there is not a single bogus church in the entire Malankara hierarchy. The unit of membership for the Association has always been and rightly each church, irrespective of the numerical strength of the worshippers. The defendants asserted that the 1st defendant is entitled to succeed to the 2nd defendant as Malankara Metropolitan and Catholicos of the East.

ISSUES:-

47. The following issues have been raised for trial:-

1. Is the suit maintainable?
2. Whether the suit is barred under Order II Rule 2 and Order IX Rule 9 of the Code of Civil Procedure by reason of the dismissal of O. S. 125/1970 of the Sub Court, Ernakulam?
3. Whether the suit is barred by res-judicata by reason of the decisions in O. S. 1. of 1963, District Court, Kottayam and in Civil Appeal No. 267 of 1958 of the Supreme Court?
4. Whether the Churches in Malankara are autonomous in their

administration ?

5. Whether the present Malankara Jacobite Syrian Christian Association is a continuation of the one formed in 1876?
6. Is the election of 31-12-1970 vitiated by procedural irregularities?
7. Whether it is proper or competent to elect a successor to the Catholicos or Malankara Metropolitan?
8. Is it proper to elect one person to the two offices of Malankara Metropolitan and Catholicos?
9. Whether the clubbing of the two offices into one has affected the election in the matter of either nomination of candidates or the electorate? 10
10. Is the election of a Catholicos by the Malankara Association valid and proper?
11. Has the second defendant actively influenced the election so as to vitiate the same?
12. Is the first defendant disqualified to be the Malankara Metropolitan and, or Catholicos?
13. Is the election of the first defendant invalid on any of the grounds mentioned in the plaint?
14. Are the plaintiffs entitled to the declaration and injunction prayed for? 20
15. Reliefs and costs?

O. S. No. 4 of 1979:-

48. This suit was first instituted as O. S. No. 142 of 1974 before the Subordinate Judge's Court, Kottayam. The two plaintiffs in the suit are the Metropolitans, Moran Mar Baselius Ougen I Catholicos of the East and Malankara Metropolitan and Metropolitan Mathews Mar Athanasios, who is alleged to have been appointed as Assistant of the Catholicos and elected successor of the Catholicos of the East cum Malankara Metropolitan. Pending suit, the 1st plaintiff died. There are 18 defendants to the suit. The first three defendants are Metropolitans consecrated by the Patriarch of Antioch and according to the plaintiffs in violation of the provisions of the Constitution of the Malankara Association and all the established authority of the Catholicos cum Malankara Metropolitan. Defendants 4 to 10 are some of the priests and deacons ordained by defendants 1 to 3, who according to the plaintiffs are not competent to exercise any episcopal function in and over Malankara church. Defendants 11 onwards are Vicars appointed to the various parish churches under the Malankara Metropolitan, who are alleged to have joined hands with the other defendants to deny the authority of the 1st plaintiff and other properly ordained Metropolitans and who are alleged to be creating schism in the churches. 30 40

Plaintiffs' Case:-

49. The Malankara Church was founded by St. Thomas, one of the apostles of Jesus Christ, who arrived in Malankara in A. D. 51-52 after preaching Christianity in Persia and other places particularly at Edessa, Seleucia, Tigris, etc. and having converted many people to Christianity. He built 7 churches at seven different places in Malankara and established ecclesiastical administration there. The Christians of Malankara were called right from the beginning 'St. Thomas Christians'. 50

All men and women who have received Holy Baptism and believe in the divinity of the Holy Trinity, the incarnation of the Son, the procedure of the Holy Spirit, the Holy Church and the application of the Nicene Creed, the divine inspiration of the Holy Traditions, the mediation of the Mother of God and the Saints, the commemoration of the departed ones, the administration of the seven sacraments and the canonical observances like fasting, etc. and who have accepted the obligations to observe them, have the right to be members of the Church. It is alleged that in A. D. 325 the first General Council well-known as the Council of Synod of Nicea was held. It was an epoch in the history of Christianity and to this Council priests and prelates from all parts of Christendom were invited. The Bishop or Metropolitan of Great India and Persia represented Christians of this region. Four Great Patriarchs, one each at Rome, Constantinople, Alexandria and Antioch were outlined and established in the Council. The Episcopa at Jerusalem was conferred the dignity as the fifth Patriarch and the Catholicos of the East who represented the church having headquarters in Persia, was also recognised and confirmed. The Catholicos is said to have administered the church from the Apostolic Throne of St. Thomas. The plaintiffs contended that the Malankara Church was being supervised by the Catholicos of the East from early century onwards. With the passing on of time, theological differences of opinion arose regarding nature and person of Christ. The Christian Community began to split under different names. The Malankara Christians continued to hold on to the old Orthodox faith. During the ancient days, when it was hazardous to have direct connection with Persia or Antioch, the Malankara Christians were seeking episcopal assistance from various seats of Episcopacy to maintain continuity of Apostolic succession. The Church was in a difficult stage till the advent of the Portuguese. The Portuguese brought upon the Malankara Church much pressure to yield to the supremacy of the Roman Church. This led to uneasiness when the Church at Malankara broke off the Roman Shackles by taking oath at Cochin (Mattancherry) in 1654 A. D.

50. The plaintiffs would state that the Metropolitans of the Malankara Church were usually being consecrated during the life time of the predecessor to prevent any break of line and for the spiritual perfection of Apostolic succession. The Malankara Church had at times sought the intervention of Antioch during periods when Catholicate of the East was not functioning. At no time, the Malankara Church had conceded temporal and administrative powers to the Patriarch of Antioch over the Malankara Church. No doubt, at times, the Patriarch of Antioch tried to secure temporal powers over the Malankara Church. During periods when the Catholicate of the East was not functioning the Patriarchs of Antioch were consecrating Metropolitans and sending Holy Moron and were exercising a general supervisory power in the spiritual affairs of the Malankara Church. The Malankara Metropolitan, necessarily a native of Malankara invariably had been exercising administrative powers over temporal and ecclesiastical matters the authority having been derived also by election or approval of the person by the community. The plaintiffs would further state that the persistent

unsuccessful attempts of the Patriarchs to subdue the Metropolitans of Malankara and the Malankara Church to the administrative control of the Patriarch of Antioch had compelled the community to feel the need for the re-establishment of the Catholicate. As a result, with the co-operation of the Patriarch of Antioch at the time when he visited Malankara in 1912, the Catholicate of the East was revived and re-established and the seat was transferred from Tigris in Persia and the first plaintiff's predecessor enthroned on the Apostolic throne of St. Thomas. The plaintiffs' case is that practically there was no residuary power left with the possession of Patriarch of Antioch over the Malankara Church which is described as an Episcopal Church. 10

51. There are 15 lakhs of worshippers in the Malankara Church worshipping in more than 1000 Parish Churches. A list of churches is appended to the plaint. Besides there are other religious and charitable institutions. Irrespective of the sources from which money proceeded and the persons responsible for the establishment of each church, each church became a constituent of the Malankara Church, a well established religious community administered by and under the authority of the Malankara Metropolitan. The parishioners of each church at the most are entitled to the benefits from the church and its properties. The Malankara Church is neither a union nor a federation of congregational autonomous units, but a church with a unique solidarity derived from Apostolic succession and authority of Malankara Metropolitan and the doctrines and creed followed by the Church. In due course the Malankara Church has adopted a constitution of its own which codified and incorporated the rights, duties and functions recognised by judicial precedents and established by Canons, Customs and Practices. The plaintiffs contend that the constitution was drafted, published and validly passed by a duly convened meeting of the Malankara Association at M. D. Seminary in 1934 by elected and authorised representatives of parishes of the Malankara Church. Their case is that the administration of the Church has been carried on in accordance with the provisions of the constitution, ever since the passing of the constitution in 1110 M. E. (1934 A. D.). The constitution has also been duly and suitably amended as and when found necessary, and is said to be binding in toto on the entire church. The temporal, ecclesiastical and spiritual powers of administration are with the Malankara Metropolitan, who invariably is a native of Malankara elected or approved by the community. The constitution enables the Malankara Metropolitan to hold office of the Catholicos also. Thus, according to the plaintiffs, in the Malankara Metropolitan-cum-Catholicos converge all temporal, spiritual and ecclesiastical powers without mitigating the exalted position and status of the Patriarch the Primate of the Orthodox Syrian Church. All the constituent churches and all the members of the Malankara Church are bound by the provisions of the constitution and have accepted the constitution. 20 30 40

52. Since the revival and re-establishment of the Catholicate of the East, the validity, powers and authority of the Catholicos of the East as also the constitution were questioned again at the instance of the later Patriarchs of Antioch. The Supreme Court in its decision on 12-9-1958 had upheld the validity of the revival and re-establishment of the Catholicate 50

of the East as also the constitution and also the authority of Catholicos of the East and Malankara Metropolitan. In the circumstances, the present Patriarch of Antioch settled the differences and accepted the Catholicos of the East and the Catholicos in turn recognised the Patriarch subject to the provisions of the constitution. The Metropolitans who had supported the Patriarchs in the disputes were therefore allowed to be inducted into the United Malankara Church under the authority of the Catholicos. The plaintiffs would state that for administrative convenience the Malankara Church was divided into 10 dioceses each having a diocesan Metropolitan as Assistant to the Malankara Metropolitan. In 1964, just on the eve of the installation of the first plaintiff as the Catholicos of the East, on the suggestion of His Holiness the Patriarch of Antioch who was then present in India at the invitation of the Holy Synod to preside over the installation ceremony of the first plaintiff, the Holy Synod of Malankara Church had met to re-define the territorial jurisdiction of the Catholicos of the East and excluded certain western regions in the Persian Gulf area subject to certain conditions from the jurisdiction of the Catholicos of the East as desired by His Holiness the Patriarch of Antioch. Even the administration of the Simhasana Churches till then claimed to be under the control of the Patriarch was passed over to the Catholicos. The plaintiffs stated that in the circumstances, the relationship of the Patriarch with respect to Malankara Church is only as one envisaged in the constitution. The Catholicos of the East cum Malankara Metropolitan is the undisputed spiritual, temporal and ecclesiastical head of the Malankara Church and there cannot be any office or institution pertaining to religious category within the Malankara Church touching or affecting the temporalities or spiritualities or doctrine or creed or faith or discipline or order of Malankara Church, otherwise than under the authority and control of the Catholicos of the East-cum-Malankara Metropolitan. As per the provisions of the Constitution of the Malankara Church and established precedents, if any person is to be consecrated as a Metropolitan, such person has to be elected to such office by the Malankara Association on behalf of the community. Such election must be approved by the Synod. Then the candidate has to be consecrated by the Catholicos with the co-operation of the Synod and the person consecrated is bound to submit a statement regarding faith and submission to the Catholicos who in turn has to give a certificate of consecration (Stathicon) to the Prelate so consecrated. A Metropolitan who has not been validly consecrated for the Malankara Church cannot ordain priests or deacons in the Malankara Church. A person can get himself ordained to any ecclesiastical order or office in Malankara only under the provisions of the constitution. The relevant provision relating to ordination of priests and deacons is contained in articles 110 and 111 of the constitution, which enjoins that any person desirous of being ordained has to apply to the Diocesan Metropolitan and on his recommendation he has to undergo a course of study as directed by the Malankara Metropolitan in any seminary of the Church. After completion of his study on being certified as a fit person to be ordained by the Principal of the Seminary, he can be ordained by the Diocesan Metropolitan or the Malankara Metropolitan.

53. The plaintiffs have also got the case that the authority to

appoint and transfer vicars or assistant priests for parish churches rests with the respective Diocesan Metropolitans who are acting under the authority of the Malankara Metropolitan. They are appointed and transferred by the Diocesan Metropolitans. The Vicar is the representative on the spot of the appointing authority and becomes a joint steward with the elected and approved lay-steward of the Church and manage the affairs of the Church subject to the provisions of the constitution of the Malankara Church. No priest not so appointed and no elected steward not approved by the concerned Metropolitan is entitled to hold office or function in any church or institution in Malankara. On the 1st plaintiff's death, the 2nd plaintiff became the Catholicos of the East on 27-10-1975 entitled to the spiritual, temporal and ecclesiastical government of the Malankara Orthodox Syrian Church. 10

54. The plaintiffs' complaint in this case is that of late, a section of the community had organised themselves under the name 'Malankara Jacobite Syrian Christian Association' to work against the well established authority of administration of the Catholicos of the East-cum-Malankara Metropolitan, attempting to create foreign domination and divided loyalty. They formed sub groups under different names and are unitedly working to effect the matters, viz questioning the authority of the Catholicos of the East-cum-Malankara Metropolitan and obstructing the administration of the Church and its parishes. It is stated in the plaint that the defendants belong to that category and they are impleaded in their individual capacity and as representing the said group consisting of numerous persons. Permission has been sought for filing the suit against the defendants also in the representative capacity, for which application under Order I Rule 8 has been filed. The plaintiffs contend that this group has succeeded in imparting a wrong impression in the mind of the Patriarch of Antioch that the Malankara Church is secretly aiming to sever connection with the Holy See of Antioch and has made him hesitatingly inclined towards them. At their instigation the Patriarch of Antioch had first deputed a foreign Bishop as his delegate. The Malankara Church refused to recognise him and he had to return on orders from the Government of India. On the eve of his departure, the defendants and their partisans succeeded in getting several persons ordained as priests and deacons. Afterwards, the Patriarch of Antioch had consecrated the first 3 defendants as Bishops in violation of the provisions of the Constitution and in absolute disregard of the authority of the Catholicos cum-Malankara Metropolitan, whereby the Patriarch is attempting to secure administrative control over Malankara Church. These newly appointed Metropolitans indiscriminately and wantonly ordained priests and deacons. Such ordinations are not binding on the church, being done by Bishops not competent to do so and of persons who are unqualified to be ordained. Defendants 4 to 10, as stated earlier, are some of the priests and deacons thus ordained. Defendants 11 onwards are Vicars appointed to the various Parish Churches under the authority of the Catholicos-cum-Malankara Metropolitan. They had unconditionally submitted to the authority of the Catholicos-cum-Malankara Metropolitan and the respective diocesan Metropolitans and had been ministering accordingly. 20 30 40 50

But joining hands with the other defendants, they have recently chosen to deny the authority of the plaintiff and other Metropolitans and are creating schism in the churches. They have openly declared that they defy the authority of the first plaintiff and other Metropolitans. The defendants are denying the authority of the Catholicos-cum-Malankara Metropolitan and other legally consecrated and appointed Metropolitans under the first plaintiff in the Malankara Church and refuse to recognise and mention the names of the Catholicos of the East-cum-Malankara Metropolitan and the concerned Metropolitans in 'Thubaden' (a part of the form of service of the Holy Qurbana). This is an unlawful interference with the churches and the worshippers' right for proper performance of worship and religious rites. This is also liable to endanger the peaceful and solemn atmosphere of the Church and would seriously affect the discipline and administration of the Church. It is also alleged that continuance of such practices affecting religious sentiments and faith may even lead to breach of peace. The plaintiffs' case is that no person, irrespective of his position has any locus standi in the Malankara Church without believing in the Holy Church headed by the Catholicos of the East-cum-Malankara Metropolitan and without submitting and accepting the ecclesiastical authority of the Catholicos of the East, and the administrative set up and the hierarchy. According to the plaintiffs, the principle is that lawful Metropolitan is necessary to the very being of the Church. The plaintiffs have therefore prayed:-

- A. To declare that the Malankara Church is episcopal in character and is not a union or federation of autonomous church units and is governed in its administration by the constitution of the Malankara Church.
- B. To declare that defendants 1 to 3 are not competent to ordain priests and deacons for Malankara Church.
- C. To declare that defendants 1 to 3 are not legally consecrated Metropolitans of the Malankara Church and defendants 4 to 10 are not legally ordained priests or deacons of the Malankara church.
- D. To declare that no Metropolitan, priest or deacon unless validly ordained and appointed under the provisions of the constitution of the Malankara Church can officiate in any of the churches or its institutions in the Malankara Church.
- E. To declare that any priest who refuses to recognise the authority of the Catholicos and Malankara Metropolitan the 2nd plaintiff and other Metropolitans under him is not entitled to minister in any of the churches or its institutions in Malankara.
- F. To prohibit defendants 1 to 3 by an order of permanent injunction from ordaining priests or deacons or performing any other sacraments, services etc, for the Malankara Church or its institutions.
- G. To prohibit defendants 3 onwards from performing any religious services or sacraments whatsoever in or about any of the churches of Malankara and for the Malankara Church or its constituent churches or institutions.
- H. To prohibit the defendants from interfering in any manner with the administration of the Malankara Church.

55. In this case, number of written statements have been filed by the different defendants.

Written Statement of the 1st defendant :

56. The first defendant is the Missionary Metropolitan and a life member of the Evangelistic Association of the East, hereinafter called the Association. He has worked as the Managing Committee member and its administrator for several years. According to him, the Association repeatedly requested the Patriarch of Antioch, the Supreme Patron to consecrate him as Metropolitan for the Association and finally in 1973 he was consecrated as its Missionary Metropolitan. In 1973, he has worked as its Mission Director. He is now the Vice President of the Association. The Association was established in 1924 with its head office in Perumbavoor. It is a religious and philanthropic society founded with the main object of propagating the Christian Gospel among the people throughout the world. Its Supreme Patron is the Patriarch of Antioch and all the East. The Constitution of the Association was first registered in 1941 at the Sub Registrar's office at Perumbavoor. Later it was registered in 1949 as No. 59 at Kozhikode under the Indian Societies Registration Act of 1860. At the time of the registration, the 1st defendant was the President of the Association. The Constitution was amended from time to time and such amendments were also duly registered. The first defendant takes the contention that the Association is a necessary party to the suit and without impleading it the suit is not maintainable against the first defendant. He does not represent the Malankara Jacobite Syrian Christian Association and has no connection with that organisation. He questions the plaintiffs' right to implead the first defendant to represent that Association or any other group or party in the Malankara Church. This defendant would totally deny the rights of the plaintiffs over the churches and institutions belonging to the Association. The churches numbered as items 897 to 912 in the list appended to the plaint belong to the Association. The churches indicated as items 906 to 911 are churches situated in the Mysore State (Karnataka). The churches are alleged to be founded, managed and controlled by the Association without any help from the Malankara church. Neither the plaintiffs nor any other dignitary of the Malankara church has any right to interfere in the temporal, ecclesiastical or spiritual administration of the churches established by the Association. The churches founded and managed by the Association were treated by the Malankara church as institutions or churches outside the Malankara church and those were never invited by the Malankara Metropolitan to send representatives to the Malankara Syrian Christian Association or by the diocesan Metropolitans to the diocesan Councils. Nor has any representative from any of such churches participated in any of the meetings of those bodies. These churches were neither invited nor represented in any of the organisations of the Patriarch's party in the Malankara Church including its Malankara Jacobite Syrian Christian Association. The Association is alleged to be a Missionary organisation in the universal Syrian Orthodox church under the Patriarch of Antioch and all the East. This has been founded with the object of carrying out its activities throughout the world and not to confine it within the geographical frontiers

of Malankara or India. The Association has as its members, persons belonging to various countries in the Middle East and America besides India. It has established 19 churches, 3 High Schools, one Upper Primary School, one Orphanage and other institutions and acquired properties both movable and immovable and all of them are controlled and managed by the Association in accordance with the provisions of its constitution. As Vice-President of the Association and its Missionary Metropolitan, the 1st defendant claimed the right to enter and conduct all religious services in the churches belonging to the Association. This cannot be restrained by the plaintiffs in any manner. In this connection he would point out that the first plaintiff filed another suit, O. S. No. 78 of 1974 in the Munsiff's Court of Puttur in the Karnataka (Mysore) State to gain episcopal administration and control over 5 churches (Item Nos. 906 to 910 in the list appended to the plaint), which belonged to the Association and prayed for a temporary injunction to restrain the Missionary priests appointed by the Association from functioning in those churches. After hearing the parties, that court had dismissed the injunction petition holding that the 1st plaintiff has no manner of right or control over those churches. The 1st plaintiff's claim as Catholicos of the East and as the Malankara Metropolitan, in respect of the spiritual, temporal and ecclesiastical powers over all the churches described in the list appended to the plaint is baseless and untenable. The Catholicos is purely a spiritual dignitary and is a deputy of the Patriarch of Antioch. As such deputy his functions are confined to the consecration of Metropolitans and sanctification of Holy Morone on behalf of the Patriarch. The Catholicos has no manner of administration over any church. In the hierarchy of the church he is above the Metropolitans and below the patriarch. The powers of the Malankara Metropolitan are confined to the administration of the Common Trust Properties of the Malankara church and do not extend to the individual Parish churches or to the institutions and churches established and managed by the Evangelistic Association of the East. Malankara Metropolitan has no powers or duties over any church or properties situated outside the Malayalam speaking area, which is known as Malankara.

57. According to the 1st defendant, Malankara church is following a democratic form of Government in all ecclesiastical and temporal affairs. The description of the church as 'Orthodox Syrian Church' in the plaint is not correct. The church is episcopal in character in spiritual matters only in the sense that it recognises the spiritual efficacy in the Episcopacy by Divine Succession and nothing more. The Syrian Orthodox Church has been established by St. Peter in obedience to the command of Jesus Christ and the Malankara Church is only an Arch-Diocese of the Universal Jacobite Syrian Church. This defendant would further put forth the case that according to the tradition, St. Thomas preached Christianity in Malankara. In any case the Malankara Church does not believe that St. Thomas established any apostolic succession or ecclesiastical administration. A person becomes a member of the church when he is admitted to the church by a priest of the church and accepts the spiritual authority of the Patriarch of Antioch as its head. The allegation in the plaint that the

Catholicos administered the Malankara Church from the Apostolic Throne of St. Thomas is denied. According to the 1st defendant there is no such throne and the affairs of the Malankara church were supervised from early centuries by the Patriarch of Antioch and not by the Catholicos. He denied the plaintiff allegation that Patriarch exercised ecclesiastical powers in the Malankara church only when the Catholicos in the East was not functioning. The allegations regarding the re-establishment and revival of the Catholicate in Malankara made in the plaintiff is contraverted. It is contented that there was no valid revival or re-establishment of the Catholicate in 1912. The majority members of the Malankara church refused to accept the Catholicate. At any time the Catholicate has not been accepted or acknowledged by the Malankara Church as the substitute for the Patriarchate of Antioch. In 1912 A. D. there was no Catholicate pre-existing or revived in Tigris. It is impossible to transfer anything which is not in existence. Malankara Church can only mean the people in Malankara Parish churches following the Jacobite Syrian Christian faith under the Patriarch of Antioch, the successor of St. Peter who was commanded by Jesus Christ to establish his church. Faith is a matter of the soul and even without any church edifice or properties, there can be a religious community. The members of the Malankara Jacobite community who live scattered throughout Malankara formed themselves into groups and constructed churches for the worship of God according to the Jacobite Syrian faith. Such churches came into existence from the 1st century and they were all established by the faithful people of the respective locality. There was no Central Organisation till 1876, when the Malankara Syrian Christian Association was formed at the Mulanthuruthy Synod convened and presided over by the Patriarch of Antioch, Peter III. The Malankara Syrian Christian Association was given the power to take decisions on all common matters of the community. It was not vested with any power over the individual parish churches or their administration. No parish church has surrendered its powers of administration to the said Association. The Metropolitan's jurisdiction is confined to purely spiritual matters, particularly relating to the maintenance of the true faith without any deviation. The parish churches and their properties belong to the respective parishioners.

58. According to the first defendant, the Malankara Metropolitan's authority and jurisdiction are confined to the management of the common trust properties belonging to the Malankara church as a whole and do not extend to the affairs of individual parish churches. He has absolutely no authority over any of the churches and institutions of the Evangelistic Association of the East. The first defendant has got a further case that the constitution referred to in the plaintiff has not been accepted by the Parish churches or by the Evangelistic Association of the East. The Association has adopted its own constitution and the Malankara Church or the Malankara Association has no power to replace and impose any other constitution for the administration of the churches and properties of the Evangelistic Association of the East. The constitution relied on by the plaintiffs contains provisions which are unreasonable unlawful and against court decisions. It was adopted as an experimental measure by an Association consisting only of the members of the Catholicos

party. The constitution is not binding on the Evangelistic Association of the East or on any parish church.

59. It will not be correct to state that the difference between the Patriarch party and the Catholicos party was settled in 1958 or in any later year. The Patriarch accepted the Catholicos, but no other difference between the party was settled. The Metropolitans in the Patriarch's party were accepted as such by the churches in that party which is a section in the Malankara church. It will be wrong to say that they were inducted into the united Malankara church, because there was no union by resolving the differences that existed between the parties on matters of religion including the question as to the true version of the Canon. It is stated that the resolution of the Malankara Episcopal Synod was passed without the concurrence of the people in those places or that of the Patriarch. The allegation that the Patriarch passed over the administration of the Simhasana churches to the Catholicos is not true. Really, Patriarch has no such power to transfer the administration of those churches to the Catholicos. This defendant would assert that it is the fundamental right of the members of the Malankara church to establish, maintain and administer churches, institutions and associations of their choice. The authorities of the Malankara church can treat them as institutions in that Sabha or can treat them as institutions outside the Sabha. But, in any case they cannot claim any right of administration or any kind of control over such institutions, offices or associations unless they are surrendered to them.

60. In regard to the qualifications of a person to become a Metropolitan in the Malankara church, those mentioned in paragraph 15 of the plaint are not admitted. The Malankara Association has no powers to prescribe the qualifications of a Metropolitan for the Evangelistic Association of the East or even for a diocesan Metropolitan of the Malankara church. The Association has no power to add to or alter the qualifications fixed by the Royal Court of final appeal for the Malankara Metropolitan. The qualifications for becoming a Metropolitan mentioned in paragraph 15 of the plaint are alleged to be against the usage and custom existed in the church. A Metropolitan in order to get the authority should be either elected or accepted by the people over whom he claims spiritual authority. Acceptance or election by the Malankara Association is not a qualification for a Metropolitan claiming spiritual powers in a Diocese, parish or in the Evangelistic Association of the East. Consecrations and ordinations are purely spiritual functions. The Malankara Association consisting of a majority of laymen has no authority to lay down rules on spiritual matters. The spiritual act of consecration or ordination means the imparting of the spiritual grace emanating from St. Peter and his successor the Patriarch. According to this defendant, the members of the Jacobite Syrian community all along have considered it a great privilege to get the consecration or ordination direct from its source, namely, the successor of St. Peter, instead of obtaining it from any dignitary under the authority and commission of the Patriarch. It is alleged by this defendant that priests and vicars in parish churches are appointed by the respective parishioners. The function of the Metropolitan

is to ordain them when requested by the parishioners. The Vicar or priest cannot be transferred by the Metropolitan except in the churches of the Evangelistic Association. For unity in the Malankara Church, Patriarch party temporarily suspended their organisations and joined with the Catholicos party in the administrative machinery of the church. But, unfortunately, the so called union was not really a union in religious matters at all. There were differences between them on religious matters such as the true version of the Canon, the powers of the Patriarch, Catholicos, Malankara Metropolitan, diocesan Metropolitan and also regarding the form of government of the church 10 as to whether it is congregational or episcopal. Neither of the parties have abandoned their original views on these matters. In spite of the ostensible agreement on the administration, there was no association of the two parties in complete harmony. With the adoption of a throne for St. Thomas, there was complete chaos within these sections. This defendant would contend that the prayer for injunction against him is unsustainable since it is tantamount to restraining the missionary work of the Association which is not a party to the suit.

Written Statement of the 2nd defendant:-

61. The 2nd defendant contends that the Malankara Jacobite Syrian 20 Church or the Malankara Church means the people residing in the Malayalam speaking territory in India who accept and follow the faith of the Syrian Orthodox Church founded by Jesus Christ. Jesus Christ appointed St. Peter, his Chief disciple as the head of the Visible Church and St. Peter established his Throne at Antioch in 37 A. D. His successors are called the Patriarch of Antioch. The Malankara Church is a part of the Universal Syrian Orthodox Church and is not the autocephalous division of the Orthodox Syrian Church as stated in the 30 plaint. There is no recognised church called as the Orthodox Syrian church. The allegation in the plaint that the church is episcopal in character is denied. What exactly is the form of the church is stated by this defendant. There is only one true Church, which was founded by Jesus Christ. St. Thomas has not founded the Church in Malankara. Malankara Church is not a Church separate from the Syrian Orthodox Church. According to this defendant, St. Thomas had not established any ecclesiastical administration in Malankara nor has he appointed any successor. It is wrong to say that Christians in Malankara were called from the beginning as St. Thomas Christians. He would contend that persons who do not accept and believe in the 40 fundamental faith of the Church that Patriarch of Antioch and all the East is the head of the Church and that the Eucharist and other sacraments should be consecrated by religious dignitaries who possess the spiritual grace transmitted from the Patriarch and that the reception of 'Bread and Wine' from such dignitaries also will lead to the remission of sins and eternal life have no right to be the members of the Church. The Synod held at Nicea in 325 A. D. was a land mark in the history of Christianity. It is not correct to say that the persons in Malankara were represented by Bishop of Persia and Great India. It is also wrong to say that four Patriarchates were established at Nicea. Only the Patriar- 50 chates of Antioch, Rome and Alexandria were recognised at that council.

The great Metropolitan of the East was recognised as the Catholicos of the East at that council, as a deputy of the Patriarch. He would characterise the allegation that the Catholicos administered the church from the 'Apostolic Throne of St. Thomas' as baseless and contrary to facts. The Catholicos did not exercise any supervision over the Malankara Church. In or about 488 A. D. Catholicos of the East became a Nestorian. The Malankara Church was supervised from early centuries by the Patriarch. After the 'Koonan Cross' Oath was taken on 3rd Makaram, 1654, at Mattanchery, the Syrian Christians were split into two parties known as Jacobite Syrians following the creed of the Patriarch of Antioch and the Roman Syrians following the creed of Pope of Rome. 10

62. This defendant would state that a Metropolitan has no authority to appoint his successor. That will be against the canon law. Nor has the Catholicos of the East jurisdiction over the Malankara Church. According to him, irrespective of the fact of the existence or non existence of the Catholicate of the East, it was the Patriarch and his delegates who consecrated the Metropolitans in Malankara. The management of the temporal affairs of the Church was left to the local Metropolitan and the trustees. Before 1876, there was only one Metropolitan for the whole of Malankara Arch Diocese. The Malankara Metropolitan was exercising the duties and powers of the Metropolitan in the whole of Malankara. But he exercised his powers always subject to the superior spiritual powers of the Patriarch. The Patriarch never attempted to subdue the Metropolitans and the Church in Malankara. The Metropolitans and people always voluntarily acknowledged the supreme spiritual powers of the Patriarch who is the Supreme Head and the guardian of the true faith. He has got the right to interfere in the affairs of the Malankara Church whenever there occurred lapses from the fundamental faith of the church. 20

63. This defendant would also state that the community never felt any need for re-establishment of the Catholicate. The Catholicate of the East was not revived or re-established in 1912. Nor is it correct to state that the seat of the Catholicos in Tigris was transferred to Malankara and the plaintiffs' predecessor was enthroned on the Apostolic Throne of St. Thomas. The Catholicate and Maphrianate ceased to exist in the Syrian Orthodox Church long before 1912 and there was nothing to be transferred or revived. What happened in 1912 was the conferment of the glory of the title of Catholicos on a retired Metropolitan by a dethroned Patriarch. Such a dignitary had not the powers of the Catholicos and there was no intention to invest him with such powers. According to this defendant, the Malankara Church never accepted the person concerned as a valid Catholicos. The so called Catholicos died shortly and for 12 years nobody wanted to claim the glory of the title of Catholicos. The Catholicos was only a deputy of the Patriarch and can function only in subordination to the Patriarch. This defendant further contends that each individual parish church is founded by its parishioners and the Churches belong to the respective parishioners. They are autonomous and self governing units. The hierarchy of the Malankara Church or the Malankara Syrian Christian Association has not done any thing for the establishment of these 30 40 50

churches and the prishioners of those churches have not surrendered their churches or its administration or autonomy to the plaintiffs. A church when founded does not become a constituent of the Malankara Church. The administration of each parish church except in some spiritual guidance is completely vested in the Pothuyogam of each church. Each parish church and its properties constitute a trust and the respective parishioners are the beneficiaries. The Malankara Metropolitan is the Metropolitan trustee of the common Trust properties of the community and the president of the Malankara Syrian Christian Association. It cannot be said that the Jacobite Syrian Community is administered by and under the authority of the Malankara Metropolitan. He has no such power or authority. It is not correct to say that the temporal, ecclesiastical and spiritual powers of administration are with the Malankara Metropolitan. There was unity in the church in respect of the faith in the Apostolic succession from St. Peter. Recently the plaintiffs and their partisans deviated from this fundamental faith and have propounded a theory that the Apostolic succession is perpetual in the Malankara Church from St. Thomas. Even when there was unity in the faith, the property rights and the administration of the individual parish churches were exclusively vested in the respective parishioners. The religious hierarchy of the church, at the most are entitled to sever their connections with the churches if they do not conform to their advices in spiritual matters. They cannot assume or take over the administration of the Parishes in opposition to the wishes of the Parishioners.

64. This defendant takes up the plea that the Malankara Syrian Christian Association is an organisation devised for fellowship and co-operation in the common affairs. It has no ecclesiastical, spiritual or temporal authority over the individual parish churches. The constitution adopted by the Malankara Association in 1934 had never been enforced or accepted by the parish churches. Neither the members of the Malankara Church nor the Parish Churches are bound by the constitution. The Patriarch has not accepted the alleged constitution. The Malankara Syrian Christian Association has no jurisdiction to frame a constitution for the individual Parish churches. In 1951 the Catholicos party who were declared as aliens to the Malankara Church by the judgment dated 8-8-1946 of the Travancore High Court, framed another constitution which the plaintiffs now rely on as valid and binding. The representatives of the Churches in the Patriarchal fold were never invited to nor have they participated in the meeting which was held on 17-5-1951. It was not a valid meeting of the Malankara Syrian Christian Association. The second defendant would further contend that the provisions of the said constitution are unreasonable, in conflict with the constitution adopted at the Mulanthuruthy Synod, in defiance of Court decisions, against the usage that existed in the Church and in violation of the cardinal principles of faith and canon law. The provisions therein are ab initio void and devoid of any authority. It is pointed out that a suit has been filed as O. S. No. 13 of 1976 in the Civil Judges Court at Udippi for declaration that the said constitution and all its provisions are ab initio void and inapplicable to all or any of the affairs of the Jacobite Syrian

Church or any of the Parish churches.

65. According to this defendant, previous suits related only to the administration of the common trust properties and not about the individual parish churches. The validity of the constitution adopted in the meeting of 17-5-1951 had not been questioned in O. S. No. 111 of 1113 of the District Court of Kottayam. No issue was raised in that case regarding the question nor was there any decision on it. The Supreme Court of India in its judgment dated 12-9-1958 had not upheld the validity of the alleged revival and re-establishment of the Catholicate of the East or of the binding nature and validity of the alleged constitution. Nor has it decided, the defendant pleads, the question of the authority of the Catholicos of the East or of the Malankara Metropolitan. All these questions were outside the subject matter of the special appeal before the Supreme Court. The two questions that arose in that appeal were as to whether the defendants in that case had gone out of the Malankara Jacobite Syrian Church and secondly as to who are the validly elected trustees of the common trust properties of the community. The present Patriarch immediately after his enthronement on 27-10-1957 issued his first Apostolic Kalpana of 11-11-1957 to the Malankara Church and to establish peace in it by accepting the section which has separated themselves from the fold of the Church. He stated therein that he is opening the doors of peace and unity wide open. In his Kalpana of 9-12-1959 he accepted Basselios Gheevarghese as the Catholicos. This Kalpana was issued by the Patriarch in fulfilment of his cherished and genuine desire to lay the foundation for a permanent settlement of the differences between the two sections in the Malankara Arch Diocese. It was not because of the decision of the Supreme Court, the Patriarch issued the Kalpana. Without properly appreciating the Kalpana of the Patriarch, Basselios Gheevarghese issued a Kalpana No. 105 dated 16-12-1958 to his followers, accepting Moran Mar Ignatius Yacoob III as the Patriarch of Antioch, subject to a constitution relied on by him. When the Patriarch knew about the said Kalpana, he informed Basselios Gheevarghese that the constitution is not binding on him or on the Church. The differences, disputes and litigations between the two sections in the Malankara Church continued without settlement particularly on the religious questions. The defendant affirms in his contentions that the Metropolitans in the Patriarchal section in 1958 were all proper and valid Metropolitans and there is no need for anybody to induct them into the Church. They had been validly consecrated and were accepted by the people and churches under their jurisdiction. They continued to exercise their respective jurisdiction even after 1958. There was no fresh allotment of the jurisdiction in any effective manner. The defendant contended that the Synod of the Malankara Church referred to in the plaint has no jurisdiction to define the territorial jurisdiction of the Catholicate, which powers are vested in the Holy Universal Episcopal Synod of the Syrian Orthodox Church. The administration of the Simhasana Churches was passed over to the Catholicos is also not true. Even if there was any deligation of any of the powers of administration over

the Simhasana Churches, such delegation does not mean any abandonment of the powers vested on the Patriarch. In any view the 2nd plaintiff cannot inherit the powers by succession. The spiritual powers of the Patriarch who is the successor of St. Peter are divinely bestowed upon him and such powers cannot be abridged or abrogated by the Metropolitans or the Association of the Malankara Church. The provisions in the said constitution curtailing the spiritual powers of the Patriarch are ab initio void and ultra vires. The catholicos of the East is only a deputy of the Patriarch in spiritual matters. The Malankara Metropolitan apart from his powers as a trustee of the common trust properties and as the president of the Malankara Association has no more powers than those of the Diocesan Metropolitans. All the Metropolitans and the Catholicos are subject to the spiritual authority of the Patriarch, who is the supreme head of the Church. The Catholicos cum Malankara Metropolitan is not the spiritual, ecclesiastical or temporal head of the Malankara Church. The claim made by the Catholicos that there cannot be any office, or institution or Association pertaining to the religious category within the Malankara Church touching or affecting the temporalities or spiritualities or doctrine or creed or faith or discipline or order of the Malankara Church otherwise than under the authority and control of the Catholicos of the East cum Malankara Metropolitan is contrary to truth and facts and is unsustainable. The claim is not only uncanonical but is against the freedom guaranteed under Articles 25 and 26 of the Constitution of India. Every religious denomination or any section thereof has the right to establish maintain and manage religious institutions. In regard to the procedure and formalities for the consecration of Metropolitans in the Malankara Church, this defendant would state that consecration is purely a spiritual act and as the Patriarch is the Supreme Spiritual Head, he has complete powers to consecrate Metropolitans anywhere in the world. A provincial organisation like the Malankara Association or the Malankara Episcopal Synod has no jurisdiction to confer any rule or condition on the Patriarch for the consecration performed by him. The election or acceptance by the people becomes necessary only when the consecrated dignitary enters into the administration of his diocese. The election or acceptance should be by the people over whom the consecrated Metropolitan has to exercise his authority. The Malankara Association has no power to elect or accept a dignitary as the Diocesan Metropolitan. The power to issue staticon is vested exclusively with the Patriarch. The Patriarch or the Metropolitan Dioceses or the parish churches or the people are not bound by the provisions in the constitution relied on by the plaintiffs. Those provisions are alleged to be against the usage that exist in the Church and contrary to the provisions in the Canon. It is further pleaded that the first plaintiff was consecrated as Metropolitan by the Patriarch and the rules stated in paragraph 15 of the plaint were not followed. Therefore, plaintiffs are estopped from alleging that the rules mentioned in that para are valid and enforceable for the consecration for Metropolitan by the Patriarch. Priests and deacons can be ordained by any Metropolitan who has been consecrated by the

Patriarch or his duly authorised Metropolitan. All priests and deacons on whom spiritual grace has been imparted either directly by the Patriarch or through the medium of a Metropolitan are qualified to minister in the parish churches. Such priests are entitled to function in the parish churches if and when they are accepted by the parishioners. According to this defendant, the parish churches are following congregational principles in all their administrative matters. No vicar or priest can be appointed in a parish church without the consent of the parishioners. The long established usage in the matter is that on the recommendation of the name of a priest or vicar a formal order 10 of his appointment is made by the Metropolitan. In some churches even this formal appointment order by the Metropolitan is not insisted upon. The Metropolitan has no arbitrary power of appointment or transfer of priests in the church. Vicar is the representative of both the parishioners and of the Metropolitan. In purely spiritual matters he is the representative of the Metropolitan and in all other matters he is the representative of the parishioners from whom he gets his remuneration.

66. It is alleged that from 1971 plaintiffs and their partisans openly began to take steps to establish new churches separate and distinct from 20 the Syrian Orthodox Church of which Malankara Church is a part. They have become aliens to the Malankara Jacobite Syrian Church by reason of their deviations from the fundamental faith of the Church. The deviations are stated in paragraph 24 of the written statement. The defendant would assert that the Patriarch as the Supreme Spiritual Head and as the Protector and guardian of the true faith has the duty and powers to decide on the alteration in or deviations from the faith committed by members of the Church, including Church dignitaries. The Patriarch placed the controversy regarding the new faith started by the first plaintiff and strongly supported by the second plaintiff and their partisans before 30 the meeting of the Metropolitans of the Syrian Orthodox Church for its consideration and decision. The plaintiffs who claim to be the successors of Gheevarghese Dionysius and Basselios Gheevarghese are estopped from denying the authority of the Episcopal Synod of the Syrian Orthodox Church consisting of all the Metropolitans in the church. The Universal Episcopal Synod of the Syrian Orthodox Church, to which the Catholicos and all the Metropolitans including the first and second plaintiffs were invited, was duly held at Damascus on 16-6-1975 and continued on subsequent days, to settle the disputes regarding the alteration of the true faith caused by the plaintiffs and to take appropriate 40 decisions on them. The Synod unanimously held that the only Apostolic See of the Syrian Orthodox Church in the world is the See of Antioch founded by St. Peter, that the Malankara Church is an indivisible part of the Syrian Orthodox Church and dependent on the Patriarch in all spiritual matters and that it is essential for all persons receiving ordination or consecration to acknowledge his submission and allegiance to the Patriarch and further held that anybody who rebels thereafter will be disqualified from his ecclesiastical grade. The Synod held that the first plaintiff and his partisan Metropolitans including the second plaintiff are guilty of the violation of the fundamental matters in the 50

faith. The Holy Synod authorised the Patriarch to take necessary steps and to declare its decision.

67. But the Patriarch gave a further and final opportunity to the plaintiffs and their partisan Metropolitans to repent and return to the fold of the Church. But they did not respond to the call made by him. Therefore, they were declared as apostates, they having voluntarily severed communion with the Holy Syrian Orthodox Church of which Malankara Church is a part. The declarations of apostasy were communicated to the concerned Metropolitans and the Catholicos. By Kalpana dated 21-8-1975, the second plaintiff had been stripped of all his authorities, dignities, and status as a Metropolitan of the Malankara Church. He has thus become disqualified and disentitled to hold any religious office or dignity in the Malankara Church. Similar Kalpana was issued to the first plaintiff also. Both of them ceased to be members of the Malankara Jacobite Syrian Church. In his place Basseliose Paulose II was consecrated as the Catholicos of the East on 7-9-1975 by the Patriarch. 10

68. This defendant questions the locus standi of the second plaintiff who is claiming to be the Metropolitan of the Churches outside the Malayalam speaking area. Long before the vacancy occurred therein, the 2nd plaintiff claimed to have been elected by the Malankara Syrian Christian Association. Such election is against law of Trust, not warranted by the provisions in the Cochin Panchayat Award of 1840, against the usage that existed in the community and also in violation of the canon law. A suit to set aside his election has been filed. 20

69. It is this defendant's case that from about 1971, the plaintiffs and their partisans began to deny openly the spiritual authority of the Patriarch, denounced his actions, refused to abide by his Kalpanas and formed themselves into a new church. When the people of the community found that the plaintiffs and their followers are deviating from the true faith of the church, they revived their old organisation known as the Malankara Jacobite Syrian Christian Association with the object of protecting and preserving the true faith of the Syrian Church. A section of the community has the fundamental right to form such an organisation and the plaintiffs have no right to question it. The object of the Association was not to work against any lawful authority or to create foreign domination or any divided loyalty. Further it is stated that the said Association has ceased to function. Neither the 2nd defendant nor any of the other defendants can represent a defunct Association and they do not represent it. It is pointed out by this defendant that Aphreme Mar Thimotheos, even before he was consecrated as a Metropolitan was the delegate of the Patriarch in the Malankara Church from the year 1964. The people of the community including the plaintiffs accepted him as the delegate. They began to oppose him only when he was consecrated as a Metropolitan. Ordination is the confirm of the spiritual Grace and any Metropolitan duly consecrated can perform this spiritual act. The delegate of the Patriarch, if he is a Metropolitan, is also entitled to exercise this spiritual function. Consecration of Metropolitans is not an administrative act, but only a spiritual function. The Patriarch being the Supreme Spiritual Head of the Church can exercise this function and the first plaintiff himself was consecrated as a Metropolitan by the then Patriarch of Antioch. 30 40 50

Defendants 1, 2 and 3 are also consecrated as Metropolitans by the Patriarch and they are fully qualified to exercise all episcopal functions of Metropolitans. The allegations against defendants 11 onwards are also denied. This defendant states that Thubaden is part of the ritual and the recital of it is part of the function. In any case it being a spiritual matter, adjudication on it is barred under Section 9 of the Code of Civil Procedure. Names of dignitaries who are declared as apostates by the highest tribunal in the church and by the Supreme Spiritual Head will not be mentioned in the Thubaden. The name of the Patriarch and the valid Catholicos of the East and that of the lawful diocesan Metropolitan who 10 is accepted by the congregation are mentioned in the Thubaden.

70. The plaintiffs have no cause of action against the defendants. it is stated that the first plaintiff had retired from all activities in the Malankara Church after he received the Kalpana of 21-8-1975, which declared him to be an apostate. Later he died on 8-12-1975. The second plaintiff is not the successor in office of the first plaintiff. It is the second defendant's case that the plaintiffs have not prayed for a declaration as to their own legal character or to any right as to any property. Even if it is assumed that there is such a prayer, as none of the defendants claim to be the Catholicos of the East or the 20 Malankara Metropolitan, there is no justifiable controversy between the parties. Basselios Paulose II, the valid Catholicos of the East and the Malankara Metropolitan should have been impleaded as the successor of the first plaintiff. The maintainability of the reliefs prayed for in the suit is questioned. It is also stated in the written statement that some other reliefs sought for are related to spiritual acts and the civil court has no jurisdiction to grant it. The suit is also bad for misjoinder of cause of action and non joinder of parties. The suit is said to be barred by res judicata.

71. The third defendant also takes up similar contentions. His 30 written statement also runs into pages with 32 paragraphs. The contentions stated therein being similar to the contentions of the second defendant, they are not summarised.

Written Statement of Defendants 4, 5 and 10:

72. They take up the contentions stated by the 2nd defendant also and add the following. The Malankara Syrian Orthodox Church (Malankara Jacobite Church) is only an Arch Diocese of the Universal Syrian Orthodox Church. The Catholicos is only a deputy or subordinate of the Patriarch. The position of the Patriarch of Antioch as the supreme spiritual and ecclesiastical head of the Jacobite 40 Syrian Church of Malankara is unquestionable. According to the Jacobite faith, the true church is that which has been presided over by St. Peter and his Apostolic successors as Vicar of Church. The hierarchy with St Peter and his successors at its head is the divine institution founded by Jesus Christ. It is the faith of the Jacobite Syrian Church that spiritual grace emanates only from the Throne of St. Peter and the Patriarch of Antioch is the true successor to St. Peter.

73. It is alleged that the first plaintiff has no power or authority over the Malankara Church as he has gone out of the Church by his 50

own act of establishing a Throne of Grace for St. Thomas and propounding a new theory that spiritual grace emanates from that Throne also and defying the lawful authority of the Patriarch of Antioch the supreme head of the Church. The validity of the meeting of the Universal Episcopal Synod of the Syrian Orthodox Church held from 16-6-1975 and afterwards is sought to be upheld in this written statement. It is these defendants' case that by deviation from the faith, creed etc. of the church and defiance of the authority of the Patriarch, the plaintiffs and their predecessors have become apostates and have become members of a new church. It is said that the defendants' ordination is valid and proper as they were ordained by Metropolitans consecrated by the Patriarch of Antioch the supreme head of the Church. Ordination is only a spiritual act of conferring spiritual grace and this could be done by any Metropolitan consecrated by the Patriarch of Antioch. Only the Patriarch of Antioch and his duly appointed delegate has got the right to consecrate Metropolitans for Malankara. It is further stated that the first plaintiff who was ordained as a priest by the then delegate Mar Osthathios and consecrated as Metropolitan by the Patriarch is barred and estopped from contending that the delegate cannot ordain priests or deacons and the Patriarch has no power to consecrate Metropolitan for Malankara. Plaintiffs who have severed all connections with the Syrian Orthodox Church, of which Malankara Jacobite Church is only a part and have formed a new church independent of the Holy Church established by Jesus Christ under the stewardship of St. Peter, have lost their status even as members of the Malankara Church and as such they cannot claim to represent, the Malankara Church as its religious dignitaries or even as its members. They also contend that the suit should be dismissed.

Plea of 6th, 7th, 8th, 9th, 11th, 14th, 15th, & 16th defendants

74. The 6th defendant who claims to be a parishioner of St. George's Church, Arakunnam supports the contentions of the 2nd defendant. I am not repeating his contentions here in view of the fact that identical contentions have been raised in his written statement. 7th defendant has also raised similar contentions. I am not referring in detail to the written statements of defendants 8, 9, 11, 14, 15 and 16, in so far as they are similar to that of the 2nd defendant. According to them, the Malankara Syrian Orthodox Church is only an Arch-diocese of the universal Syrian Orthodox Church. St. Thomas cannot have a throne of grace as it will be against the fundamental faith of the establishment of one Church with one throne which is that of St. Peter. The constitution referred to in the plaint according to them, is not valid or binding on the individual churches or on the Metropolitan dioceses, or even the Malankara Churches as a whole. They would deny the statement that temporal, ecclesiastical and spiritual powers of administration are with the Malankara Metropolitan. The Catholicos is only a spiritual dignitary under the Patriarch. Malankara Metropolitan is only a Metropolitan trustee of the common trust properties of the Malankara Church. Neither Catholicos nor Malankara Metropolitan have any authority over the individual churches. The 14th defendant states that Malankara Church was never or is an

episcopal church. It follows a system of administration which may be called democratic episcopacy. In spiritual matters it follows the principle of episcopacy and in all other matters it accepted and follows congregationalism.

Written Statement of 17th defendant:-

75. The 17th defendant is the Director Vicar General of St. Antony's Educational Society at Honavar in the Karnataka State. This Society is a religious and philanthropic society founded in 1917. It was registered on 18-12-1926 under the Societies Registration Act, 1860 and on 7-7-1953 under the Bombay Public Trust Act of 1950. 10
This defendant would contend that all the activities of the society are subject to the control and superintendence of the Patriarch of Antioch and all the East. The society has established churches, educational institutions, orphanages etc. St. Antony's church at Jeppo Mangalore which is No. 1040 in the list appended to the plaint is one such church established, maintained and managed by the society. This defendant would further assert that the Society has no connection with the Malankara church or its authorities or with the organisation referred to in the plaint as the Malankara Jacobite Syrian Christain Assocaition. He pleads that the plaintiffs have absolutely no manner of right over 20
the aforesaid St. Antony's Church and that this court has no Jurisdiction to adjudicate on the affairs of the society including that of St. Antony's Church at Mangalore.

76. He would also contend that the Malankara Jacobite Syrian church is an Arch diocese of the universal Syrian Orthodox church under the Patriarch of Antioch and would deny the claim that the Malankara church is an autocephalus church. According to him, the parish churches in Malankara are autonomous and they are established, maintained and managed by the respective parishioners without any extraneous help. These churches invariably follow the congregational 30
form of Government. The only bond of union among the parishioners of the various individual churches is their common Jacobite faith, with the Patriarch as their spiritual head. He would assert that none of the churches at any time surrendered their rights of administration to any superior religious organisation or to the hierarchy of the Malankara church. The other religious and charitable institutions are also separate and distinct. Each of the parish churches is not a constituent of the Malankara church. They are founded with the objects of having administered by the Pothuyogam of the respective parishes and to have the religious services conducted in them by religious dignitaries who possess 40
the spiritual grace transmitted to them from the patriarch of Antioch and from no other. The function of the Metropolitan in a parish church is primarily to supervise the spiritual affairs of the parishioners and does not extend to the temporalities or rights over the properties of the church. The Malankara Association is an organisation formed to discuss and decide on matters common to the whole community.

77. In regard to most of the plaintiffs' contentions the reply of this defendant is more or less on the same line as that taken by the second and other defendants. I do not think it necessary to detail the averments. But it is necessary to note this defendant who is also a 50

member of the Knanaya Samudayam has raised the following special pleas with respect to his particular community.

78. This Samudayam of Knanaya Christians, he would submit, originated according to history when a colony of Christians from Syria under the leadership of Thomas of Kana, a devout and missionary minded Christian, landed and settled down in Cranganore in 345 A. D. The settlers were known as Knanites from the name of their homeland. They are the forefathers of the present Knanaya Syrian Community in Malabar. The aforesaid colony was sent by the then Patriarch of Antioch by name Eusthathiose. The colony then had a Metropolitan by name Joseph of Uraha. The Knanaya community has all through maintained the purity of their Syrian blood by refusing to intermarry with the people outside their community. But they had no objection in obtaining their spiritual needs from the spiritual dignitaries in the Malankara Jacobite Church. As both acknowledged the spiritual authority of the Patriarch of Antioch the Knanites collaborated with the Malankara Church. But there was no fusion of the two communities and Knanites kept up their separate and distinct entity. They have their own Association, Managing Committee and Trustees. They have also their own Constitution approved by the Patriarch of Antioch. Their affairs are all managed under the provisions of that Constitution. The collaboration with the Malankara church was confined to the affairs of the common trust properties of that church. For that purpose the churches of the Knanaya Samudayam are also invited to the meetings of the Malankara Association. But the Knanaya Samudayam and the Jacobite Community respected each other's entity and independence and never interfered with each other in the spiritual, temporal and ecclesiastical administration of the various churches. This defendant would stress that the plaintiffs have absolutely no authority to interfere in the affairs of the churches in the Knanaya Samudayam which is a part of the Universal Syrian Orthodox Church directly under the Patriarch of Antioch. According to this defendant, each of the churches numbered in the list as 458, 459, 461 to 463, 465 to 497 belongs to the parishioners of each church respectively who are Knanites. They are independent churches and the plaintiffs have no manner of right or power over them. He prays for the dismissal of the suit.

Written statement of the 18th defendant:-

79. 18th defendant is the Evangelistic Association of the East, represented by its General Secretary. In his written statement, this defendant Association states that this organisation was established in 1924 with its Head office at Perumbavoor, founded with the main object of propagating the Christian Gospel throughout the world. A constitution for the association was framed in 1933 and was registered in 1941 as the Sub-Registrar's office, Perumbavoor. Subsequently, the association was registered under the provisions of the Societies Registration Act (Central Act of 1860). Amendments subsequently introduced were also registered. The association was impleaded as the 18th defendant in the suit on its application as it came to know that 17 churches established, managed and maintained by it are included in the list of churches appended to the plaint.

80. According to this defendant, the plaintiffs have no right over the churches and institutions belonging to the Association. The Malankara

Church or its hierarchy also has no right or control over them. The churches numbered as items 897 to 912 and 950 in the list appended to the plaint belong to the association. They are founded, administered and controlled by the authorities of the Samajam to the exclusion of the authorities of the Malankara Church. Neither the plaintiffs nor any other authority of the Malankara Church have any right to interfere in the temporal, ecclesiastical or spiritual administration of these churches. The Malankara church authorities have all along treated these institutions as outside the Malankara church and those churches were never invited by the Malankara Metropolitan to send representatives to the Malankara Association meetings or by the Diocesan Metropolitans to the diocesan councils. No representative from any of these churches participated in any of the meetings of these bodies. The Samajam has also no connection with the Malankara Jacobite Syrian Christian Association. 10

81. This defendant would further contend that the Association (the defendant calls it a Samajam) is a missionary organisation in the Universal Syrian Orthodox Church under the Patriarch of Antioch and all the East. Its activities are not confined to the geographical frontiers of Malankara or India or the East but extend to other parts of the world. There are among its members persons from America and the Middle East. 20

82. According to its constitution the administration of all the affairs of the Samajam, its properties, institutions and workers is vested in its Managing committee. The supreme patron of the Samajam is the Patriarch. The defendant therefore states that persons who do not accept the supreme spiritual authority of the Patriarch and who do not accept the book of canon prescribed and followed by him have no right or status in the Samajam or its institutions. The Managing Committee has the authority to select additional Patrons or Vice-Patrons or episcopas for the spiritual administration of the churches belonging to the Samajam. The Episcopa or Metropolitan ought to be a dignitary consecrated by the Patriarch or by his delegate. 30

83. The defendant then refers to the alleged attempt of the first plaintiff to introduce innovations in the faith of the church and to amalgamate the Samajam churches with that of the Malankara church. The defendant then refers to the questions raised in the plaint and these are more or less the same as those raised by the other defendants. In the circumstances, it is not necessary to detail the same again. This defendant finally prays for dismissal of the suit with costs.

Written statement of the 19th defendant:- 40

84. This defendant is the Malankara Suriyani Knanaya Samudayam, represented by its trustees, Mr. T. C. Kuruvilla and Fr. K. I. Abraham. According to them, the suit is devoid of bona fides so far as the particular defendant is concerned. The plaintiffs had absolutely no cause of action against this defendant and no cause of action has arisen. The Knanaya Church in Malankara, it is alleged, is a branch or division of the Universal Syrian Orthodox Church, the primate of which is the Patriarch of Antioch. It is a separate and independent religious community in Malankara, which traces their origin in Malankara when a colony of Christians from the Syrian Village Kana, led by Bishop Joseph of Uraha, 50

settled in Cranganore in A. D. 345 under the directions and guidance of the Patriarch of Antioch. This community is distinctly independent from the Orthodox Syrian Church referred to in the plaint as the Malankara Church, the primate of which division is alleged in the plaint to be the Catholicos of the East. The Universal Syrian Orthodox Church, the mother church is one founded by Jesus Christ. The Knanaya church in Malankara and the Orthodox Syrian Church recently so named and originally known as the Jacobite Syrian Orthodox Church in Malankara are two distinct and separate divisions of the mother church. Therefore, according to this defendant, the all inclusive reference in the plaint as Malankara church is misleading and vague. It is the further case that the coming of the Apostle Thomas to Malabar is itself a much debated one in the polemics of church history. There is certainly a tradition that St. Thomas preached Christianity in Malankara and that it was at a time when the primitive Indian Christians were on the verge of deterioration due to lack of leadership and organisation that the Knanite colonists came and settled in Malankara. This resulted in immense benefits to the Indian Christians. Their association with the colonists resulted in considerable developments in their social as well as religious status. Both the groups lived closer during subsequent years, the Knanites although being very careful in keeping up their independence as also their racial, cultural and social features distinct and separate. They never allowed or tolerated inter marriages and they still maintain the purity of their blood. This defendant would contend that it is not Apostle Thomas who established ecclesiastical administration in Malankara so far as the Knanaya church in Malankara is concerned. It is also denied that all Christians of Malankara were called right from the beginning as St. Thomas Christians. As the Knanaya church in Malankara was founded after the Synod of Nicea was held in A. D. 325, the alleged representations in the said Synod have no bearing and are unrelated to the subsequently founded Knanaya church in Malankara. The alleged conferment if any of a dignitorial status on the Episcopa at Jerusalem as the fifth Patriarch and Catholicos of the East has no relevancy in the matter of the independent establishment and separate administration of the Knanaya church in Malankara. There was no question of administration of Knanaya church in Malankara by the Catholicos of the East. This defendant characterises the alleged Throne of St. Thomas as a fictitious one.

85. The written statement further alleges that Knanaya church was right from the beginning under the supreme supervision of the Patriarch of Antioch in all matters. This church has its independent origin and continued existence not as the result of any split or difference of opinion regarding the nature and person of Jesus Christ. It is pointed out that the Knanites were particular in maintaining the independence of their church in Malankara. The Knanaya church in Malankara was particularly outlined, founded and scheduled for the exclusive benefit of the members of the Syrian Knanaya community in Malankara, owing allegiance to the Holy See of Antioch without any geographical limitations. Irrespective of the sources from which money proceeded or the persons responsible for the establishment of each Knanaya parish church or institution, it becomes an integral and inseparable

part of the Knanaya church in Malankara under the absolute authority and effective control of the Knanaya Metropolitan. During the time when the Knanaya church had no Metropolitan of their own, the Knanaya community never hesitated to meet their spiritual needs from the Metropolitans of the Syrian Orthodox church in Malankara, which was at that time directly under the supremacy and control of the Holy See of Antioch. During such periods, in the matter of temporal administration in the Knanaya church in Malankara, a representative body of the members of the Knanaya community known as the Malankara Syrian Knanaya committee functioned. While so in 1910, the Patriarch of Antioch ordained a Metropolitan for the Knanaya church in Malankara on his being elected by the said committee or Association and on the request made to the Patriarch of Antioch. The first Metropolitan so ordained was succeeded by Mar Dioscorus in 1926 during whose period the Patriarch of Antioch was pleased to declare and confirm the independence of the Knanaya church in Malankara conferring absolute right of internal administration as also the right to get their Metropolitan ordained by the Patriarch of Antioch for all times to come. This declaration is contained in a Kalpana of the Patriarch, dated 26th Makaram 1932. In 1939 Mar Dioscorus embraced the Roman Catholic faith and in 1951 the present Metropolitan was ordained and appointed Metropolitan of the Knanaya church in Malankara to succeed Mar Dioscorus. During the absence of a Metropolitan for the Knanaya church, Mar Julios Elias, Metropolitan, who was the delegate of the Patriarch of Antioch in India, attended the spiritual needs of the members of the Knanaya community. For the due temporal administration of this community, the Patriarch of Antioch appointed Rev. T. K. Abraham, Cor-Episcopa as administrator of the Knanaya church in Malankara at the request of and as desired by the Malankara Knanaya Association. On his death, Rev. Fr. P. J. Thomas was appointed as administrator. During the period of absence of the present Metropolitan in 1957, in connection with his visit to Syria, to attend the election and consecration ceremony of the present Patriarch of Antioch and in 1960, during his visit to America for higher religious studies and in 1973 during his repeated visit to Damascus as an invitee of the Patriarch, he has authoritatively deputed his own nominees to look after the temporal administration of the Knanaya church in Malankara. The Catholicos-cum-Malankara Metropolitan never sought to interfere during such period as he has no authority or right to interfere with the administration of an entirely independent church as the Knanaya church. In the circumstances, according to this defendant, the alleged revival of the Catholicate of the East does not either affect or alter the independent origin, status or authority of the Knanaya church in Malankara, nor does it take away its consistent and continued relationship with the Patriarch of Antioch. There was no need for any attempt on the part of the Patriarch of Antioch in the matter of exercise of any additional authority over the Knanaya church as he is always the supreme head of the universal Syrian Orthodox Church of which Knanaya Church is only a branch.

86. The list of churches appended to the plaint nearly 1064 in number, is alleged to contain a good number of parish churches of

the Knanaya church in Malankara, over which the plaintiffs have no right or authority or control. Item numbers 457 to 470, 472 to 488, 490, 491, 492, 494, 495, 496 and 497 in the list are parish churches of the Knanaya church in Malankara. Each such church when founded has become a constituent of the Knanaya church administered by and under the authority of the Knanaya Metropolitan. The Malankara Metropolitan has absolutely no right whatsoever over the said churches. The defendant would state that there are at present 52 Knanaya churches in Malankara including chapels and Kurisu pallies, 43 priests, 10 deacons and a Metropolitan. The Metropolitan of the Knanaya church is so ordained specifically for the Knanaya community in Malankara and not for any other church of Malankara. The Knanaya church though purely episcopal in character, the constitution which the plaintiffs relied on is not at all binding on the said church. It had its written constitution as early as 1919. The plaintiffs are estopped by their long and continued conduct from saying that the 1934 constitution is binding on the Knanaya church. It has no binding authority on the Knanaya church and the Malankara Metropolitan has no powers, control or supremacy over the Knanaya church either in temporal, spiritual or ecclesiastical matters.

87. The defendant would point out that the Knanaya church is not a party to the case settled by the Supreme Court of India on 12-9-1958. Nor the said church was a necessary party in the suit, as the suit was between the two factions of the same church known as the Patriarchal party and the Catholicos party. The alleged united church referred to in the plaint has nothing to do with the Knanaya church of Malankara and the alleged induction into the so called united Malankara church do not apply or relate to the Knanaya church. There was no occasion, need or authority to so induct the Knanaya church, which from its very establishment remains independent of the Orthodox church of the east. The Patriarch of Antioch alone has the right and authority to consecrate Metropolitan for the Knanaya church in Malankara and the person so ordained is bound to submit a statement regarding the faith and submission to the Patriarch of Antioch, who in terms has to give a certificate of consecration or warrant of authority to the prelate so consecrated. Accordingly, Mar Savarios, Mar Diascorus and the present Metropolitan Abraham Mar Clemis have executed statements regarding faith and submission to the Patriarch of Antioch who, in turn has given the warrants of authority to them. No Metropolitan who has not been consecrated by the Patriarch of Antioch can ordain priests or deacons in the Knanaya church in Malankara and any person can get himself ordained to any ecclesiastical order or office in the Knanaya church in Malankara only under the provisions of the constitution of the Knanaya church. The authority to appoint and transfer vicar or assistant priests for parish churches in the Knanaya diocese rests with the Knanaya Metropolitan who is acting under the authority of the Patriarch of Antioch and not with the Malankara Metropolitan. The Knanaya Church in Malankara has nothing to do with the Malankara Jacobite Syrian Christian Association or its formation. It is asserted that the

plaintiffs who are members of the Orthodox Syrian Church of the east, have no manner of right or authority to complain of the absolutely independent origin, status and authority of the Knanaya Church in Malankara either in their affiliation or attitude towards the Patriarch of Antioch.

Additional Pleadings of the 2nd plaintiff:-

88. Additional pleadings was submitted by the 2nd plaintiff in the matter under sections 94, 151 and Order VI Rule 5 of the Code of Civil Procedure. There it is stated that the head of the Malankara Church was always considered as seated on the throne of St. Thomas who established the church in Malankara. The Catholicos of the East was also considered as occupying the throne of St. Thomas. The constitution of the Malankara church would affirm that fact. This heritage traced to the founder of the church, is neither imaginary nor is in rivalry to any other apostolic throne. Grace will not emanate from any throne. The theory of a throne of grace is meaningless. The dispute regarding the name of the throne of the head of the Malankara Church and that of a Antiochian Church is not a matter of faith and it is brought in purposely to introduce a new controversy of apostacy without any substance. The deceased first plaintiff, nor the 2nd plaintiff and the Metropolitans and the Church under them are not guilty of any apostacy. The additional pleadings state that the only competent authority to enquire into and decide upon all matters of faith, order and discipline as regards the Malankara Church is Holy Episcopal Synod of the Malankara Church as provided in clause 107 of the constitution subject to the provisions of clause 108. In the matter of accusations of Patriarch of Antioch against Moran Mar Baselius Ougen I, the then Catholicos of the East were taken cognisance of by the Holy Episcopal Synod of the autocephalous Malankara Church in accordance with clause 118 of the constitution. The Patriarch of Antioch was not invited to preside over the Synod he being the complainant. Though he was requested to co-operate with the Synod, he did not co-operate. The charges were duly enquired into and the Holy Synod unanimously decreed and declared that the accusations are unsustainable. The decision of the Synod was duly communicated to the Patriarch of Antioch. The Patriarch is not the head of a Universal Church. The Patriarchate of Antioch was only a regional one. There is no such church as Universal Syrian Orthodox Church nor can there be a synod of the Universal Syrian Orthodox Church. It is further alleged that even if a Synod as contended by the defendants could be contemplated, no such Synod has been validly held. The very forum proposed to be constituted was arranged to be packed with henchmen many of whom were illegally consecrated for the purpose by the Patriarch. It has neither framed nor considered any charge against the first plaintiff or any Metropolitan under him, much less has it considered the question of apostacy of any person with due notice to such person giving opportunity to defend himself. Even on the defendants' showing and admission the proceedings of the alleged Synod are illegal and invalid being in violation of all principles of natural justice.

89. It is alleged that in the 4th century, four Patriarchates were outlined and established by the Nicean Synod. In course of time due to doctrinal differences Patriarchates of Rome and Constantinople separated. Later the Patriarchate of Alexandria and Antioch and the Catholicate of the East worked in harmony. As time passed on autocephalous divisions were recognised in those churches. At present, the Malankara Church, Antiochian Church, Alexandrian Church, Ethiopian Church and Armenian Church are sister churches in ecumenical communion without theological differences in matters of faith. Ecumenical Synod competent to decide ultimately disputes regarding faith of the church is a Synod of all the Bishops of all the churches. Therefore, there cannot be any Synod of the Syrian Orthodox Church which could be termed Universal. 10

90. It is the plaintiff's case in the additional pleadings that all apostles had derived spiritual grace and St. Peter had no administrative authority over the other apostles. St. Peter was not made the sole administrator of the Church and St. Peter never exercised such a jurisdiction. Patriarchs of Antioch by the very constitution of the Patriarchates never exercised any universal jurisdiction. Therefore the claim made that the Patriarch of Antioch is the supreme head of the Universal Syrian Orthodox Church is hollow and imaginary. The relationship of Patriarch of Antioch with the Malankara Church is only the one envisaged in the constitution of the Malankara Church. The claims of spiritual and ecclesiastical supremacy set up by or for Patriarch are absolutely unsustainable. Such questions have been finally settled by the decision of the Supreme Court of India reported in 1958 K.L.T. 721. The contentions on such questions are barred by res judicata or principles analogous thereto. Even the contentions regarding the throne of St. Thomas are also barred by rule of constructive res judicata by reason of the above said decision. Likewise by virtue of the said decision, the defendants are barred from contending against the validity, enforceability and binding nature of the constitution of the Malankara Church. In any event, the plaintiffs would say that the defendants and their partisans, who have been conducting themselves, accepting and admitting the validity of the Catholicate and the constitution resulting in the unification of the contending factions and enjoying the benefits therefrom cannot turn round and plead otherwise. The dissident group including the defendants cannot now be heard when they contend against their former representation and conduct which have been accepted and acted upon by the other side to their detriment. 20 30 40

91. In regard to the Knanaya Church, according to the plaintiffs, Knanites from the date of their immigration to Malankara under the direction of the then Catholicos of the East have been members of the Malankara Church. The distinguishing features of the Knanites are neither religious nor regional but are only racial, social and cultural. The group of Christians who emigrated in the 4th Century A. D. from Persia and their descendants who are now Southists (Knanites) in Malankara Orthodox Syrian Church as well as the Roman Catholic Church or in any other section of the Christian community were uniformly trying to maintain their social, racial and cultural Parti- 50

cularities. The Southists within Malankara Church were first under the Malankara Metropolitan and subsequently under the various diocesan Metropolitans of the Malankara Church since they were settled in different regions in Malankara. At the time of the epoch making pledge known as pledge at Koonan Cross the Malankara Christians who broke off their connection with the Roman Catholic Church were led by Anjilivelil Itti Thomman Kathanar, a prominent priest of the Southists. The section of the Knanites who stood with the Roman Catholics is now known as the Southists of the Roman Catholic Church. The Southists who stood with the Malankara Christians remained and continued as an integral part of the Malankara Church. In the Mulanthuruthy Synod of 1876, delegates from Knanaya parish churches also took part and Knanites were also elected to the Committee constituted for the entire Malankara Church. It is only considering the special racial and social characteristics of the Knanites the then Malankara Metropolitan Mar Joseph Dionysius permitted to form a Knanaya Committee. Till the formation of a separate diocese for the Southists in Malankara Church in the year 1910 they were being administered as constituents of the diocese of the Malankara Church. A prominent Southist was for long the Secretary of the Malankara Syrian Christian Association and was in that capacity conducting the affairs of the Malankara Church including the conduct of Seminary case and other cases filed against Thomas Mar Athanasius etc. by Joseph Mar Dionysius. The Knanites of the Roman Catholic Church were also grouped into a separate diocese during that period.

92. The plaintiffs would state that from the beginning of the factional fight in the Malankara Church, i. e. from [about 1909 the Southists identified themselves with the Patriarchal section. During the pendency of the Samudayam suit Abraham Mar Clemis Metropolitan of the Knanaya diocese got himself elected as Malankara Metropolitan of the Patriarchal section and got himself impleaded as an additional respondent when the case was pending in appeal before the Supreme Court. It is also stated that after the decision of the Supreme Court during the course of the peace talks which followed Mar Clemis took an active part in the peace talks. In the official and ceremonious function of the mutual acceptance held at Old Seminary Kottayam Mar Clemis was present. Thereafter Mar Clemis and the Knanites accepted the primacy of the Catholicos cum Malankara Metropolitan as also the applicability of the constitution for the administration of the Malankara church. The Metropolitan functioned as a member of the Episcopal Synod submitting fully to its jurisdiction and to the authority of the Catholicos cum Malankara Metropolitan. The Members of the Knanaya diocese came under the lawful hierarchy of the Malankara church. Mar Clemis or the members of the Knanaya diocese had never before taken a stand that Knanites formed a separate church independent of the Malankara Church. Separate constitution of the Knanaya Samudayam can at best be a body of rules for the internal administration of their diocese. The Knanaya association and other bodies in the community are only bodies brought into existence for convenience of the internal adminis-

tration and as advisory cadres. The fact that certain rules of internal administration were followed by them in certain matters is not sufficient to make them a separate church.

Additional Written Statement of the 19th defendant:-

93. The filing of the additional pleadings by the plaintiffs has led to the additional written statement being filed by the 19th defendant. There they reiterate their earlier stand. It is stated that the episcopal hierarchy with St. Peter and his successors on the Throne of Antioch is a divine institution founded by Jesus Christ. At the time of Synod of Nicea there was only one church and one faith in the world. The Nicene creed was formulated for the effective administration of all the dioceses in the Christian world. The Christendom was divided into four Patriarchates and four Patriarchs were appointed for the four Sees. They were the Patriarchs of Rome, Constantinople, Alexandria and Antioch. These patriarchs were given authority and supreme jurisdiction over their respective Sees. The Patriarch of Antioch was also allotted exclusive and unfettered jurisdiction over all the East including India as well. The Synod gave the Patriarch of Antioch the title 'The Patriarch of Antioch and All the East'. Besides these four Patriarchs one was appointed at Jerusalem as a mark of distinction for that place with the title of a fifth Patriarch, who was also known as the Catholicos of Jerusalem. The Great Metropolitan of Persia was honoured with the title of Catholicos of the East, subject to the supremacy and authority of the Patriarch of Antioch. That Catholicos has never exercised any authority either spiritual, temporal or ecclesiastical over the Malankara. The ecclesiastical and the spiritual supremacy of the Holy See of Antioch over the Syrian Orthodox Church of Malankara has been all along recognised and acknowledged and so laid down by the Royal Court of Final Appeal. The supreme authority of the Syrian Orthodox Church is the Patriarch of Antioch and all the East.

94. The history of the coming of the Knanaya community to Kerala under Thomas of Cana etc. are all then detailed. It is stated that the racial, social and cultural distinction between the two sets in question were more vigorously maintained and preserved even during the time, when the Knanaya community in Malankara had no Metropolitans. Knanaya Parish Churches are founded for the benefit of persons who possess the dual qualification of professing the Syrian Orthodox faith under the Patriarch of Antioch, and maintaining the racial distinction. No person outside the fold of Knanaya church will be admitted to the Knanaya church as members thereof. It is alleged that ever since the advent of the Knanaya Syrian Colonists to Malankara, more than sixteen and a quarter century ago, there is not even an isolated instance of a person born of non-knanites parents ever having been admitted into the Malankara Syrian Knanaya Community and no inter-marriage between the members of other churches were recognised by the Knanaya community. Any member of the Knanaya community who happens to marry outside its fold automatically ceases to be a member thereof.

95. It is stated that in early times the Patriarch of Antioch used

to send Metropolitans for the governance of Knanaya Church. At the time when there were no Metropolitans for the Knanaya Church the members of the Knanaya Community received their religious sacraments from the then Metropolitans of the Malankara Syrian Orthodox Church as much as the native Indian Christians of Malankara also adopted the faith, order and discipline of the Knanaya Church after their arrival in A. D. 345. The authority and jurisdiction of the Patriarch of Antioch as also the independent status and set up of the Knanaya Church were thus unquestionably recognised.

96. It is said that during the Portuguese political power on the west coast of India, they tried to spread the Roman faith in Malankara. There was conflict and the supremacy and faith of the Antioch was at stake. During that period there was no Metropolitan in Malankara. Anjilimoottil Itty Thomman Kathanar who was a prominent Knanaya priest tried to get a Metropolitan from Antioch. Because of his efforts the Patriarch Ignatius himself came to Malankara in the year 1654. The Portuguese authorities in some mysterious way disposed of the Patriarch. As a result the people of Malankara were furious. Itty Thomman Kathanar took the leadership and active part to throw away the Roman Yoke and to strengthen the Antioch faith and supremacy. He gathered people who accepted the supremacy of the Patriarch of Antioch and all the East and at Mattancherry, Cochin, they held a meeting there and took an Oath and declared that "we and our coming generations never throw away the Antiochian faith and the supremacy." This is known as the famous "Koonan Cross Pledge" held in the year 1654. Mar Dionysius, the then Metropolitan of the Malankara Church was recognised only as patron of the Knanaya Committee, because he was owing allegiance to the Patriarch of Antioch and all the East. The Knanaya community never hesitated to receive the holy sacraments from him, he had never exercised any authority over the Knanaya Community. The Knanaya community of Malankara was neither a party to the suit decided by the Royal Court of Appeal nor was the said church represented therein. Late Sri. E. M. Philip from Knanaya Community was assisting the Metropolitan Mar Joseph Dionysius in the seminary suit in his individual capacity. He was not the Association Secretary, but he was the private Secretary and the civil agent of the Metropolitan. He was also a Knanite much interested in affirming the authority of the Patriarch of Antioch and all the East. In 1910 the Patriarch of Antioch and all the East at the unanimous request of the Knanaya Association as also the people of the Knanaya Community, consecrated Mar Severious from Knanaya Community as Metropolitan exclusively for the Knanaya Church. As an independent unit of the Universal Syrian orthodox Church, the Patriarch of Antioch was pleased to recognise the Knanaya Church of Malankara as a Diocese of the Universal Syrian Orthodox Church without territorial or geographical limits. Consequent on his consecration as Metropolitan Mar Severious administered the Knanaya community consisting of only 14 churches of that time in all matters independently.

97. The defendant denies that Knanaya Church in Malankara is at any time a party to the prior litigations which were all between the

two factions of the same church popularly known as the Catholicos Party and the Patriarchal Party. The conduct of the Knanaya Metropolitan in becoming the Malankara Metropolitan Trustee on the Patriarchal side is without the concurrence of the Malankara Suriyani Knanaya Association and it is not valid or binding on the Knanaya community or knanaya church as such. Mar Clemis Metropolitan, though without the concurrence of the knanaya Association had pointedly stressed and insisted that a cordial relationship with the Orthodox Syrian Church of Malankara could be thought of only on the following conditions. He had stressed that the Catholicos cum 10 Malankara Metropolitan shall have no right or authority to insist on the execution of salmoosa by the Metropolitan of the knanaya Church in favour of Catholicos acknowledging any authority or supremacy of the Catholicos over the Knanaya Church or to issue a warrant or authority to the Metropolitan of the Knanaya Church as its primate. The nature, extent and limit of such cordial relationship which the Knanaya Church is capable to extend, that will not in any way fetter its independence or prejudice the supreme authority and supremacy of the Patriarch, has to be officially enquired into and settled. The third 20 condition was that it should be unequivocally declared that the 1934 Constitution of the Malankara Orthodox Syrian Church shall have no binding authority over the Knanaya Church and that no attempt at implementing the same so far as the said church is concerned will be resorted to. It was also stressed that the alleged fictitious Throne of St. Thomas, being unacceptable to the Knanaya Church would be ignored fully. These conditions were brought to the notice of the Malankara Metropolitan in person who accepted the same as also to the notice of the provincial Synod of the Malankara Orthodox Syrian Church and managing committee. The Synod has also accepted those condi- 30 tions, on which acceptance, Mar Clemis Metropolitan never hesitated to have cordial relationship with them without prejudice to the independent status and individuality and separate machinery of administration of the Knanaya Church.

98. Malankara Suriyani Knanaya Samudaya Association was formed in the year 1882 A. D. There was a constitution for the Knanaya community. The Knanaya committee conducted administration in concurrence of this constitution. Only in the year 1934 Malankara Church framed their constitution. Knanaya community had a constitution even before this. The constitution was amended from time to time and in the year 1918, the constitution was promulgated in the community by 40 the Kalpana of the first Metropolitan, Mar Severiose. This was 16 years prior to the constitution of the Malankara Church. The Patriarch of Antioch formed an independent Diocese called Malankara Suriyani Knanaya Diocese with 14 churches. The independent status of the Knanaya Diocese has been recognised and the attempt of the plaintiffs is to take away that independent status.

99. On these pleadings, the following issues and additional issues have been framed:—

- “1. Whether the constitution of the Malankara Orthodox Syrian Church is valid and binding on the entire Malankara Church including its 50

- institutions, parishes and members.
2. Whether the Patriarch of Antioch has any spiritual or ecclesiastical supremacy over the Malankara Church? If so what is the extent and nature of such supremacy?
 3. Whether the Malankara Church is episcopal in nature or is it a congregational church as contended by the defendants.
 4. What is the procedure to be adopted for the election and consecration of a metropolitan for the Malankara Church?
 5. Whether defendants 1 to 3 are properly consecrated metropolitans and are they competent to function as metropolitans of the Malankara Church? 10
 6. Whether Malankara Church is an autocephalous Church and whether the Catholicos and Malankara Metropolitan as envisaged in the constitution is the primate of the Malankara Church.
 7. Whether the defendants who defy the authority of the Catholicos-cum-Malankara Metropolitan and the constitution of the Malankara Church are entitled to function as Metropolitans priests and deacons of the Malankara Church and are they entitled to intermeddle in the affairs of the Malankara Church in any manner?
 8. Can Metropolitans, priests and deacons be ordained or appointed to function in the Malankara Church its dioceses, parishes and other institutions except according to the provisions of the constitution? 20
 9. Whether parish churches are independant autonomous units as contended by the defendants.
 10. Whether the administration and conduct of the affairs of the parish churches and their assets are to be under the immediate control direction and supervision of the Diocesan Metropolitan as provided for in the constitution and whether vicars, priests and office bearers in parish Churches have to be approved and appointed by him or has he only spiritual supervision as contended by the defendants? 30
 11. Whether the plaintiffs are entitled to the declaration prayed for.
 12. Whether the injunctions prayed for are allowable.
 13. To what reliefs are plaintiff entitled.
 14. What is the order as to costs.

Addl. Issues

15. Whether the plaintiffs have deviated from the fundamental faith of the Malankara Jacobite Syrian Church and have severed communion to the original church.
16. Are the plaintiffs estopped from questioning the jurisdiction of the said Synod and validity of the decisions taken therein? 40
17. Whether the plaintiffs who defy the spiritual authority of the Patriarch of Antioch over the Malankara church can function as religious dignitaries in it?
18. Whether the two sections in the Malankara Church settled all their differences in 1958 and became a united Malankara church as alleged in the plaint.
19. Whether the authorities of the Malankara Church have any power or right of administration over the Churches or other institutions established by the Evangelistic Association of the East. 50

20. Whether the Malankara Jacobite Syrian Christian Association is in existence and whether all or any of the defendants entitled to represent it?
21. Whether the suit is bad for non-joinder of necessary parties?
22. Whether the decision in the suit applicable to individual parish churches, private chapels and other institutions?
23. Whether the 2nd plaintiff who is the only surviving plaintiff has got the locus standi to file the suit seeking the reliefs sought therein.
24. Is the constitution relied upon by the plaintiffs validly passed and binding on the Jacobite Churches and the Patriarch? 10
25. What are the powers and jurisdiction of the Universal Episcopal Synod and are not the plaintiffs apostates to and aliens to the Jacobite faith in view of the decision of the Universal Episcopal Synod of the Syrian Orthodox Church held at Damascus from 16th June 1975 to 20th June 1975 and enforced by His Holiness the Patriarch?
26. Which is the true version of Canon Law applicable and binding on the Church? Whether it is Ext. XVIII in O. S. 94/1088 of the District Court of Trivandrum or Ext. A in O. S. 94 of 1088 of the District Court of Trivandrum? 20
27. Whether the Malankara Church is founded by St. Thomas as alleged in the plaint and whether unbroken apostolic succession from St. Thomas is maintained in the Malankara Church.
28. Whether the consecration of defendants 1 to 3 by the Patriarch as Metropolitans and ordination of priests and deacons by the said Metropolitans not valid and operative.
29. Is the Church episcopal in all matters as contended by the plaintiffs or is it not democratically episcopal in spiritual matters and congregational in temporal matters as contended by the defendants?
30. Whether the Malankara Church is autocephalous of the Syrian Orthodox Church as alleged in the plaint or whether it is a part or unit of the Universal Syrian Orthodox Church as alleged by the defendants? 30
31. Whether the Knanaya Church in Malankara is distinctly independent and separate from the Orthodox Syrian Church referred to in the plaint as 'Malankara Church.'
32. Whether the plaintiffs have any right or authority to include in the plaint any of the parish churches of the Knanaya community.
33. Whether the 1934 Constitution relied on by the plaintiffs is valid and binding on the Knanaya Church. Are not the plaintiffs estopped from saying that the said constitution is binding on the Knanaya Church? 40
34. Whether the suit is maintainable as against the Kananaya Parish Churches. Has the plaintiffs any cause of action against the said Churches.
35. Is not the Patriarch of Antioch and All the East the supreme head of the Knanaya Church of Malankara, in all the matters, spiritual, ecclesiastical and temporal.
36. Is the injunction prayed for allowable as against the 19th defendant? "

O. S. No. 5 of 1979:-

100. The fifth suit in the series is the one filed by the Metropolitan 50

of the Kottayam Diocese and a priest whom he has appointed as Vicar of St. Mary's Church, Pampady. The defendants are members of the said parish church, the first defendant the lay steward, the second defendant secretary of the Parish Yogam and the other defendants are in management of the affairs of the plaint parish church. This suit also arises as an off shoot of the main controversy high lighted in the earlier suits.

101. The suit is for a decree—(a) to declare that second plaintiff is entitled to function as the duly appointed Vicar of the plaint parish church and defendants are not competent to cause any objection in the due exercise of his functions, 10

(b) to declare that no money from the church can be spent or assets of the church utilised or otherwise dealt with by the defendants except with the junction and co-operation of the second plaintiff and also only as provided for in the constitution of the Malankara church,

(c) to prevent the defendants by an order of injunction restraining them from obstructing in any manner the conduct of religious worship in the plaint church and carrying out the other functions of the second plaintiff as the Vicar of the church and also to prevent the defendants from dealing in any manner the money and other assets of the plaint church without the co-operation and junction of the second plaintiff, 20

(d) to order the defendants by an order of injunction not to allow any other priest to function or officiate in any manner in the religious services in the church or otherwise,

(e) to allow the first plaintiff to realise Rs. 300/-with future interest at 6% from the assets of the plaint church and for other consequential reliefs and costs.

Plaint allegations:-

102. Malankara Church is an autocephalous division of the Orthodox Syrian Church. The Primate of the Malankara Church is the Catholicos of the East cum Malankara Metropolitan in whom vests all the spiritual, ecclesiastical and temporal powers of administration over the church. For administrative convenience, the Malankara Church is divided into diocese and it now consists of ten dioceses, each headed by a Diocesan Metropolitan who function under the authority of the Catholicos cum Malankara Metropolitan. The Church has got a constitution governing the administration of the entire Malankara Church, its constituent dioceses, parishes etc. First plaintiff is the Metropolitan of the Kottayam Diocese, one of the ten dioceses. The plaint parish church, St. Mary's Church, Pampady was founded as a parish church within the Malankara Church, at a time when there existed a factional fight in the Malankara Church between the Patriarch's party (those who support the Patriarch of Antioch) and the Metran's party (those who support the Catholicos), by persons who supported the claims of Patriarch of Antioch and the Metropolitans under him. The factional fight finally went to the Supreme Court ending with the judgement of that Court reported in 1958 K. L. T. 721. The Supreme Court found in favour of the valid establishment of the Catholicate. According to the plaintiffs, the decision held that the then Catholicos cum Malankara 30 40 50

Metropolitan was the lawful head of the Malankara Church and also upheld the validity and binding nature of the constitution framed by the Church. Both the factions were held to have not gone out of the church.

103. It is alleged that in the wake of the Supreme Court decision, the Patriarch of Antioch who was treating the Catholicos and the church under him as separate from the church recognised by him, thought it expedient to accept the Catholicos and Malankara Metropolitan as head of the Malankara Church evidently as envisaged in the constitution of the Malankara Church. In turn the Catholicos cum 10 Malankara Metropolitan accepted the Patriarch of Antioch subject to the then constitution of the Malankara church. The native Metropolitans of the Patriarch party was also taken into the fold of the Malankara hierarchy under the Catholicos and dioceses were distributed by the Catholicos as under the constitution. The plaintiffs would allege that peace and unity were thus restored in the church. According to them, thereafter there cannot be any ecclesiastical institution or office otherwise than under the authority or control of the Catholicos of the East cum Malankara Metropolitan, the supreme head of the Malankara Church. They go on to recite the story of how the Patriarch was 20 invited and happened to be present at the installation of the Catholicos in 1964, how the Holy Episcopal Synod of Malankara on his request readjusted the territorial jurisdiction of the two primates, the Patriarch and the Catholicos of the East, whereby certain regions of Persian Gulf area were allowed to be added on to the jurisdiction of the Patriarch subject to certain conditions. Before leaving India, the Patriarch issued a Kalpana No. 163 of 1964 dated 14-6-1964 whereby certain churches known till then as Simhasana Churches and claimed to be directly under the Patriarch were also recognised and affirmed as parish churches of the Malankara Church under the Catholicos-cum- 30 Malankara Metropolitan to be administered by the respective Diocesan Metropolitans. The plaintiff church is one such Simhasana Church. The plaintiffs' case is that by conduct these churches including the plaintiff church have been brought under the administration of the respective diocesan Metropolitans. The plaintiff church comes under the first plaintiff.

104. The first plaintiff is the authority to appoint priests to the said church and he was making up such appointments. The administration of the plaintiff church has been carried on according to the provisions of the constitution. 40

105. First plaintiff has appointed the second plaintiff as Vicar of the Church by order dated 17-1-1975. The previous Vicar had vacated the office accepting the order. The plaintiffs' complaint is that the defendants in management of the affairs of the plaintiff church are refusing to submit to the authority of the plaintiffs. The dues payable to the first plaintiff as diocesan Metropolitan is not being paid. Defendants are resisting the second plaintiff from functioning as Vicar of the church. The Vicar is a joint steward, entitled along with the lay steward to the management of the affairs of the plaintiff parish as provided in the constitution. The suit is brought forward on the alleged ground that defendants 50

along with few others succeeded in obstructing the conduct of religious worship by the second plaintiff in the plaint church on 19-1-1975 and 26-1-1975. The defendants are impleaded in their individual capacity and as parishioners representing the other parishioners as well. Permission has also been sought for to sue the defendants as representing the numerous other parishioners having the same interest in the suit under Order I Rule 8 C. P. C.

Defendants' Contentions:-

106. A joint written statement has been filed by defendants 1 to 6. They contend that as no sanction of the Advocate General has been obtained the suit is barred under section 92 C. P. C. The Malankara Jacobite Syrian Church is an Arch-diocese of the Universal Syrian Orthodox Church, which traces its origin to Jesus Christ. Christ authorised his chief disciple St. Peter to establish his visible church and the 'Keys' the symbol of authority were given to him. St. Peter established his Church at Antioch and the Patriarchs of Antioch are his successors. The plaint church was founded by its members for the worship of God according to the faith of the Syrian Orthodox Church under the Patriarch. Originally the founders were parishioners of Mar Yuhanon Valia Pally, Pampady. They seceded from that Church in 1951 establishing the plaint religious institution first as a chapel and later as a church with cemetery with the object of conducting religious services in it by religious dignitaries who possess the spiritual grace from the Patriarch or his delegate. It is the belief of the founders of the church that apostolic succession and spiritual grace from the Patriarch, the successor to St. Peter is indispensable for the efficacy of the sacraments and for the transmission of orders. Loyalty to the Patriarch and obedience to his spiritual authority are treated as fundamental faith of the church.

107. The defendants would also contend that the plaint church is governed under the provisions of a constitution framed by its parishioners and approved by the Patriarch. According to clause 4 of the said constitution, only those religious dignitaries who obtained the apostolic succession from the Patriarch are entitled to perform the religious services in the plaint church. Persons who defy the Patriarch and deviate from the fundamental faith of the church have no right to enter or perform religious services in the plaint church. The plaint church is alleged to be an autonomous body.

108. The defendants then try to explain the conflict between the Patriarch group and the Catholicos group and take up the same contentions raised by the Patriarch group in the other cases that are being tried along with this suit. In regard to the settlement of the controversy after the Supreme Court case what the defendants contend is that for the benefit of the Malankara people and for creating peace in the community on accepting the supremacy of Patriarch, the Patriarch of Antioch accepted the then Catholicos by giving his blessings to be a Catholicos under him. But the said acceptance had not the expected consequence. The difference between the two sections, on religious questions especially regarding the correct version of the Canon were never settled. There was an attempt to have unity in the machinery of administration accepting the Patriarch as the Head of the Malankara church, which attempt failed.

The plaint church continued to be under the administration of the delegate of the Patriarch even after 1958. The defendants deny the plaint statement that there cannot be any ecclesiastical institution or office otherwise than under the authority and control of the Catholicos-cum-Malankara Metropolitan. It is the fundamental right guaranteed under the constitution of India for a section of any religion to establish, maintain and manage any religious institution of its choice. The defendants point out that though the Patriarch desired to delegate certain powers of administration on Simhasana Churches to the Catholicos by the Kalpana of 14-6-1964, the Catholicos wanted the transfer of ownership of those institutions in his name. But as such a transfer would have been inconsistent with the objects of the foundation of those churches, the Patriarch withdrew whatever powers he desired to delegate to the Catholicos. Only Vicars nominated by the parishioners had functioned in the plaint church. 10

109. The defendants would further contend that the function of the first plaintiff was only to supervise the spiritual matters of the church. Otherwise, his functions were very formal. He has no power of removal of a Vicar which power vests in the general body of the Church. The second plaintiff has never been accepted by the parishioners and the present Vicar is Rev. Fr. M. T. Thomas, who was nominated by the Pothuyogam and formally appointed by the Metropolitan Jacob Mar Julius who is in charge of the Simhasana churches. The first plaintiff ceased to be the episcopa of the plaint church from 1973 onwards. The defendants pray for the dismissal of the suit with costs. 20

110. The following issues were framed for trial:-

- "1. Is the suit not maintainable being one concerning purely religious matters?
2. Is the suit bad for want of sanction under section 92 of the Civil Procedure Code?
3. Was the plaint church established as contended by the defendants to be always under the supervision and authority of the Patriarch of Antioch? 30
4. Whether the plaint parish church was established as a constituent parish of the Malankara Orthodox Syrian Church also known as the Malankara Jacobite Syrian Church?
5. Whether the Patriarch of Antioch can exercise any powers over the Malankara Church as contended by the defendants.
6. Whether the relationship of the Patriarch of Antioch to the Malankara Church is only the one envisaged in the constitution of the Malankara Orthodox Syrian Church. 40
7. Whether the constitution of the Malankara Orthodox Syrian Church is valid and binding on the entire Malankara Church, its dioceses and parishes as contended by the plaintiffs?
8. Whether the constitution of the Malankara Orthodox Syrian Church is binding on the plaint parish church and whether it was being administered as under the provisions of the said constitution.
9. Has the plaint parish church a separate constitution of 50

its own? If so whether it is valid and enforceable?

10. Whether the Catholicos of the East and Malankara Metropolitan and the Metropolitans under him including the first plaintiff have become apostates as contended by the defendants.
11. Has the Patriarch of Antioch any jurisdiction to convene a synod as alleged in the Written Statement and whether the decision of the alleged 'Universal Episcopal Synod' valid and binding on the Malankara Church and the plaintiffs, 10
12. Is the order of ex-communication issued by the patriarch against Catholicos of the East and the first plaintiff valid or is it void and unenforceable?
13. Whether the administration of the Simhasana Churches come under the Catholicos of the East and Malankara Metropolitan as contended by the plaintiffs.
14. Whether the first plaintiff is entitled to exercise all powers of administration over the plaintiff parish as its diocesan Metropolitan.
15. Are the parishioners of the plaintiff parish church competent to deny the Powers of the Catholicos of the East and Malankara Metropolitan and the diocesan Metropolitan, the first plaintiff? 20
16. Whether Vicars and priests were being appointed to the plaintiff parish by the first plaintiff as alleged in the plaint.
17. Are the parishioners entitled to nominate a priest or Vicar of their own and have they been doing so?
18. Is the first plaintiff the lawful diocesan Metropolitan entitled to the administration of the plaintiff parish church. Is he entitled to get the dues claimed by him from the plaintiff parish church? 30
19. Whether the amount claimed in the plaint is due to the first plaintiff and is he entitled to realise the same from the plaintiff parish as claimed in the plaint.
20. Is the second plaintiff the lawfully appointed vicar of the plaintiff church entitled to function as such?
21. Whether the defendants can manage the affairs of the plaintiff parish church without the junction of the Vicar the first plaintiff.
22. Whether the declarations prayed for are allowable. 40
23. Whether the plaintiffs are entitled to the injunctions prayed for.
24. To what relief is plaintiffs entitled?
25. What is the order as to costs.?"

O. S. NO. 6 of 1979:-

111. In this suit the Catholicos cum Malankara Metropolitan and the Metropolitan of the Malabar Diocese pray for a decree for declaring that the defendants who are Metropolitans on the Patriarchal section are not entitled to exercise any function as priest episcopa or Metropolitan in matters spiritual temporal and ecclesiastical 50

in any parish church or institutions of the Malabar diocese of the Malankara church and for granting a permanent injunction restraining the defendants from entering, officiating in religious worship and interfering with the administration of any parish church or other institution of the Malabar diocese of the Malankara church and more particularly of the churches, institutions, buildings rooms and premises of the properties scheduled to the plaint.

Plaintiffs' plea:-

112. I am not dealing with the averments in the pleadings in detail because they are on a line with the averments in the connected cases. What the plaintiffs contend is none of the defendants have any right to exercise any functions religious or temporal in any churches or institutions of the Malankara church or the Malankara diocese. The second plaintiff as Metropolitan of the Malabar diocese, is subject to the authority of the first plaintiff, the only authority competent to appoint priests for parish churches, regulate worship therein, control the spiritual temporal and ecclesiastical administration of the Malabar diocese its parish churches and other institutions. According to the plaintiffs, in order to entitle anyone to function as Metropolitan or to exercise episcopal authority in the Malankara church, its parish churches or other institutions it is essential that he should be (a) elected for ordination as Metropolitan or episcopa by the entire Malankara Church as represented by the Malankara Association consisting of representatives from all the parish churches of the Malankara church; (b) approved for ordination as Metropolitan or episcopa by the Malankara Episcopal Synod; (c) that he should execute salmoosa or agreement declaring his faith, and allegiance to the Catholicos and ordaining Synod, and the canons and rules accepted by the church; (d) that he should be ordained by the Catholicos as Metropolitan or episcopa and (e) appointed to office by the Catholicos in consultation with the Managing Committee and as decided upon by the episcopal synod of the Malankara Church. They would contend that the defendants have not been elected by the Malankara Church as represented by the Malankara Association for ordination as Metropolitans or episcopas. They have also not been approved by the Episcopal Synod for ordination as Metropolitans or episcopas. The Catholicos has not ordained them. Neither have they executed salmoosas or agreements declaring their faith or undertaking to obey the Catholicos and Synod or canons and rules accepted by the church. They have also not been appointed to office as required. As such the defendants have no right to exercise any episcopal functions spiritual, temporal or ecclesiastical in the Malankara church, or the Malabar Diocese or any of the parish churches or other institutions there of. According to the plaintiffs, the defendants have recently joined a group of persons working to create indiscipline in the Malankara Church. The first plaintiff on knowing that the second and third defendants have joined the group intending to create indiscipline in the church and are going to get themselves ordained as Metropolitans in defiance of the lawful authorities and in violation of the rules of the Malankara church issued notices on 31-1-1974 intimating them that it is

wrongful for them to get themselves ordained Metropolitans in violation of the discipline and rules of the Malankara church. The defendants replied through their lawyer raising untenable contentions. Notwithstanding the intimation and warning given by the first plaintiff the defendants are known to have, in defiance got themselves ordained Metropolitans by the Patriarch of Antioch. The episcopal Synod, the supreme ecclesiastical governing body of the Malankara Church has on 11-9-1973 considered the situation arising out of the first defendant's consecration and conduct and has decided that he will not be permitted to enter, officiate, or interfere with the religious service and administration of the Malankara church. The first plaintiff has under a Kalpana of 15-10-1973 issued directions to all parish churches and members not to receive or associate him in matters of religious service and administration of the Malankara church its dioceses, parish churches or other institutions. The first defendant has been notified by the first plaintiff under letter dated 21-9-1973 enclosing the decision of the Synod dated 11-9-1973 requiring him not to enter or officiate in religious worship or administration of the Malankara Church, its parish churches or other institutions.

Written statement filed by the first defendant:-

113. It is pointed out that he is the Missionary Metropolitan and a life member of the Evangelistic Association of the East, hereinafter called the Association. He is also the Vice President of the said Association and a member of its Educational Council. The Association was established in 1924 with its head office at Perumbavoor. Its supreme patron is the Patriarch of Antioch and all the East. It is a religious and philanthropic Society founded with the main object of propagating the Christian gospel among the people. The constitution of the Association was first registered in 1941 at the Sub Registrar's office at Perumbavoor and later on 19-4-1949 it was registered as No. 59 at Kozhikode under the Indian Societies Registration Act of 1860. The constitution was amended from time to time and such amendments were also duly registered. The plaintiffs are well aware of the status, work and activities of the Association, which is a legal entity by itself. According to the first defendant, the Association is a necessary party to the suit and without impleading it the suit is not maintainable against the first defendant. Then the first defendant goes on with the question of the plaintiffs' right to file a suit. Various contentions raised on behalf of the Patriarchal party in the other suits are put forward in resisting the plaintiff contentions. He points out that the Evangelistic Association elected him and the Patriarch's call for consecration as Metropolitan was accepted by him. The first defendant before going to Syria for consecration from the Patriarch, met the Ankamali Metropolitan and told him of the same. The Metropolitan blessed him and gave him best wishes. The first plaintiff was duly informed about the decision to accept the consecration from the Patriarch, but he never raised any objection. After consecration as Metropolitan, the first defendant returned to Malankara and he was given a reception by the members of the church.

114. He would contend that the individual churches in the

Malankara Sabha are in the possession and management of their parishioners through their elected trustees. Religious services in them are also conducted by the priests or Metropolitans, only if they are allowed to perform such services by the trustees and parishioners. The plaintiffs have no right to enter and perform any religious service in any parish church in Malankara unless they are permitted to do so by the parishioners. The plaintiffs have also no right to enter any of the churches belonging to the Association without their permission. In any case the plaintiffs who belong to the Catholicos party in the Malankara Church have absolutely no right to enter and perform any religious function in the churches within the fold of the Patriarch's party. Most of the churches in the Malabar diocese are within the Patriarch's party and the plaintiffs have no right to pray for any relief in respect of those churches, or in respect of the churches belonging to the Association. 10

115. The defendant further alleges that neither the first plaintiff nor the second plaintiff has any control over the religious services in the parish churches in the Malankara diocese, particularly the churches within the Patriarch's party. They have no right to appoint Vicars or priests in the parish churches without the consent of the parishioners. All temporal affairs in those churches are exclusively managed by the parishioners and the plaintiffs have no right to interfere in them. It is perfectly within the powers of the parishioners or the trustees to permit the first defendant to enter and conduct religious services in their churches. The plaintiffs have no possession, or actual spiritual, ecclesiastical or temporal administration over the parish churches in Malabar. According to this defendant, the parishioners of the respective churches or their trustees ought to have been made parties to the suit. He also contends that the plaintiffs have filed the suit with mala fide intentions. It is only an attempt to throw away the supreme spiritual powers of the Patriarch and to appropriate those powers by the first plaintiff who himself obtained his consecration and spiritual Grace from the Patriarch. He also prays for dismissal of the suit with costs. 20 30

116. The following issues have been framed for trial:-

- "1. Whether the suit is bad for non-joinder of necessary parties?
2. Whether the plaintiffs have got any right, title and possession over plaint schedule item No. 8 Church. Is plaint item 8 a Parish Church of the Malankara Orthodox Syrian Church? 40
3. Whether the plaintiffs have executed any temporal or ecclesiastical powers over the church at any time?
4. Has the Patriarch of Antioch any temporal or spiritual powers over the Malankara Orthodox Syrian Church?
5. Was the Catholicate of the East at Malankara re-established validly?
- (a) Was it re-established as an independent perpetual institution or only as a depute of the Patriarch with concurrent powers for consecration as contended by 50

the defendants?

- (b) Was there a territorial delimitation between the Patriarch of Antioch and Catholicos of the East in 1964?
- (c) Is the Evangelistic Association free from the control of the lawful ecclesiastical authorities of the Malankara Orthodox Syrian Church ?
- (d) Can there be a religious activity or movement of the Malankara Orthodox Syrian Church pertaining to the same without the sanction and approval of the lawful ecclesiastical authorities of the Malankara Orthodox Syrian Church? 10
- (e) Is there a church by name Universal Syrian Orthodox Church of which Malankara Orthodox Syrian Church is a part?
- 6. Whether the 1st plaintiff has any authority or overlordship over the Metropolitans or their dioceses?
- 7. Are the defendants entitled to claim themselves to be Metropolitans of the Malankara Orthodox Syrian Church? 20
- 8. Are parish churches autonomous in their administration?
- 9. Is Malankara Church a federation of independent individual Parish Churches?
- 10. Whether the suit is barred under Order 2 Rule 2 C. P. C. by reason of O. S. 274/73 and O. S. 97/74 of the Subordinate Judge's Court, Kottayam.
- 11. Has the constitution of the Malankara Church been validly passed for the entire church or only for a section of the Community? 30
 - (a) Does the constitution bind the entire Community?
- 12. What is the true and correct canon of the Malankara Church?
- 13. Whether the plaintiffs are estopped from contending that it is not Ext. 18?
- 14. Whether the plaintiffs are entitled to any and what reliefs?
- 15. What is the order as to costs?"

O. S. No. 7 of 1979:-

117. The plaintiffs in the suit are the Catholicos cum Malankara Metropolitan and six other Metropolitans, who, for convenience and reference, may be called the Metropolitans on the Catholicos side. The suit is filed against one of the Metropolitans on the Patriarch side. The defendant had been consecrated as a Metropolitan by Paulose Mar Phelexinos, whom the Patriarch had consecrated and installed as a Catholicos. The suit is based on the conflict between the two factions of Malankara Church and I am not detailing here the points at conflict between the two groups which have been referred to in the pleadings in the connected cases. 40

Plaintiff's Case:-

118. The plaintiffs pray for a declaration that the defendant is 50

not a Metropolitan and is not entitled to enter into any of the parish churches or any other institutions of the Malankara Church or function in any manner infringing the rights of the plaintiffs and for preventing him by an order of injunction from entering into any of the parish churches or any other institutions of the Malankara Church or from interfering in any other manner in the administration of the Malankara Church or its dioceses, parishes or any of its other institutions and also from holding out as a Metropolitan or from performing any sacraments or services in any of the parish churches or other institutions of the Malankara Church and from ordaining priests and deacons for the Malankara Church, its dioceses, parishes etc. and for costs of the suit. 10

119. After detailing the controversy between the two groups from the stand point of the plaintiffs, it is alleged in the plaint that the Patriarch of Antioch, after the decision of the Malankara Episcopal Synod ex-communicating Paulose Mar Philixinos summoned him to Damascus and it was claimed by himself and his supporters that he has been consecrated as the Catholicos of the East in the name of Baselius Paulose II in rivalry to the established Catholicate in Malankara. The further allegation is that it is pretended by the Patriarch and his partisans in the Malankara Church that the Catholicos of the East the predecessors of the first plaintiff and the plaintiffs have become apostates as decided by the Patriarch pursuant to a declaration by a Synod styled the Universal Synod of the Universal Syrian Orthodox Church held in June 1975. The Patriarch of Antioch, according to the plaintiffs, has no jurisdiction to initiate or take any disciplinary action against the Catholicos of the East or any Metropolitan or member of the Malankara Church. The declaration and apostacy claimed by the Patriarch of Antioch and his supporters is void ab initio. There is no church called the Universal Orthodox Syrian Church and there cannot be any synod of that church. All the actions of the Patriarch of Antioch are without jurisdiction and void. Paulose Mar Philixenos who had been stripped of all his episcopal authority and excluded from the membership of the church by the decision of the Holy Episcopal Synod of the Malankara Church cannot function or claim any authority as Catholicos of the East or even as a Metropolitan. He is not even a member of the Church. His consecration by the Patriarch as Catholicos of the East is illegal and void. 20 30

120. Posing as Catholicos of the East, the plaintiffs would state, Paulose Mar Philixenos has consecrated the defendant a renegade priest of the Malankara Church as a Metropolitan on 26-12-1975. His appointment is as assistant Metropolitan for the diocese of Malabar and outside Kerala. According to the plaintiffs, the said consecration is illegal and void. The defendant cannot claim the status of a Metropolitan. He cannot function or hold out as a Metropolitan. Alleging that the defendant on the basis of the illegal consecration is attempting to interfere in the administration of the Malankara Church, its dioceses and parishes, the present suit has been filed for the reliefs aforementioned. 40

Defendant's contentions:-

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121. According to the defendant, the plaintiffs have all been declared apostates by competent authorities. Neither the people nor the Malankara Church has accepted the first plaintiff as Catholicos of the East. His pretension to be the Catholicos of the East is uncanonical.

122. The Patriarch, according to the defendant has complete jurisdiction to take disciplinary action against the Catholicos of the East, and the Metropolitans and members of the Malankara Church which is a part of the Syrian Orthodox Church. He has also the power to convene and preside over the Universal Episcopal Synod of which the Metropolitans in the whole church are members. The allegation that there is no such synod or such church called Universal Syrian Orthodox Church is denied. The words Universal Syrian Orthodox Church denote and include all the dioceses of the Syrian Orthodox Church in the whole world, and Universal Episcopal Synod means a meeting of all the Metropolitans of the Syrian Orthodox Church in the world which includes the Metropolitans of the Malankara Church also. The Patriarch has the further power to declare, publish and implement the decisions of the Universal Episcopal Synod. 10

123. According to the defendant, the Universal Episcopal Synod of the Syrian Orthodox Church found Bassalios Ougen I guilty of deviations from the fundamental faith of the church. At the request of the faithful people and Metropolitans of the Malankara Church and as is the duty of the Patriarch to fill up the vacancy and it is his power to consecrate a Catholicos, the Patriarch after declaring Bassalios Ougen I as an apostate of the Jacobite Syrian Church consecrated Metropolitan Mar Philaxinos as Catholicos of the East on 7-9-1975, with the name Bassalios Paulose II. Earlier the Patriarch had validly consecrated a few priests as Metropolitans of the Malankara Church. The consecrations were necessitated by the deviations from the faith of the Episcopal Synod in Malankara. The defendant further states that his consecration on 26-12-1975 as a Metropolitan of the church by the Catholicos of the East, Bassalios Paulose II is legal and valid and has been accepted by the faithful and true members of the Malankara Church. The Catholicos is a dignitary subordinate to the Patriarch and therefore the latter can exercise his spiritual powers with the Catholicate. The defendant would contend that the Patriarch has the power to consecrate Metropolitans anywhere in the world and he is bound to exercise that power where there is deviation in faith or when there is a request by the people for the exercise of that power. 30 40

124. The defendant would further plead that he is exercising episcopal functions in the Malabar diocese and the plaintiffs have no right over the parish churches or other institutions in that diocese. His entry into the churches has not created any chaos or indiscipline as alleged by the plaintiffs. The defendant in the circumstances has prayed for the dismissal of the suit with costs.

125. The following issues have been framed for trial:-

- “1. Whether all the plaintiffs have deviated from the fundamental faith of the church and have become members of a new church.
2. Whether the plaintiffs have voluntarily severed communion 50

- with the Malankara Jacobite Syrian Church for the reasons stated in paragraph 4 of the written statement ?
3. Whether the Malankara Church is an Arch-diocese or a part of the Syrian Orthodox Church or is it an autocephalous church.
 4. Whether the Universal Episcopal Synod of the Syrian Orthodox Church, has the authority to decide upon matters of faith. Are the plaintiffs estopped from questioning the jurisdiction of the said synod for the reasons stated in para 6 of the written statement ?
 5. Whether the said Synod has decided that the faith and doctrines followed by the plaintiffs 1 to 7 are deviations from the fundamental faith of the church. 10
 6. Whether the Patriarch has declared that plaintiffs 1 to 7 are apostates to the true faith of the Church, and whether the declarations are valid and binding on the plaintiffs ?
 7. What is the effect of the decision of the Universal Episcopal Synod and the declarations of the Patriarch on the plaintiffs ? Can they exercise any function as religious dignitaries of the Malankara Church ?
 8. Whether Bassalios Paulose II is the valid Catholicos of the East and whether the consecration of the defendant by him as a Metropolitan valid ? Can the plaintiffs question his consecration ? 20
 9. Whether the constitution relied on by the plaintiffs is valid and binding on the Malankara Church its dioceses and churches and on the Patriarch ?
 10. Whether the defiance or denial of the spiritual powers of the Patriarch entails loss of membership of the church and whether the plaintiffs have thus lost membership of the Malankara church ? 30
 11. Whether the differences between the Patriarch's section and the Catholicos section in the Malankara church were settled and whether the two sections united themselves in 1968 as alleged in the plaint.
 12. What is the effect of the Kalpana No. 163/64 dated 14-6-1964 issued by the Patriarch ? Was it accepted by the Catholicos ? Was the power, if any, delegated under it, withdrawn by the Patriarch. Can the 1st plaintiff claim any right under the said Kalpana ?
 13. Whether the defendant has any connection with the Yacobaya Syrian Christian Association. 40
 14. Whether the decision of 22-6-1975 mentioned in para 17 of the plaint and the proceedings leading upto that decisions valid and competent.
 15. Whether the claim of the first plaintiff as the Catholicos of the East valid and tenable.
 16. Is the suit maintainable.
 17. To what relief is the plaintiff entitled ?
 18. What is the order as to costs ?"

126. This is another suit arising out of the factional fight inside the Malankara Church between what may broadly be termed as the Catholicos Party and the Patriarchal Party. The plaintiffs in the suit are Moran Mar Baselius Ougen I (since deceased), Catholicos of the East cum Malankara Metropolitan and Mathews Mar Athanasios, who at the time of the institution of the suit was Metropolitan of Diocese outside Kerala and who had been appointed as assistant to first plaintiff and elected successor of the Catholicos of the East-cum- Malankara Metropolitan (who since the decease of the first plaintiff has succeeded to that post). The prayer in the plaint is to declare that the defendant who was a priest of the Malankara Church and a member of the Parish Church of Mepral, Tiruvalla who subsequent to the arising of the recent controversies in the church has been ordained as a Bishop by the Patriarch of Antioch allegedly without paying any heed to the provisions of the constitution of the Church, is not entitled to function as an episcopa or Metropolitan or interfere in the administration of the Malankara Church or even as a priest without submitting to the authority of the first plaintiff and the constitution of the church and also to prohibit by permanent injunction the defendant from entering or exercising any episcopal or priestly functions or solemnising any of the sacraments in any of the churches of Malankara especially those scheduled in the plaint. 10 20

Plaintiffs' contentions:-

127. Here also I am not detailing the various allegations in the plaint which resolve round the controversies in the church detailed with all the facts in O. S. No. 4 of 1979. The particular basis of this suit is the rule in the constitution alleged to be governing the Malankara Church and established by precedents that if any person is to be consecrated a Bishop or Metropolitan he should have been elected to such office by the Malankara Association on behalf of the community and such election should have been approved by the episcopal Synod. Further the candidate has to be consecrated by the Catholicos with the co-operation of at least two Bishops of the Synod. Finally, the person being consecrated is bound to submit a statement regarding faith and submission to Catholicos and the Catholicos in turn to give a certificate of consecration to the prelate so consecrated. 30

128. According to the plaintiffs, a dissident section of the community organising themselves under the name "Malankara Jacobite Syrian Christian Association" is working against the well established authority of administration of the catholicos of the East cum Malankara Metropolitan attempting to create foreign domination and divided loyalty. Imparting a wrong impression in the Patriarch, they have succeeded in getting the Patriarch consecrate three Bishops in violation of the provisions of the constitution of the Malankara Church. The defendant who belongs to this group recently went to Damascus and has taken ordination as Bishop from the Patriarch. The suit is on the apprehension that the defendant without any legal right may come and unauthorisedly occupy any of the plaint schedule churches including the buildings attached to the churches. 40

Defendant's Plea:-

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129. Here also I am not adverting to the various pleas taken by the defendant which is in line with the pleas taken in by the Patriarch side in the other suits. In short his contentions are that the Patriarch of Antioch as the supreme spiritual head of the Malankara Church has full power to consecrate Metropolitans for that Church. This power in him was not only not questioned, but clearly admitted by all parties including the predecessors of the plaintiffs in O. S. No.94 of 1088 of the District Court of Trivandrum and in O. S. No.111 of 1113 of the District Court of Kottayam. They are now estopped in pleading otherwise. The constitution relied on by the plaintiffs is void, ultra vires and against court decisions. It will not bind the Patriarch who has repudiated it. A person who is a native of Malabar and who is properly consecrated by either the Patriarch or Catholicos can conduct religious services and sacraments in the Malankara Church. The further qualification of election or acceptance by the people is needed only to entitle him to be spiritual and ecclesiastical administrator. This election and acceptance has to be by the particular people over whom the Metropolitan wants to administer. The election or acceptance by the Malankara Association is required only for the Malankara Metropolitan and not for others. The episcopal Synod had no power in this matter. The oath of loyalty to be taken by the Metropolitan at the time of consecration is to the Patriarch of Antioch who is the Supreme Head of the Church and not of the Catholicos. A certificate of consecration by the Catholicos is unnecessary as it can be issued only by the dignitary who performs the function. According to the defendant, he is a fully qualified Metropolitan consecrated by the most competent authority and as such he is entitled to conduct religious services and sacraments in any church. Obstructing him in these functions is tantamount to defying the supreme spiritual head of the church. He was a Vicar of St. John's Church at Mepral and on 21-7-1974; he has been consecrated as a Metropolitan for Niranam, Thumpamon and Quilon Dioceses by the Patriarch, the Supreme Head of the Church. In the light of these contentions, he prays for the dismissal of the suit with costs.

130. The following issues have been framed for trial:-

- "1. Is the suit maintainable?
2. Is the suit bad for want of notice under Order I Rule 8 of the Code of Civil Procedure?
3. Whether the 1st plaintiff is entitled to the spiritual, temporal and ecclesiastical Government of the Malankara Church?
4. Whether the Patriarch of Antioch has got any right over the spiritual, temporal and ecclesiastical affairs of the Malankara Churches?
5. Is there any power vested with the Patriarch of Antioch over the Malankara Churches?
6. Whether the Constitution relied upon by the plaintiffs is binding on the Malankara Churches? Is it valid or void? Whether it is binding on the whole churches in Malankara?
7. Whether there are two parties in the Malankara Churches namely "Patriarch party" and "Metran Party" as contended by the defendant?

8. Whether the Malankara Metropolitan has control over the other Metropolitans?
9. Whether the Malankara Metropolitan is only the Metropolitan trustee of the common trust properties and the president of the Malankara Association?
10. Whether the 2nd plaintiff is competent to sue? Whether the alleged election to the office of Malankara Metropolitan and Catholicose is legal?
11. Whether the revival, transfer and re-establishment of the Catholice are legal and accepted by the majority of the members of the community? 10
12. Whether the Patriarch has withdrawn his administrative powers over the Simhasana Churches?
13. Is the Patriarch of Antioch competent to consecrate Metropolitans for the Malankara Churches?
14. Whether the defendant is validly cosecrated as Metropolitan for the Malankara churches?
15. Is the defendant competent to act as Vicar of St. John's Church, Mepral? Has he forfeited his Vicarship for any of the reasons stated in the plaint? 20
16. Whether the declaration prayed for is allowable?
17. Whether the injunction prayed for is allowable?
18. Reliefs and Costs?
Addl. Issues raised on 27-9-1975
19. Have not the plaintiffs become schismatics and aliens to the Malankara Jacobite Syrian Orthodox Church?"

These 8 suits out of the long number of the actions that came to the courts were considered significant suits and hence were transferred to the Addl. District Court, Ernakulam specially constituted for the control and disposal of these 'socially sensitive cases'. These were tried together. The main questions that are raised covered by various issues in these cases which as could be noticed, considerably over lap, arise rather pointedly and more fully in O. S. No. 4 of 1979 which was taken as the main case and evidence recorded therein. Plaintiffs 1 to 9 were examined on the plaintiffs' side and Exts. A1 to A. 232 marked on that side. D. Ws. 1 to 14 were examined on the defence side and Exts. B1 to B 361 marked on that side. Ext. X1 is a photostat copy of the Malayala Manorama Daily of 4-5-1951. It is after the evidence was recorded that the case was made over to this court as per the order of the Supreme Court in Civil Appeal No. 2222 of 1979. The findings on the points in controversy in O. S. No. 4 of 1979 would cover the other suits also. 30 40

A Short History of the Malankara Church and of the internecine legal warfare it had to wade through:-

131. While considering the cotroversies at issue between the parties, it is necessary to understand the history of the Malankara Church, the various vicissitudes it had to undergo and the unfortunate litigations within it which commenced with what is popularly known as the Seminary Case in 1054 M. E. which corresponds to 1878-1879.

132. My task in the matter of the history of the church is 50

rendered easy as both the parties to the suits should have no objection—in fact they cannot go behind—to the findings with regard to that in the majority judgment of the Royal Court of Final Appeal, Travancore in the case of **Mar Thomas Athanasius and Two Others V. Mar Dionasius** which is an appeal by the defendants in O. S. No. 439 of 1054 in the Zilla Court of Alleppey—the Seminary Case. I might make it clear that it is because both the parties to the present proceedings claim under the original plaintiff in that suit, that I am taking the history of the church rendered in the majority judgment for the purpose of these cases. The very beginning of Christianity in this region is rather shrowded in mystery. There is a long standing tradition that St. Thomas, one of the 12 Apostles was the founder of the Church here. The historians, are by no means, in agreement on the question of the reliability of this tradition. Some of the western historians have passed judgment that the basis of the tradition is very flimsy, and in fact, some of them like C. B. Firth in *An Introduction to Indian Church History*, the French historians Basnage (Protestant) and Tillemont (Roman Catholic) La Croze (Protestant) and the English (Protestant) writers, James Hough, Sir John Kaye and Dr. G. Milne Rae and the German Fr. J. Dahlmann discard the story as not worthy of serious attention. But, not all Western historians have made such an outright denial. Dr. J. B. Keay in his *History of the Syrian Church in India* writes:-

“The visit of St. Thomas to South India cannot be positively proved. The local tradition with regard to his visit is very strong and there is no other rival local tradition as to the origin of the Church in South India. The tradition has been held also outside India both in the West and in the East from very early times. There is nothing improbable in the story that the apostle should have travelled as far as India to preach the gospel. If the story cannot be proved, it is certainly by no means unlikely.”

Rev. G. B. Howard in an earlier work, *The Christians of St. Thomas and their Liturgies*, goes further and says:-

“I fear it must be admitted that we are not yet in possession of sufficient evidence to be entitled to claim the account (i.e. St. Thomas' visit to South India) as a matter of well-ascertained historic truth.....but it should be considered that written documents, although the strongest, are by no means the only authentic evidence of general fact; and where the constant traditions of a country are confirmed by the support of collateral circumstances, they must atleast command attention. Upon the whole, it may not unreasonably be held that in this case, at least the balance of probability is strongly in favour of the supposition that St. Thomas was the founder of the Church in Malabar.”

Some writers have gone still further and maintained that there is sufficient evidence for the acceptance of the tradition. They are Bishop A. E. Medlycott, the author of *India and the Apostle Thomas* and Dr. J. N. Farquhar, the author of *The Apostle Thomas in North*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fifteenth Question:-

“What are the forms of worship of the Syrians?”

Answer:-

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

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

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

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

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

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

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

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

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

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

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

had originally said, when entering on his duties.

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

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

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

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

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

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

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

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

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

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

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

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

Royal Court Judgment Ext. B74:-

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

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

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

**The Case before the Court of Appeal of the Rajah of Cochin —
S. A. No. 7 of 1076 — Ext. B110:-**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Full Bench concluded the judgment as follows:-

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

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

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

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

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

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

Mr. Justice Thaliath

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

Mr. Justice Parameswaran Pillai concluded as follows:-

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

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

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

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

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

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

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

160. The plaintiffs would contend that after the decision in 45 T. L. R. 116, in view of the importance and considering the fact that the Church had developed by long strides with an increase in its membership and in the number of its churches, the Managing Committee of the Association was authorised to draw up the draft of a Constitution, as the lack of a written and codified Bharanaghatana was felt keenly. However, immediately after the suit itself Mar Julius, the Patriarch's delegate issued an order calling upon Mar Geevarghese Dionysius to execute an udampadi and suspending him for having committed grave offences against the Holy Throne of Antioch. A suit was filed in the 10 Kottayam District Court as O. S. No. 2 of 1104 against Mar Geevarghese Dionysius and other persons including Mar Philexinos the then Catholicos. On the death of Mar Philexinos, Moran Mar Baselios, who was the succeeding Catholicos was impleaded. The suit was dismissed for default. The restoration application also was rejected. Then a C. M. A. was filed in the High Court as C. M. A. No. 74 of 1107, which was also dismissed.

161. Afterwards, it would appear that there were some peace talks between the members of the community at the instance of Lord Irwin, the then Viceroy of India and at his instance, Mar Elias III, the 20 then Patriarch visited India. He soon died here. He was succeeded by Mar Ephraim. The attempts at reconciliation did not bear fruit. In the meantime on February 1934 Mar Geevarghese died and a meeting of the Malankara Association was called on 26-12-1934. The plaintiffs would state that a draft of the Bharanaghatana was also published in the form of a pamphlet for the information of the Sabha members. Notices were then issued on 3-12-1934 calling for a meeting on 26-12-1934. They were also published in the two leading Malayalam news papers. The main purposes of the meeting were to elect a new Malankara Metropolitan and to pass the Bharanaghatana. The meeting was duly 30 held and unanimously it passed the Bharanaghatana (Ext. A9) and elected Mar Basselios as the Malankara Metropolitan and Catholicos. While so, on 6-1-1111 (1935) a rival meeting of the Malankara Association was held by the partisans of the Patriarch at which one Avirah Joseph Kathanar and Thukalan Paulo Avirah were elected as trustees and Mar Paulose Athanasius as Malankara Metropolitan. The election of Mar Paulose Athanasius was confirmed by the Patriarch by issuing an appointment order.

Samudayam Case:-

162. The Samudayam suit O. S. 111 of 1113 was filed in the 40 District Court, Kottayam on 21-7-1113 by the Patriarch appointed Metropolitan and the other trustees for a declaration that the first plaintiff there is the lawful Malankara Metropolitan and plaintiffs 2 and 3 therein the lawful priest and lay trustee; to recover possession of the trust properties from defendants with mesne profits and to direct defendants 1 to 3 to render accounts and also to restrain the first defendant there from doing any act as Catholicos or Malankara Metropolitan of the Jacobite Syrian Church. The allegations in the 50

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

About the establishment of the Catholicate he said:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to decide these charges and counter charges it is absolutely necessary to determine which is the correct book of canons, for the plaintiffs founded their charges on Ex. B. P. = Ex. 18 in O. S. No. 94 of 1088 and the defendants took their stand on Ex. 26 = Ex. A in O. S. No. 94 of 1088. Issue No. 13 was directed to determine that question. Issue No. 16 is concerned with the conclusions to be drawn from the findings on issues Nos. 14 and 15. The plaintiffs cannot be permitted to use issue No. 16 as a general issue not limited to the subject matter of issues 14 and 15, for that will be stretching it far beyond its legitimate purpose. 10

36. Re. (iib): This ground raises the question of the Patriarch's right to Ressissa. Ressissa is a voluntary and not a compulsory contribution made by the parishioners. Ex. F. O. which records the proceedings of the Mulanthuruthy Synod held on June 27, 1876, refers to a resolution providing, inter alia that the committee that is to say, the committee of the Malankara Association, will be responsible to collect and send the Ressissa due to His Holiness the Patriarch. This may suggest that some Ressissa was due to the Patriarch. But in paragraph 218 of Ex. DY which is the judgment pronounced by the Travancore Royal Court of Final Appeal on July 12, 1889, it is stated that no satisfactory evidence had been adduced before the court as to the payment of Ressissa to the Patriarch by the Committee in Malankara, that the evidence on record was very meagre and inconclusive and that it was open to doubt whether it was payable to the Metropolitans in this country or to the Patriarch in a foreign country. Ex. 86, which records the proceedings of the meeting of the Malankara Association held on September 7, 1911, refers to a resolution forbidding maintaining any connection with Patriarch Abdulla II and presumably in consequence of this resolution the payment of the Ressissa to the Patriarch was stopped. The interpleader suit (O. S. No. 94 of 1088) was filed in 1913. If non-payment of Ressissa could be made a ground of attack, it should have been taken in that suit and that not having been done, it cannot now be put forward according to the principles of constructive res judicata. Besides, the provisions of paragraph 115 of the impugned constitution (Ex. A. M.) require every Vicar in every parish Church to collect only two chukrums from every male member who has completed 21 years of age and to send it to the Catholicos. This does not forbid the payment of Ressissa to the Patriarch, if any be due to him and if any parishioner is inclined to pay anything to the Patriarch who is declared in c. (i) of this very constitution to be the supreme head of the Orthodox Syrian Church. In any case, according to the canons relied upon by each of the parties, namely Ex. B. P.=Ex. 18 of O. S. No. 94 of 1088 produced by the plaintiffs or Ex. 26=Ex. A in O. S. No. 94 of 1088 insisted upon by the defendants, the non-payment of Ressissa does not entail heresy. Even if the question involved in ground (iib) is not covered by the previous 50

decision in the interpleader suit (O. S. No. 94 of 1088) the question has, on the foregoing grounds to be decided against the plaintiff respondent.

37. Re. (iii): This is really not a charge but a statement of the conclusion which the plaintiff-respondant desires to be drawn from the other charges formulated above. Accordingly the point has not been pressed before us and nothing further need be said about it.

38. Re. (iv): An attempt is made by learned counsel for the respondents to make out that what was referred to in the interpleader suit (O. S. No. 94 of 1088) was the ordination of a Catholicos where as in the present suit reference is made to the establishment of a Catholicate and further that in any case the Catholicate of the East referred to in the plaint in the present suit is an institution quite different from the Catholicate which was the subject matter of discussion in the interpleader suit (O. S. No. 94 of 1088). We do not think there is any substance whatever in this contention. A reference to paragraphs 30 and 31 of the written statement clearly indicates that the institution of Catholicate, which is relied upon by the defendants, is no other than the Catholicate established in Malabar in 1088 by Patriarch Abdul Messiah. This position is accepted by the plaintiffs themselves in their grounds of appeal Nos. 13, 15, 17, 18, and 27 to the High Court of Travancore from the decision of the District Judge of Kottayam in this case. Issues Nos. 14 and 15 as well as the judgment of the District Judge in this case also indicate that the subject matter of this part of the controversy centred round the Catholicate which had been established by Abdul Messiah in the year 1088. Before the argument advanced before us there never was a case that the impugned constitution (Ex A.M.) had established a Catholicate of the East. The purported distinction sought to be drawn between the ordination of Catholicos and the establishment of a Catholicate and a Catholicate established by Abdul Messiah in 1088 and the Catholicate of the East created by the impugned constitution (Ex. A. M.) and which is sought to be founded upon as a new cause of action in the present suit, appears to us to be a purely fanciful afterthought and is totally untenable.

39. For reasons stated above we have come to the conclusion and we hold that the case with which the plaintiffs have come to court in the present suit is that the defendants had become heretics or aliens or had gone out of the Church by establishing a new Church because of the specific acts and conduct imputed to the defendants in the present suit and that the charges founded on those specific acts and conduct are concluded by the final judgment (Ex. 256) of the High Court of Travancore in the interpleader suit (O. S. No. 94 of 1088) which operates as res judicata. The charge founded on the fact of non-payment of Ressissa, if it is not concluded as constructive res judicata by the previous judgment must, on merits, and for reasons already stated, be

found against the plaintiff-respondent. We are definitely of the opinion that the charges now sought to be relied upon as a fresh cause of action are not covered by the pleadings or the issues on which the parties went to trial, that some of them are pure afterthoughts and should not now be permitted to be raised and that at any rate most of them could and should have been put forward in the earlier suit (O. S. No. 94 of 1088) and that not having been done, the same are barred by res judicata or principles analogous thereto. We accordingly hold, in agreement with the trial court, that it is no longer open 10 to the plaintiff-respondent to re-agitate the question that the defendant-appellant had ipso facto become heretic or alien or had gone out of the Church and has in consequence lost his status as a member of the Church or his office as a trustee.

40. In the view we have taken on the question of res judicata it is not necessary for us to discuss the further question whether this suit is founded on the same cause of action as that on which O. S. No. 2 of 1104 was founded or whether by allowing that suit to be eventually dismissed for default the plaintiffs can under the relevant provisions of the 20 Travancore Code of Civil Procedure corresponding to O. 9, R. 9 of our Code of Civil Procedure maintain the present suit."

(emphasis mine)

187. The Supreme Court then considers the question whether the appellant before it had been validly elected as trustee by the Malankara Association. For that purpose, it considered the question of the validity of the meeting in which he was elected, namely the meeting held on December 26, 1934 at the M. D. Seminary, Kottayam. There the learned Judges come to the conclusion that the High Court's decision with respect to the matter was based partly on a mis-reading of evidence and 30 partly on the non-advertence to important material evidence bearing on the question and to the probabilities of the case. In their opinion, the M. D. Seminary meeting was properly held with notice to all the churches and the appellant before them was validly appointed as the Malankara Metropolitan and as such became the ex-officio trustee of the church properties. In this view, as pointed out earlier, the judgment of the Kerala High Court was set aside, the decree of the trial court dismissing the suit was restored and the two suits stood dismissed with costs throughout. It may be pointed out here that along with this appeal, 40 a petition filed under Article 32 of the Constitution by 8 persons belonging to Catholicos party praying for a writ of certiorari or other appropriate order or direction of writ for quashing the judgment and decree passed by the High Court in the case had also been disposed of. The Petition was not pressed and was dismissed without costs.

After the Supreme Court Case:-

188. After the decision of the Supreme Court, attempts were made by well meaning persons on both sides to have peace in the church and to bury the hatchet. It would appear that Metropolitans on both sides and the leading members of the clergy and laity were unanimous to have peace accepting as they are bound to the decision rendered by the 50

Supreme Court. There was acceptance by the Patriarch of the Catholicos and Malankara Metropolitan. The Catholicos accepted the Patriarch subject to the constitution. It would appear that there was a re-allotment of all the dioceses in the Malankara Church and as the combined strength of Metropolitans slightly exceeded the number of dioceses, in some cases two Metropolitans were appointed for the same diocese, one being senior and the other assistant depending upon their seniority. Apparently some peace was seen to be established. However, there was no acceptance as such of the constitution framed by the Catholicos group by the Patriarch and according to the Patriarchal party, even assuming that he had accepted it there is no indication that the various churches in Malankara which were supporting him had accepted it for the administration of the churches. To bind the parish churches, according to the Patriarch group the Pothuyogam of each church should accept it. Finally it would appear that the main differences between the parties which were apparently seen to be settled had not been really settled at all. These existing differences have led to the filing of the various suits which have again come up before the civil courts for adjudication.

Finality or otherwise of the decision in 1946 T. L. R. 683:-

189. Before going into the points at issue between the parties in O. S. No. 4 of 1979, I think I should first dispose of the contention raised by Mr. Easwara Iyer, one of the counsel appearing for a party on the Patriarch group. He rather strongly pressed that really finality had attached to the decision of the Travancore High Court reported in 1946 T. L. R. 683 and the Supreme Court's decision in 1954 directing the rehearing of the appeal by the High Court and all subsequent proceedings ending with the decision of the Supreme Court in 1958 K. L. T. 721 were without jurisdiction.

190. With due respect to the counsel, I am afraid his plea is based on a misconception of law and I have no hesitation to overrule his contention. The Travancore Full Bench decision was rendered on 8-8-1946. The decision of the Travancore High Court was no doubt subject to no right of further appeal. The High Court could review its decision on a proper application to it within the time allowed by law subject to the limitations imposed by the Travancore Code of Civil Procedure in matters of review. An application for review was duly filed in that Court on 22-8-1946 well within the time limit for such application. The Travancore High Court also ordered notice in the matter on 4-12-1947. Travancore and Cochin integrated to form the United State of Travancore and Cochin by a Covenant entered into by the Rulers of the two States with the concurrence and guarantee of the Government of India in May 1949, the new State as per the Covenant coming into existence on 1st July, 1949. Under Article XI of the Covenant, until a constitution framed or adopted by the Legislature comes into operation, the Raja Pramukh created by Article IV of the Covenant, was given the power to make and promulgate ordinances for the peace and good Government of the new State which ordinance shall for the space of not more than six months from its promulgation, had the like force of law as an Act of Legislature, to be controlled or superseded by any such Act. Accordingly the Raj Pramukh of the new State, made

Ordinance No. II of 1124 coming into force from 7-7-1949 for the establishment of a High Court and matters connected with the constitution and functions of such High Court. Under Section 5 of the Ordinance the High Court for the new State was established. Section 8 of the said Ordinance specifically provided that all proceedings commenced prior to the coming into force of the Ordinance in either of the High Courts of Travancore and Cochin shall be continued and depend in the High Court as if they had commenced in the High Court after such date. It also provided that any order made by either of the existing High Courts in any such proceedings as aforesaid, shall, for all purposes, have effect not only as an order of that court, but also as an order made by the High Court. 10

191. In the light of the above proceedings the review petition was validly continuing in the new High Court when the Indian Constituent Assembly adopted and enacted on 26-11-1949 the Constitution of India. Travancore-Cochin was one of the new States of India—a Part B State. Under Article 214 read with Article 238 (12) the High Court of the United State of Travancore and Cochin became the High Court of Travancore-Cochin. Articles 132 to 136 provide for right of appeal to Supreme Court. Provision was also provided regarding pending suits, appeals or proceedings in the Federal Court of India, pending appeals and petitions in the Privy Council, and appeals and petitions pending before the authority functioning as the Privy Council in a State specified in Part B of the first schedule to the constitution, in Article 374 (2), (3) and (4). Article 374 (2), (3) and (4) could usefully be extracted here :- 20

“374 (1).....

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court. 30

(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on Such Court by this Constitution. 40

(4) On and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to, 50

and disposed of by, the Supreme Court.”

192. It is true that any appellant has a vested right of appeal to a particular forum as per the existing law on the date of suit. That right is a substantive right and although it could be exercised only if there was an adverse decision, the right is governed by the law prevailing at the commencement of the suit and the right consist of successive rights of appeal from court to court which constitute one proceeding. Such a right could only be taken away by a subsequent enactment either expressly or by necessary intendment. See **Colonial Sugar Refining Co. Ltd. v. Irving** (1905) A.C.369.; **Garikapati Veeraya v. N. Subbiah Choudhry** 10 and **Others** (1957 S. C. R. 488 = A. I. R. 1957 S. C. 540).

193. While a right of appeal in respect of a pending matter may conceivably be treated as a substantive right vesting in the litigant on the commencement of the action, no such vested right to obtain a determination with the attribute of finality can be predicated in favour of a litigant on the institution of the action.

See **Indira Sohanlal v. Custodian of Evacuee Property, Delhi and others** (A. I. R. 1956 S. C. 77).

194. It may be that when a legal determination is made which may be final and no proceedings are initiated under the existing law, if there be provision for review, for review of such decision, a subsequent conferment of power by a statute for appeal or revision against such determination unless specifically so provided cannot be restrospective affecting the finality of the determination. And such finality will accrue only when the determination is made and not when the proceedings for such determination is effected. The Privy Council dictum in **Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commissioner, Delhi** (A. I. R. 1927 P. C. 242) could be understood in that manner. There the Privy Council said:-

“Their Lordships can have no doubt that provisions, which, if applied retrospectively would deprive of their existing finality orders, which, when the statute came into force, were final, are provisions which touch existing rights”.

195. There is always the difference between a case where by the operation of the previous law, the order has become final and the case where the repealed law cannot operate on the subsequent stages of a pending application. See **Niranjan Singh v. Custodian, Evacuee Property** A. I. R. 1961 S. C. 1425 and **Bishambhar Nath v. State of U. P.** (A. I. R. 1966 S. C. 573) (where Justice Shah speaking for the court doubts certain observations in A. I. R. 1961 S. C. 1425 in regard to the legal fiction introduced by Section 58 (3) of Central Act 31 of 1950).

196. I would here also refer to the decision in **Nathoo Lal v. Durga Prasad** (A. I. R. 1954 S. C. 355). Note (a) of the Head Note to the case may be usefully extracted here:

“Plaintiff preferred a second appeal to the High Court of Jaipur. The appeal was allowed. The defendant applied for a review of this judgment. Meanwhile the Jaipur High Court had become defunct and the review was heard by the Rajasthan High Court as successor to the Jaipur High Court under the High Courts Ordinance and was partially allowed on the 5th of April 1950 and the decree was accordingly amended. It was

against this judgment and decree passed after the coming into force of the Constitution of India that the present appeal had been preferred to the Supreme Court by leave of the Rajasthan High Court under Art. 133 (1) (c) of the Constitution:

Held that the only operative decree in the suit which finally and conclusively determined the rights of the parties was the decree passed on the 5th of April 1950 by the Rajasthan High Court and that having been passed after the coming into force of the constitution of India the provisions of Art. 133 were attracted to it and it was appealable to Supreme Court provided the requirements of that Article were fulfilled. The Code of Civil Procedure of the Jaipur State could not determine the jurisdiction of Supreme Court and had no relevancy to the maintainability of the appeal." It will be instructive to quote paragraphs 5 and 6 of the decision in **Keshavlal v. Mohanlal** (A. I. R. 1968 S. C. 1336). 10

"(5) The suit out of which this appeal arises was filed by the respondent on July 22, 1958; it was decided on October 28, 1961; the appellate court decided the appeal on February 25, 1963 and the Amending Act 18 of 1965 came into effect on June 17, 1965. The High Court exercised the jurisdiction invested by Act 18 of 1965 in respect of a judgment which had become final a long time before that Act. It is true that this Court in **Indira Sohanlal v. Custodian of Evacuee Property, Delhi** 1955-2 S. C. R. 1117 = (AIR 1956 SC 77) distinguished the judgment of the Judicial Committee in the **Colonial Sugar Refining Co. Ltd's Case**, 1905 AC 369 and observed at p. 1133: 20

".... it appears to be clear that while a right of appeal in respect of a pending action may conceivably be treated as a substantive right vesting in the litigant on the commencement of the action - though we do not so decide - no such vested right to obtain a determination with the attribute of finality can be predicated in favour of a litigant on the institution of the action. By the very terms of Section 5-B of East Punjab Act XIV of 1947 finality attaches to it on the making of the order. Even if there be, in law, any such right at all as the right to a determination with the attribute of finality, it can in no sense be a vested or accrued right. It does not accrue until the determination is in fact made, when alone the right to finality becomes an existing right as in....." 30

In **Indira Sohanlal's case**, 1955-2 SCR 1117 = (AIR 1956 SC 77) the court was dealing with a case in which by amendment of statute, the finality which would but for the amendment have attached was taken away before the order was made. This Court in **Dafedar Niranjana Singh v. Custodian Evacuee Property (Punjab)**, (1962) 1 SCR 214 = (AIR 1961 SC 1425) distinguished **Indira Sohanlal's case**, 1955-2 SCR 1117 = (AIR 1956 SC 77) and held that an order which had become final under a provision of the law could not be affected retrospectively under an Amending Act so as to deprive the order of its finality acquired under the original provision. In **Dafedar** 40 50

Niranjan Singh's case, (1962) 1 SCR 214= (AIR 1961 SC 1425) an order releasing the property in dispute was passed by the Custodian of Evacuee Property under Patiala Ordinance No. IX of 2004 Samvat. No appeal was filed against the order of the Custodian and it became final on that account. The order was however set aside by the Custodian in exercise of jurisdiction under S. 58 (3) of the Administration of Evacuee Property Act 31 of 1950. This Court held that since the order had become final in exercise of the jurisdiction subsequently conferred, in the absence of any positive indication giving Section 58 (3) retrospective operation, the finality of the previous order could not be taken away. 10

(6) Counsel for the respondent relied upon a judgment of this Court in Moti Ram v. Suraj Bhan (1960) 2 SCR 896= (AIR 1960 SC 655) in which following Indira Sohanlal's case, 1955-2 SCR 1117= (AIR 1956 SC 77) it was held that the High Court could, in exercise of jurisdiction under an Amending Act enacted after the litigation was commenced, set aside an order which according to the law in force at the date when the litigation was commenced, was not subject to the jurisdiction of the High Court. In Moti Ram's case, (1960) 2 SCR 896= (AIR 1960 SC 655) an application for eviction of the appellant from a shop was made in August 1956 under Section 13 of the East Punjab Urban Rent Restriction Act, 1949. An appeal was provided under Section 15 of the Act from the order of the Rent Controller, and sub-section (4) of Section 15 provided that the decision of the appellate authority, and subject only to such decision, the order of the Controller shall be final. By Amending Act 29 of 1956 which came into force on September 24, 1956, the High Court was empowered to call for and examine the records relating to any order passed under the Act for satisfying itself as to the legality or propriety of such order. The landlord's application was dismissed by the Rent Controller and in appeal the appellate authority confirmed the order. Thereafter on the application of the landlord the High Court reversed the order. This Court rejected the contention that the High Court had no jurisdiction to entertain the revision application under Section 15 (3) as amended. The decision brought before the High Court in exercise of its revisional jurisdiction under Section 15 (5) of the amended Act was delivered on August 19, 1958, after the amendment of the Act on September 24, 1956. On the date on which it was made, the order had acquired no finality, for it was subject to an order which may be passed in a revision application which may be filed before the High Court under the amended Act. Moti Ram's case, (1960) 2 SCR 896= (AIR 1960 SC 655) has, therefore, no application to this case." 20 30 40

The principle can succinctly be stated as follows. An order, which on the date it is made is final, gives rise to vested rights; and a subsequent change in law giving rise to new right of appeal or revision 50

is presumed not to affect the finality of orders already made. But the right to finality does not vest or accrue until the making of the order; and, therefore, if new right of appeal or revision is conferred before making of the order, although after institution of proceedings, the right of appeal or revision is available against all orders subsequently made. If a new Act provides that the orders made under the old Act are deemed to be made under the new Act as if it were in force on the day when the orders were made, the orders though made under the old Act will become appealable or revisable under the new Act. Thus a retrospective change in law may enable a court to review its earlier decision and to modify it even in the absence of an express conferral of such power and a retrospective statute may by implication without using express words, invalidate an order previously made. 10

197. In regard to 1946 T. L. R. 683, an application for review was admitted and notice ordered therein. That was a pending proceeding when the Travancore Cochin State came into existence and also when the constitution came into force. Under the law constituted, proceedings commenced prior to the coming into force of that law in either the High Courts of Travancore and Cochin had to be continued and proceeded in the new High Court as if they had commenced in that High Court. From the order dismissing the review petition passed by the High Court, appeal was taken to the Supreme Court, as such appeal would lie in view of the coming into force of the constitution. Such appeal that was taken and consequent proceedings which followed are not vitiated by any way by lack of jurisdiction. Therefore 1946 T. L. R. 683 could not have any finality as urged by Mr. Easwara Iyer. The suit had been finally concluded only by the Supreme Court decision rendered in 1958. Whether the review application could have been proceeded with, had been considered by the Supreme Court in the appeal before it on special leave when the Travancore Cochin High Court had dismissed the review petition on 21st December, 1951. A contention had been taken up before the Supreme Court then that the effect for setting up a common High Court for the United States of Travancore and Cochin had made the earlier review application infructuous. The Supreme Court said:- 20 30

“The application for review was properly made to the Travancore High Court and the Travancore High Court had to decide whether to admit or to reject the application. The judgment to be pronounced on the application for review did not require, under any provision of law, to be confirmed by the Maharaja or any other authority. It was a proceeding properly instituted and was pending on the 1st July 1949 and consequently under section 8 of Ordinance No. II of 1124 had to be continued in the High Court of the United State as if it had commenced in the said High Court after the coming into force of the said Ordinance. The application for review was rejected by the High Court. If, however, the High Court had admitted the review then such admission would have had the effect of reviving the original appeal which was properly filed in the Travancore High Court under section 11 of the Travancore High Court Regulation (1V of 1099). That appeal, so revived, having been 40 50

commenced prior to the coming into force of Ordinance No. II of 1124 would, under section 8 of that Ordinance, have had to be continued in the High Court of the United State as if it had commenced in that High Court after such date.

The position would be the same if on appeal before the Supreme Court, the Supreme Court now admitted the review, for, upon such admission the appeal filed in the Travancore High Court would be revived and then, having been commenced in the Travancore High Court and continued in the High Court of the United State by virtue of section 8 of Ordinance No. II of 1124 the appeal so revived would under section 8 of the Act of 1125, have to be continued in that High Court as if it had commenced in that High Court after the coming into force of that Act. In other words, the old appeal, if restored by the Supreme Court, would, by the combined operation of section 8 of Ordinance II of 1124 and section 8 of the Act of 1125, be an appeal pending in the High Court of the United State. Under the present constitution Travancore-Cochin has become a Part B State and under Article 214 of the Constitution the High Court of the United State of Travancore-Cochin has become the High Court of the Part B State of Travancore-Cochin and shall have the jurisdiction to exercise all the jurisdiction of and administer the law administered by the High Court of the United State.

Such appeal must, accordingly be disposed of under section 25 of the last mentioned Act. That Section does not require any confirmation of the judgment passed on the rehearing of the appeal by the Maharaja or Rajpramukh or any other authority. Assuming, however, that the appeal if restored will have to be governed by section 12 of the Travancore High Court Regulation (1Vof 1099) even then the provisions of section II would have to be applied "as far as may be" and it may well be suggested that the portion of section II which requires the confirmation by the Maharaja, would, in the events that have happened, be inapplicable. Hence the review application had not become infructuous."

The question of res judicata:-

198. A very important question arising in these suits is how far the final decision rendered on certain questions in respect of the same questions which are covered by issues in the present suit. After a consideration of all relevant aspects of fact and law on the matter, I am afraid both the parties have taken up rather extreme positions at different ends and I have to reject their contentions on the same. I am formulating independently the points which according to me are covered by the earlier decisions which cannot be reopened in these proceedings.

199. As regards the decision in the Seminary Case-Ext. B74- the majority decision of the Royal Court of Appeal, there may not be much difficulty. The conclusion in that case which is of validity here can be extracted from para 347 of that judgment:

"that the Ecclesiastical Supremacy of the See of Antioch over the Syrian Church in Travancore has been all along, recognised and acknowledged by the Jacobite Syrian Community and their

Metropolitans; that the exercise of that supreme power consisted in ordaining, either directly or by duly authorised Delegates, Metropolitans from time to time to manage the spiritual matters of the local Church, in sending Morone (Holy oil) to be used in the churches in this country for Baptismal and other purposes and, in general supervision over the spiritual government of the Church; that the authority of the Patriarch has never extended to the government of the temporalities of the Church which, in this respect, has been an independent Church; that the Metropolitan of the Syrian Jacobite Church in Travancore should be a native of Malabar consecrated by the Patriarch of Antioch, or by his duly authorised Delegates and accepted by the people as their Metropolitan to entitle him to the spiritual and temporal government of the local church ...” 10

It will be necessary also as to what the learned Judges meant by the word “accepted by the people as their Metropolitan”. Very pointedly the learned Judges (in para 244 of Ext. B74) state that the contention of both the parties in that suit that acceptance by the people is necessary for a Bishop duly consecrated and appointed by the Patriarch to become Metropolitan of the local church seemed to be a new idea and was probably due to a precaution on their part to prevent foreigners sent out by the Patriarch from assuming the management of the temporalities of the Church without the consent and against the wishes of the community. I have referred to this aspect when discussing the history of the church. The judges in Ext. B74 state that acknowledgement by the people was thought of as the best and safest substitute to adopt. How is the acceptance to be found out? In that case, taking due note of the fact that Mar Joseph Dionysius’ claim had the support of Mulanthuruthy Synod where representatives of 102 churches had attended and that the rival claimant Mar Thomas Athanasius had taken up the position actually to the effect that he did not consent to a decree being passed in favour of a party that had the majority on his side (Para 308 of Ext. B74), the Judges said that Mar Joseph Dionysius had been accepted by a large majority of the people as the Metropolitan of the Syrian Church in Travancore and that acceptance had given him a right to the Government of the temporal affairs of the Church. It might also be noted that the suit itself was for the recovery of the movable and immovable properties of Kottayam Seminary, belonging to the Jacobite Syrian Christian Community of “Malayalam” with those shown in a separate schedule as those worn and used by the successive Metropolitans of the community. The learned Judges also say in Ext. B74 “Nor is a meeting necessary for the purpose of expressing submission to or acceptance, of a duly ordained Bishop as Metropolitan. It is implied if no opposition is offered by the majority of the community”. (Para 291-Ext. B74) 20 30 40

200. Now we will go into the Vattippanam Case where the final judgment is the one reported in 45 T. L. R. 116 (the judgment rendered after reviewing to some extent the decision rendered in 41 T. L. R. 1). Though it had been very strongly contended by Mr T. N. Subramonia Iyer and Mr. John appearing for the parties on the Patriarch’s side that the findings in 41 T. L. R.1 on questions 50

which had been declared to be excluded from the consideration of the rehearing when the review petition was allowed by the Travancore High Court and about which in the final judgment in 45 T. L. R. 116, Chief Justice Chatfield said (at page 139):-

“The plaintiffs on the other hand have failed to show that any of the questions which have been declared to be excluded from consideration at the rehearing are inseparably connected with those questions and thereupon in disposing of this appeal the excluded questions will not be referred to”,
are res judicata, I find it difficult to agree with them. No doubt their 10
plea is supported fully by the decision of the Full Bench of this Court in the Samudayam Case 1957 K. L. T. 63. There Sankaran J. as he then was, said at page 103:

“In the final judgment after review the question of natural justice alone was considered and decided and this means that the earlier finding on the question of canons, which was a matter directly and substantially in issue in the suit, was accepted as correct even for the purpose of the final decision on the question of natural justice. Thus by implication the finding on the question of the canons forms an integral part of the final 20
decision in 45 T. L. R. 116 because, without maintaining that finding, the question of natural justice could not have arisen at all. A finding on a question which is so vitally and intimately connected with the final decision passed in the suit, will operate as res judicata just as the final decision itself in a subsequent suit where the same question is raised between the same parties or those claiming under them. The decisions in *Kaveri Ammal v. Sastri Ramier* (I. L. R. 26 Madras 104) and in *Mota Holiappa v. Vithal Gopal* (I. L. R. 40 Bombay 662) are in support of this position.” 30

Sankaran J. further added:-

“In another view of the matter also, the finding recorded in 41 T. L. R. 1 on the question of the canons accepted by the Malankara Church as binding on it, must be held to be conclusive and final for the purpose of this suit also. The order on the review petition expressly stated that such a finding must be taken as binding. That order was confirmed by another order passed on a petition to remove the said restriction. These orders were passed by the final court after fully hearing the parties. Apart from the question as to the validity or correctness of those orders, 40
the fact is there that they have become final as between the parties to that suit which was a representative suit.”

201. As a decision of the Full Bench of this court, Justice Sankaran's observations would have been binding on me but for the reason that the judgment as such was set aside by the Supreme Court. Basically I find it difficult to agree with the reasoning of Justice Sankaran. The plea against the Catholicos and his adherents had been dismissed on the ground of violation of the principles of natural justice in the matter of excommunication of Mar Geevarghese Dionysius and his followers. This was on the alternative plea raised by them. It was at one time thought that the test 50

of res judicata was whether the finding was embodied in the decree. This however is not correct for res judicata is a matter of substance and not of form. It is the right of appeal which indicates whether the finding was incidental or necessary. If the plaintiffs' suit is wholly dismissed, no issue decided against the defendant can operate as res judicata against him in a subsequent suit, the decree being wholly in his favour. See in this context :

Thakur Magundeo v. Thakur Mahadeo Singh and another (I. L. R. (1891) 18 Cal. 647.) and Ramasami Reddi v. Thalawasal Marudai Reddi and others (I. L. R. (1924) 47 Mad. 453.)

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202. The two questions that had been finally decided by the judgment in 45 T. L. R. 116 were:

(i) The ex-communication of Mar Geevarghese Dionysius was invalid because of the breach of the rules of natural justice in that he was not apprised of the charges against him and he had not been given a reasonable opportunity to defend himself;

(ii) that the defendants 1 to 3 in that suit (the then Catholicos and his adherents) had not become heretics or aliens or had not set up a new church by establishment of the Catholicate by Abdul Messiah.

203. The first question is clear in itself. In regard to the second question how the answer was arrived at by the judges can be seen from their own words:-

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Chatfield C. J.

"In the Canon" of Nicea" as given on both Exhibits A and XVIII there is express provision for a great "Metropolitan of the East" who was to have power like the Patriarch, to consecrate Metropolitans in the East. All that can be urged against the 1st defendant therefore is that he cooperated with one who was not a valid Patriarch when the latter was doing acts which could only be done by a Patriarch or at the worst that he caused this unlawful Patriarch to do such acts. It is conceded by the defendants that if Abdullah had done these acts there would have been no objection. Therefore the whole matter resolves itself into a personal dispute between two claimants to the Patriarchate in which it is said, the 1st defendant 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 courts could try him or express any opinion as to his guilt. In addition it is extremely hard to ascertain on the evidence before the court that the person recognised by the 1st defendant as 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. It is true that 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

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Senior Patriarch. All this is mere surmise. But the defendants' attempt to found an inference of fact from a contrary surmise is not to be accepted. At the present time it is admitted that both Abdulla and Abdul Messiah are dead and that a new Patriarch rules at Antioch. No recognition that can have been given to either of the former rivals can materially affect the church at present. In the circumstances it cannot be said that the church to which the defendants 1 to 3 belong is a different church from that for which the endowment now in dispute was made."

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Joseph Thaliath J.:

"There is another aspect of the case also to be considered. Sir. C. P. Ramaswamy Aiyar contended that even if it is found by the court that the excommunication of the 1st defendant is invalid, since he, after excommunication, had openly revolted against the authority of the Patriarch Abdulla, who was the lawful Patriarch in the Jacobite Church and accepted Abdul Messiah, a rival Patriarch, the 1st defendant should be considered to have become an alien or schismatic, that such a person ceased to possess the faculties of a Metroplitan, and that hence he can no more act as a trustee of the Jacobite Church in Malabar. This raises the question whether we can adjudicate upon an alleged ecclesiastical offence as long as there has not been any declaration by the lawful ecclesiastical authorities relating to the same matter. This is, indeed, a question of considerable difficulty."

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Parameswaran Pillai J.

"The last argument of Sir C. P. Ramaswami Iyer was that, by accepting Abdul Messiah as the Patriarch of Antioch, the 1st defendant and his adherents constituted themselves into a different church separate from the Malankara Church. He has, therefore, become a Schismatic and if he is allowed to draw the funds they will be diverted from their original purpose."

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I have considered this aspect of the case very carefully and have come to the conclusion that there is no substance in this contention. The 1st defendant has not denied the authority of the Patriarch of Antioch and therefore he remains the Metropolitan Trustee of the Malankara Church and he claims to draw the money on behalf of that Church. At best what he did was, when Abdulla and Abdul Messiah both claimed to be the Patriarchs of Antioch, he acknowledged the latter as the true Patriarch in preference to the former. If he was wrong in this he has committed a spiritual offence for which his spiritual superiors might punish him in a proper proceeding. This court has nothing to do with his spiritual offence."

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203. Now we come to the last of the series of cases, the Samudayam Case. According to the counsel for the plaintiffs (party array in O. S. No. 4 of 1979 is being referred to here) Mr. Narayanan Poti, the Supreme Court by reversing the decision of the High Court in 1957 K. L. T. 63, has restored in toto the judgment Ext. A16. According to Mr. Poti, that

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would be evident from four points.

(1) That the Supreme Court did not discharge or reverse any of the findings of the trial court.

(2) It did not hold that any of the findings of the trial court was not necessary for deciding the suit.

(3) The Supreme Court repelled every contention put forward by the respondents there to sustain the High Court decision and

(4) It reversed the High Court judgment in full and restored the trial court decree also in full.

204. In this connection Mr. Poti would point out that in the plaint in the Samudayam Suit Ext. A15, the various acts of the Catholicos partisans are enumerated and characterised as repudiation of the Patriarch. Ext. A15 contained a prayer for a declaration that the plaintiffs therein were the lawful Malankara Metropolitan, priest trustee and lay trustee respectively. There was the further relief claimed for injunction for restraining the first defendant therein from doing any act in his professed capacity as Catholicos or Malankara Metropolitan. Alternate request for suing in their personal capacity as members of the community has also been made, with the necessary application under Order 1, Rule 8. Such permission had also been granted. 37 issues were framed by the trial judge and duly answered. The learned counsel would submit that when the Supreme Court set aside the High Court judgment and restored the trial court's decree, the whole findings in Ext. A16 have to be taken to be revived. Each such finding is binding on members of the Malankara Jacobite Syrian Church. Mr. Poti would also contend that the findings in the Samudayam suit cannot be taken to constitute res judicata only in respect of the common properties. That is because Ext. A15 made a direct challenge to the first defendant in that suit to hold the office of the Metropolitan and he had been asked not only to surrender the properties but also the insignia of his office. An injunction was also prayed for in Ext. A15 for restraining him from doing any act in his professed capacity as Catholicos or as Malankara Metropolitan.

205. It is certainly true that the test of res judicata is the identity of title in the two litigations and not the identity of the actual property involved in the two cases. See

A.I.R. 1953 S.C. 33

A.I.R. 1971 S.C. 442

A.I.R. 1963 S.C. 385 and

A.I.R. 1965 S.C. 948 (last para).

Nor could there be any controversy with the principle so clearly stated by Spencer Bower on Res Judicata-para 193 at page 152.

"Where the decision sets 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

thing as a res judicata by implication."

206. It may not be correct to state that a judgment can be evidence only of the facts decided. It may be conclusive evidence "not merely of the facts directly decided, but of those facts which are... necessary steps to the decision", (Coleridge J. in R. V. Hartington, Middle Quarter (Inhabitants) (1885) 4E.& B.780) but the term "necessary steps to the decision" is in the sense that they are so "cardinal to it that, without them, it cannot stand". Unless they are such necessary steps, the rule fails.

207. I am afraid Mr. Poti learned counsel for the plaintiffs casts the net rather wide when he states that the Supreme Court should be taken to uphold every finding in Ext. A16. Reading the Supreme Court judgment as a whole, it would indicate that the court was of the view that plaintiffs in the Samudayam Case should fail (i) if the suit is looked at based on the plaintiffs' title as trustees, if they do not establish their title as trustees by showing their valid election, (ii) on the basis of their representative capacity as members of the Malankara Church, if they fail to prove (a) that the defendants in that suit had become heretics or aliens or had set up a new church going out of the Malankara Church or (b) that the defendants had not been validly elected as trustees by the Malankara Association. The Supreme Court finds that the defendants in the suit had not become heretics or aliens to the church or gone out of the church on the basis of res judicata because of the earlier decision in 45 T. L. R. 116. In view of this, as the defendants therein are not outside the church, the plaintiffs' election as trustees becomes defective as notice had not been given to churches on the Catholicos side. In regard to election of defendants 1 to 3 as trustees, the Supreme Court on the evidence comes to the conclusion that notice has been given to all churches. A reading of the Supreme Court judgment in full indicates that the court was of the view that on the basis of these findings the suit should be dismissed and hence the High Court judgment was set aside and the decree of the trial court restored. In the circumstances it is rather hollow to contend that all the findings of the learned District Judge had been accepted by the Supreme Court. For the disposal of the appeal it was not necessary to go into the other questions. The various observations of the court in paragraphs 34 to 38 of the Supreme Court judgment which I had extracted at the early stage of this judgment are only to pinpoint that the new charges that were sought to be relied upon as a fresh cause of action were not covered by the pleadings or issues on which the parties went to trial. When the Supreme Court judgment states in para 35 of the judgment that "in order to decide these charges and counter charges it is absolutely necessary to determine which is the correct book of canons," they were only pointing out the necessity of issue 13 in the suit on the basis of the pleadings in the case, independent of the contention of res judicata on the basis of 45 T. L. R. 116. The court was not at all endorsing the finding of the District Judge on the issue but only refuting the contention raised on behalf of the respondents before them that issue 13 reflected the plea on the new charges which were not before the Travancore High Court in the earlier case. A judgment cannot be taken to mean more than what it says

either expressly or impliedly. I have no hesitation in holding that the Supreme Court decision is res judicata only on the points it has been specifically dealt with. It might be noted that the High Court had set aside the trial court judgment. The Supreme Court took the view that the suit could be dismissed on the points it positively noted and decided and hence did not go into the other questions. On the basis of the findings the Supreme Court had positively entered into, other findings which the trial court had entered into was unnecessary for consideration. This certainly does not mean that the decision of the High Court on the other points will stand. The judgment of the High Court is set aside. The other points are open for decision in this case. The instance where A. I. R. 1966 S. C. 1332 and A. I. R. 1947 Oudh 74 were rendered are not parallel to the present case and therefore could have no application. As regards individual churches and the application of the Supreme Court decision to such institutions and their properties, I will discuss the matter under the heading "Individual Churches" and I here only point out what Justice Raman Nair, as he then was, said in A. S. No. 269 of 1969, "The Supreme Court case like its precursor the interpleader suit O. S. No. 94 of 1088 instituted by the Secretary of State in the District Court, Trivandrum, was concerned with the Jacobite Church as a whole, (in other words, the entire community or denomination, represented since the Mulanthuruth Synod of 1876 A. D., by a body constituted by that Synod and known as the Jacobite Syrian Christian Association, popularly known as the Sabha).

Parish Churches – Their relationship with Malankara Church (Sabha) – Are they independent trusts or integral parts of the whole Malankara Church with no claim to a separate existence?

208. The above is the next question that I will have to resolve in tackling the issues in the case. Both the sides –the Catholicos side and the Patriarch side have taken up totally conflicting stand with regard to this. The case on the Catholicos side as reflected in the plaint in O. S. No. 4 of 1979 is that each church when founded becomes a constituent of the Malankara Church, a well established religious community administered by and under the authority of the Malankara Metropolitan. The Parish Churches are subject to rules and regulations of the Sabha and its constituent churches. The parishioners of each church are beneficiaries qua the membership of the Sabha and its constituent churches. It is on this idea that the Bharanaghatana of 1934-Ext. A2 and the subsequent amendments-Ext. A9 in 1954 and Ext. A1 in 1967 were passed and they are binding on the Sabha and the constituent churches.

209. The defendants - the Patriarch side however take the contention that each individual parish church belongs to the respective parishioners and they are autonomous and self governing units. They do not become except in the matter of spiritual guidance, a constituent of the Sabha and the administration in the church is vested in the Pothuyogam. The Parish Churches are in a way independent trusts, no doubt guided and controlled in spiritual matters by the Malankara Sabha which itself in spiritual matters have to look up to

the Patriarch of Antioch. The Malankara Metropolitan has full control of temporalities of the Malankara Church (Sabha) as such, which means trusteeship of the common properties of the Jacobite Community of Kerala. It will be wrong to say that the temporal, ecclesiastical and spiritual powers of administration are with Malankara Metropolitan. If the individual churches do not conform to the spiritual discipline of the religious hierarchy, they may be entitled to sever their links with those churches. The 14th defendant while reiterating the same contentions adds that the founders of each Parish Church intended it to be administered by its own parishioners in all matters temporal, ecclesiastical and spiritual subject to the supremacy of the Patriarch of Antioch and the system of government in each church is neither presbyterian nor episcopal but congregational. Neither the Malankara Association which is only a conference of the Parish Churches nor its President, the Malankara Metropolitan has any supervision, control or governmental authority of any kind over the Parish Churches. The Malankara Association has no authority to frame rules or regulations for the individual churches or the diocesan trusts. According to this defendant the provisions of the Bharanaghatana are ultra vires and in conflict with the rules, principles and doctrines existed in the church.

210. Mr. Poti in support of the contention raised by his clients would point out that the other side is in confusion with regard to the nature of a Public Religious Trust. In a private trust the beneficial interest is vested absolutely in one or more individuals who are or could be ascertained with a certain time and to whom therefore it will be competent to control, modify or determine the trust. The duration of such trust can be extended by the period allowed by the rule against perpetuations. A public or charitable trust on the other has for its object the members of an uncertain and fluctuating body and the trust itself is of permanent character. These trusts have as their object some purpose recognised by law rather than human ceste qua trust. Object or purpose therefore is of the fundamental concept in a charitable trust. (Pages 7, 8 and 17-18 Lewin on Trusts - 16th Edition). When a charity has been founded and trusts have been declared, the founder has no power to revoke, vary or add to the trusts. This is so irrespective of whether the trusts have been declared by an individual or by a body of subscribers or by the trustees. Therefore, Mr. Poti would urge that the defendants are fundamentally wrong in assuming that the Parish Churches founded or established long ago, some times several centuries ago, as an integral part of the Malankara Orthodox Syrian Sabha belong absolutely to the parishioners of any given time or date to be dealt with by them as they choose. According to him they have been established as an indelible part of the Sabha in accordance with and in conformity to the rules of the Sabha for worship of God in the faith of the Sabha. In support of his plea, Mr. Poti relied on many of the passages in the evidence of D. W.2, a leading witness for the Patriarch side. He had said:-

“കൂടാശ ചെയ്യപ്പെട്ട പള്ളിയും കൂടാശ ചെയ്യപ്പെടാത്ത പള്ളിയും, സഭയിലെ സ്ഥാപനമാണ്. അവസാന നിയമങ്ങൾക്കും അനുസൃതമായി ഭരിക്കേണ്ടതാണ്.” 50

പ്പെടേണ്ടതാണ്.”

At another place he had said:-

“സഭയിൽപെടാതെ പള്ളി ഉണ്ടാകാൻ സാധ്യമല്ല. സഭയുടെ വിശ്വാസം പാലിക്കാനും ആത്മാക്കളുടെ രക്ഷക്കാവശ്യമായ കൂദാശകൾ നിർവ്വഹിക്കാനുമാണ് പള്ളികൾ. ആ സ്ഥിതിക്കു സഭയിൽ പെടാതെ പള്ളി ഉണ്ടാകുക അസാധ്യമാണ്.”

At an early part of his deposition D. W. 2 had said:-

“ഒരാം സഭയിലെ അംഗമായി തീരുന്നത് എങ്ങിനെയാണ്? (Q) പ്രായമുള്ള ആളാണെങ്കിൽ വിശ്വസിച്ചു മാമുദീസ ഏറ്റം, കത്തുങ്ങളാണെങ്കിൽ മാമുദീസ പ്രാപിച്ചു. സഭയിലെ അംഗമായി തീരുന്നു. (Ans.) 10
അങ്ങിനെ അംഗമായി തീരുന്നത് ഒരു പ്രത്യേക ഇടവകയിലേക്കുണ്ടോ? (Q). സഭയിലാണ് അംഗമായി തീരുന്നത്. എന്നാൽ ആശിശുവിന്റെ മാതാപിതാക്കൾ ഏതു ഇടവകയിലാണോ ആ ഇടവകയിലെ അംഗത്വം കിട്ടുന്നു. (Ans.)

The learned counsel for the plaintiffs would also place strong reliance on the contention taken up by Abraham Mar Clemis, a Metropolitan on the Patriarch side in his written statement in O. S. No. 62 of 1973-Ext. A191. No doubt, it was said of the Knanaya Samudayam Bharanaghatana and individual Knanaya Churches, but Mr. Poti would point the statement would reflect the true principle with regard to the Malankara Church and its constituents individual churches. Paragraph 18 of Ext. A191 states:- 20

“Plaintiffs or any parishioner of any other Church in the Knanaya Diocese is not competent to impeach, ignore or act against the constitution of the Samudayam. The averment in the plaint that constitution of the Samudayam is not binding on Ranni Valiapally and its parishioners is not correct and tenable. The case of the plaintiffs that Ranni Valiapally or any other Church in the Knanaya Diocese was to be governed by a constitution passed by the parishioners of that particular Church is opposed to the basic principles of the Samudayam Church and it is also opposed to Canon law, practice and precedents. If such a course is allowed to be practised, no Christian Samudayam can exist and the meaning of the term Samudayam becomes illusory. The Edavakayogam of a parish church is neither competent nor entitled to frame a constitution for the management and administration of that particular Church. The establishment of a Church can be only with the consent and co-operation of the Metropolitan as the Metropolitan alone is invested with the right and authority to have it so established and administered, for the same of the Samudayam.” 30 40

Mr. Poti would also contend that illustrations of the previous exercise of powers by the Metropolitan over the individual churches, the conduct of the parties especially of the conduct of all the churches of both sides after December 1958 were clear indication of the fact that the parish churches were inseparable and integrated parts of the Malankara Sabha as a whole. Mr. Poti would emphasise here that the decretal paragraph 347 in Ext. B74 judgment would declare that the spiritual and temporal Government of the local church is vested in the 50

Malankara Metropolitan and the word church has been used in the sense of the entire body of church and not as confined to some common properties. He would also point out that the plaintiffs in the Cochin Royal Court Case had contended that the Malankara Metropolitan was entitled to appoint vicars and priests to the churches and to remove them, that the election of the kaikars by the yogam was subject to confirmation by the Metropolitan, that the kaikars had to submit to him true and faithfully accounts of the receipts and disbursements of the income of the churches after having read the same at the yogam etc. That suit was decreed as sued for in the following terms:-

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“That the plaint churches, and properties are therefore subject to the spiritual, temporal and ecclesiastical jurisdiction of the first plaintiff as the Metropolitan of Malankara for the time being. We, therefore direct that subject to the approval of His Highness the Raja, the decree of the lower court be reversed, and one drawn up as sued for, except with regard to the Kymuthoo amount the claim to which has not been pressed.”

211. For his contention that the parish churches are under the administrative control of the Metropolitan, Mr. Poti points the church in Malankara is an Episcopal Church. Nor was a contrary intention ever taken until some unfortunate observations were made in the judgment of a Division Bench of this Court in A. S. No. 269 of 1960 which is marked in this case as Ext. B322. 20

212. Mr. Thaikad Subramonia Iyer, appearing for some of the defendants, who are all on the Patriarch side however eloquently put forward the plea that based on a historical survey of the Malankara church, it will be erroneous to make an inference that the Malankara Church is a pure episcopal church. Episcopatism is defined in the New English Dictionary of Historical Principles (By Sir John Munray, Vol. III, Part I, page 245) as “Theory of Church Polity which places the supreme authority in the hands of episcopal or pastoral orders”. The same dictionary has given the definition of congregationalism as follows (in Vol. III Part II): 30

“A system of ecclesiastical polity which regards all legislative, disciplinary and judicial functions as vested in the individual church or local congregation of believers.”

Mr. Subramonia Iyer would point out that whether the church in Malankara belongs to any of the two categories or to a mixture of the two can be decided only by examining the history, activities and conduct of the people. The learned counsel would refer to the origin of congregationalism as given in Chambers Encyclopedia, Vol. IV - page 13: 40

“Congregationalism is the doctrine held by churches which put emphasis on the autonomy of the individual congregations. Congregationalism has for its sign manual the words of Jesus:

“Where 2 or 3 are gathered together in my name, there am I in the midst of them.”

Its policy is at once highest and most natural organisation of the life of the Christian Church. Like Episcopacy and presbyterianism it finds its origin in the New Testament, holding that Apostolic Churches were 50

gathered churches, and that these (as always) local churches preceded, churches more highly organised. It is thus claimed that congregationalism is inevitable because wherever the Gospel is preached to non-Christians and those who respond come together for worship, fellowship and service they by an implicit or explicit covenant from, form a church, though they have no Bishop or Presbyter, minister or officer, nothing but faith in Christ and the desire to serve him, his presence making them competent to perform all church functions. Apostolic Christianity was thus organised in local churches. So were those won from Paganism by missionaries. In some of those cases from their organisation has come or may come later, but the primary, simplest or most natural form is "congregational". "Though St. Thomas in A. D. 51-52 came to Malabar, made converts to Christianity and ordained two men as Arch-deacons the first episcopa who came here was with Thomas of Cana. This Bishop, Joseph Episcopa of Ura was sent under the direction of Eusthathius Patriarch of Antioch. Thomas gave up his secular calling and devoted himself entirely to the church (Para 53 of Ext. B74). Mr. Subramonia Iyer would urge that till 1654 the spiritual affairs were mostly looked after by foreign Metropolitans who never interfered in the temporal affairs of the church though they may have spiritually ruled the church. Ext. B74 in Para 65 gives the following quotation from Dr. Buchanan:-

"The European priests were yet more alarmed when they found that these Hindu Christians maintained the order and discipline of a regular church under episcopal jurisdiction and that for 1300 years past, they had enjoyed a succession of Bishops appointed by the Patriarch of Antioch." (Dr. Buchanan-Page 201).

Mr. Subramonia Iyer would assert that even after 1654 there is no evidence to show that the Metropolitans interfered in the temporal administration of local or individual churches.

213. No doubt, a central organisation came into existence in 1876 in the name of Malankara Jacobite Syrian Association which gave an opportunity for the individual churches for co-operation and fellowship in common matters. But there is no evidence to indicate that the local churches had surrendered their autonomy or gave any ecclesiastical authority to the Association. No doubt in spiritual matters the church was supervised by the Metropolitan who however himself was subject to the Patriarch of Antioch in that sphere.

214. Mr. Subramonia Iyer and Mr. P.P. John, learned counsel on the Patriarch side, in this connection referred to certain documents which on the face of it would indicate that in temporal matters the church is not an episcopal church. Ext.B310 of 17-11-1969 is a sale deed executed by the Metropolitan of Angamali to the managing committee of St. Thomas Jacobite Syrian Church of Parur. On the basis of the decision by the Badrasana council and Badrasana Pothuyogam the Metropolitan executed the deed. The Managing Committee of St. Thomas Church after due enquiry agreed to purchase for a consideration of Rs. 53,5000. What the learned counsel on the Patriarch side would emphasise is that the purchaser church is a church in the Angamali diocese and the vendor Metropolitan at that time accepted as the Metropolitan of that diocese. The Metropolitan has

to sell a property of the diocese to a church which can be termed as a constituent church. This is said to be indicative of the fact that the constituent churches are not such an integrated part of the diocese or of the Malankara Church and the trust by which the parish church is established is legally distinct from the Malankara Church Trust as a whole. This would not be the case in a purely episcopal church. The udampadies and the constitutions of some of the churches are also referred to by the learned counsel in support of the contention that the parish church has an independent existence quite apart from the Malankara Church as a whole and these independent churches are not such an integral part of the common Trust. The documents referred to are Ext. B328 dated 29-11-1094 relating to St. George Church at Kadamattom, Ext. B329 dated 8-6-1105 relating to the same church, Ext. B326, constitution of the Vadakara Jacobite Syrian Church, Ext. B 259, constitution of the Jacobite Syrian Church at Parur passed in a Pothuyogam presided over by the Metropolitan on 11-3-1116, Ext. B269 constitution of the Mulanthuruthy Mar Thoman Church framed by the court in O. S. 1 of 1124, Ext. B305, Constitution of the Marthamariam Church at Pampady passed on 10-8-1914, Ext. B304 constitution of Marthamariam Church, at Tiruvarpu, Ext. B27 of the Angamali Akaparambu Jacobite Church, Ext. B303 constitution of Kallumgathara Cheria Pally and Ext. B194, constitution of Nadamel Jacobite Syrian Church at Tripunithura. The contention is that the clauses in these deeds are pointers to the independent powers of the pothuyogam of the churches in temporal matters and with regard to it there could be no interference by the Diocesan Metran or by the Malankara Metropolitan or by the Catholicos.

215. It is also very strongly urged by Mr. Subramonia Iyer that the proceedings of the Mulanthuruthy Synod is clearly reflective of the independent status of the individual local churches. The very first resolution passed at the Synod requested each individual church to execute agreements confirming the faith (Page 8 of Ext. B168). He would also in this connection refer to the fact that both Patriarch Peter III and Patriarch Abdulla sought to obtain udampadies from each individual church. According to him, if the church in Malankara is episcopal, the Patriarch would not have tried to get such agreements from each parish church. In that case the Patriarch should have been satisfied with the agreements executed by the Metropolitans in his favour for they would have been in full control of the temporalities of each church.

216. The learned counsel also relied on the following decisions of the courts:

- (1) 10 T.L.R. 12
- (2) 13 T.L.R. 101
- (3) 20 T.L.R. 171
- (4) 23 T.L.R. 171 F.B.
- (5) 26 T.L.R. 148
- (6) 21 T.L.J. 1137
- (7) Ext.B110 (Cochin Royal Court)
- (8) Ext. B323 (Chatfield C. J. & P. K. Narayana Pillai J.) and
- (9) Ext.B322 (of the Kerala High Court—Justice P. T. Raman Nair & Justice T. C. Raghavan)

I would now examine these cases.

10 T.L.R. 12 (Thomman Francho Kathanar and 2 others v. Ittiavira Mani Kathanar and 3 others).

This arose out of a suit by representatives of a church (Roman Syrian Church) for recovery of another church together with the articles used at divine worship therein. Plaintiffs' claim rested on a purchase from the members of a family who are alleged to have taken a prominent part in building and endowing the church sold. The Travancore High Court—a Full Bench—held that the materials used in religious worship are, by all systems of law extra commercium. The court also said that the fact that a party granted a site and contributed largely towards the building of the church will not confer on his family any special right of interest in the church or its endowments. It was further held that a Bishop is not empowered by law to sanction the transaction or sale of a church and its endowments independently of the kykars and congregation. 10

217. I do not think this decision would be of much help for resolution of the point at dispute. No doubt it indicates that even in the case of a church where the religious hierarchy's powers are of the widest amplitude and depth as in the Roman Catholic Church, the kykars and the congregation are not of that little importance that they could be totally ignored by the Bishop. 20

13 T.L.R. 101 (Kunjamman Kurien Kathanar v. Ummamen Geevarghese Kathanar & Others).

In this case the representatives of the parishioners of a Jacobite Syrian Church sued the defendants for recovery of specific immovable property on the ground that it belonged to the church and was lost subsequently by theft in 1050. The defendants denied the right of the plaintiffs to the articles and set up a plea of pledge by the late Mar Athanasius who was (or claimed to be) the supreme ecclesiastical authority of the Jacobite Syrian Church in Malabar. The court said that even if the alleged pledge was true it cannot be a proper defence to the plaintiff claim. The pledge was not made on behalf of the plaintiff church nor were the representatives of the plaintiff church parties to or cognizant of the transaction. The Metropolitan had no right to use the temporalities of the church for his own individual use. If he dealt with these articles for his own use, his act amounted to a misappropriation or conversion and the plaintiffs who were entitled to the possession of the articles as part of the paraphernalia of the church of which they are trustees could sue for the properties within the time allowed by the law. This to a certain extent is helpful to the defendants' contention that the parish church has got an individuality of its own as represented by its kaikars distinct from the church used in the wide sense of "sabha". 30 40

20 T. L. R. 131

I do not think this decision would be of any help in this case and I am not referring to the case.

23 T. L. R. 171 Titus Mar Thoma, Metropolitan & 3 others v. Mar Dionysius Metropolitan and 2 Others)

The facts and decision in this case could best be given as summarised in the head note of the case:-

"The Syrian Christian church at Maramannu was one of the 50

churches under the jurisdiction and control of Mar Mathew Athanasius who was consecrated Metropolitan of Malankarai by the Patriarch of Antioch. The entire congregation attached to the church though for a considerable time they followed the Jacobite faith subsequently abandoned the old faith, accepted the principles of the "Reformed Faith" and the congregation as well as Mar Mathew Athanasius repudiated the supremacy of Antioch. In a suit brought by the Religious head of the Jacobite faith more than 25 years after the acceptance by the congregation of the new faith for a declaration that he and his successors in office are alone entitled to appoint priests for conducting religious services in the plaint church, and also for an injunction prohibiting the religious head of the Reformed Faith from conducting services in this church and from appointing priests of the altered faith, on the ground that the church in question having been a foundation subject to the See of Antioch was invested with a trust in favour of the Jacobite faith, wherein it was contended that the suit was barred by lapse of time and also that the suit was not maintainable as the entire congregation had abandoned the old faith and had followed the new faith for a long time.

Held by the majority that though the congregation attached to the church had changed their old faith and had accepted and followed the new faith for more than 25 years since they were not trespassers and as they or their predecessors had come into possession lawfully under the trustees the suit was not barred by limitation by virtue of the provision in section 10 of the Travancore Limitation Regulation whose terms differ from those of the corresponding section of the British Indian 'Regulation.'

** "Held however also, by the majority following the decision reported in 18 T. L. R. 83 that whatever may have been the character of the original foundation, since for a considerable time (more than 25 years in this case) the original faith had been abandoned and an altered faith had been accepted and followed by the entire congregation, the church was invested with a trust in favour of the latter faith and that therefore the suit by the plaintiffs could not be allowed".

Chief Justice Sadasiva Iyer in para 8 of his judgment says:-

** "In the Chengannur church case, the majority of the Full Bench held that where the whole congregation had acquiesced for 23 years between 1053 and 1076 in an amicable arrangement by which each party had the benefit of the church in alternate weeks, a modified trust in favour of both parties in supersession of the original trust in favour of one party alone had come into existence. The present case is a much stronger one as the original trust had been completely ignored by every body and the new religious doctrines and rituals alone were in full force for at least 25 years before this suit brought in the end of 1078. I cannot accept the contention of

Mr. John that though none of the parishioners of this church had or wanted the benefit of the old trust for 25 years, the parishioners of other Jacobite Churches in Malankarai were also beneficiaries of this trust and hence, there was no alteration by the cestuique trustant as a body as was the case in 2 Madras 249. But unless we overrule the Full Bench decision in the Chengannur church case which decided that the parishioners of each parish were the sole cestuique trustants of the parish Church and that they could unanimously (by conduct or acquiescence or mutual agreement) change the trust provided the changed trust is not for an illegal or immoral purpose. If we carry Mr. John's contention to its logical conclusion, the Romo-Syrians who remained faithful to Rome when the other Christians of this coast joined Antioch can claim all churches then existing as irrevocably wedded to Rome and the Nestorians might make a similar claim against both". 10

** (These portions were added as per order of Court dated 11th June 1980 after hearing the cases posted for to be spoken to). 20

218. Here the majority follow a decision of another Full Bench of a Travancore High Court in 14 T.L.R. 83 basing their conclusion on I.L.R. 2 Madras 295 and I.L.R. 15 Madras 241 which in their turn refer to Attorney General V. Bunce (6 Eq. L.R. 563)

26 T. L. R. 148:- (Geevarghese Kathanar and others v. Mar Dionysius Metropolitan and Others)

219. This is the next case that came up for consideration. This suit was an off shoot of the Seminary Case. The plaintiffs, members of the Jacobite party of the Syrian Christians owing allegiance to the Patriarch of Antioch as the supreme spiritual head sued the defendants, members of the Mar Thomaite Party, also sometimes then called the Reform Party, followers of Mar Thoma Athanasius for a declaration of their right to the plaint church, for an injunction restraining defendants 3 and 4 from officiating as priests therein and also for damages for interfering with the plaintiffs' use of the church. The evidence in the case showed that for more than 12 years before the date of the suit, the defendants had been openly asserting the title of the anti Jacobite party to the plaint church adversely and to the knowledge of the Jacobite party and had been in possession of the church to the exclusion of the plaintiffs' party. There overruling plaintiffs' contention that no question of adverse possession would arise in the light of section 10 of the Travancore Limitation Regulation, a Division Bench of the Travancore High Court, Chief Justice M. Krishnan Nair and Justice Ramachandra Rao, held that the plaintiffs' suit was barred by limitation, the plaintiffs' right to the church having become extinguished under section 28 of the same regulation. How Section 10 becomes inapplicable, I find it rather difficult to understand in view of the fact that both the plaintiffs and the defendants were members of the same church in the first instance and when the defendants had contended that even if the church was originally a Jacobite Church, the 30 40 50

nature of the trust has changed and it had become an anti Jacobite Church and therefore the suit was barred by adverse possession and limitation. The parishioners who had come as additional defendants in the suit had supported the other defendants. Probably the decision was based on the following statements in the judgment:-

“There is no allegation in the plaint that the plaint church became vested in the third defendant or any other defendant, or that the third defendant or any other defendant was trustee for any specific purpose and there is also no evidence showing that any of the defendants was a trustee of the plaint church. In fact, no attempt was made by the plaintiffs either in the pleadings or in the evidence to bring the case within the exemption contemplated in section 10.” 10

220. Before going to the other two cases relied on behalf of the Patriarch side, I would refer to a valid contention raised by Mr. Poti, learned counsel on the Catholicos side (I am using the expressions Patriarch side and the Catholicos side in the broad fashion in which it is now commonly understood in the State, those who swear by the Antiochean Throne and their opponents certainly noting that there is now a Catholicos ordained by the Patriarch also) that a vital mistake had crept in I. L. R. 2 Madras 295 which had been followed in 14 T.L.R. and 23 T.L.R. I will extract below Mr. Poti's submission in regard to this aspect made in his characteristic, analytical and lucid style. While I completely agree with him in this submission, I will for reasons which I will presently state, that may not make much of a difference in the reliance on those Travancore decisions in the consideration of the question of the status of the individual churches. Mr. Poti said of I. L. R. 2 Madras 295:- 20

“In this Madras case reliance has been placed upon a previous Madras decision citing **Attorney General v. Bunce** (1868) 6 Equity 567). A look at the Equity Case will show that it is no authority for the proposition that the parishioners as a body could change the faith to faith different from that of the founders and still remain the proper objects of the charity. Once a charity is founded for the benefit of persons following a particular faith neither the authors of the charity nor the trustees as a body, nor the entire body of the congregation can effect any change in faith. This is an accepted and settled proposition of law - vide Tudor on Charities - Pages 131, 132 & 446. Vide **Att. Gen. v. Pearson** 36 E. R. 135. Lord Eldon said:- “If any number of the trustees are now seeking to fasten on this institution the promulgation of doctrines contrary to those which, it is thus manifest, were intended by the founders, I apprehend that they are seeking to do that which they have no power to do, and which neither they, nor all the other members of the congregation, can call upon a single remaining trustee to effectuate.” 30 40

Also vide **Att. Gen. v. Kell** and **Att. Gen. v. Bovill** cited at Tudor Page 131.

This is obviously so because when a public charitable trust 50

is founded it is intended for the benefit of future generations howlow-soever, so that at no particular date would there be a group of persons who can claim to be absolutely entitled to the properties so as to entitle them to divert the properties from the original trust. At Page 73 of Underhill on the 'Law of Trusts and Trustees' (13th Edn.) he says:

"However, the crucial difference surely is that no absolutely entitled members exist if the gift is on trust for future and existing members, always being for the members of the association for the time being. The members for the time being cannot under the association rules appropriate trust property for themselves for there would then be no property held on trust as intended by the testator for those persons who some years later happened to be the members of the association for the time being."

This principle worked hardship in cases where non-conformists had separated from their mother Church and built their own Church and followed their own doctrines for several years. After a long time had elapsed from the foundation, it was found by the courts extremely difficult on oral evidences to determine with any certainty which was the doctrine followed by the founders in any particular case. Owing to this unsatisfactory position the Non-Conformist Chapels Act, 1844 was enacted. This Act provided that in respect of religious trusts where the deed of trust or other judgment or document did not specify the particular faith for which it was founded the usage in the Church for 25 years prior to the date of the suit shall be conclusive evidence of the fact of that usage being the one for which the trust was founded. This is a statutory presumption of an irrebuttable nature applied to: (a) religious charities only, (b) the absence of any trust deed or other document evidencing the faith of the founder and (c) 25 years usage prior to the suit being treated as conclusive on the question of the object of the charity. So the importance lies in the fact that the statute itself gives the utmost importance to the faith for which the charity was founded and the statutory provision is only a rule of evidence applicable in cases where the trust deed or other document does not contain an indication of the faith of the original founders. This matter has been dealt with in Tudor on Charities, Page 209 and in the footnote 2 at that page the author says that in the 5th edition of his book the relevant sections of the Non-Conformist Chapels Act has been extracted at Page 114-115. The same is said at Page 174 of Picarda's Law Practice relating to Charities. In Att. General v. Bunce the court applied this statutory presumption because the court could not find any mention of the particular faith in the Wills in question. It also said that, as for several years there has been no other person in the parish avowing a different faith, these facts will sustain even a case of cypres.

Obviously this is no authority for the proposition that the entire congregation can change the faith”.

(From the written submission given by the counsel)

221. I quite agree with Mr. Poti in this respect that in a public charitable or religious trust, the entire beneficiaries as such at an existing time cannot change the faith. And the Travancore and the Madras cases concerned might have made a mistake with regard to that if it is taken they have so held. But the question is apart from the congregation's lack of power to change the faith are not the Travancore Cases indicative of the fact that in respect of administration of church apart from faith, the congregation was exercising a decisive voice, may be the only voice. We will look into the subsequent cases. 10

222. And also apart from the statutory provision in the Non-Conformist Chapels Act, if there is lack of positive evidence to show what the founder of the church had in view when the church came to be built, what should the court do? It will not be easy to say with distinctness and precision what the religious principles were of those who founded the church in question. As pointed out by the Cochin Royal Court of Appeal in Ext. B110

“The only safe criterion by which we can form an idea of the trust imposed upon the church is to see what was the acknowledgement by the people as a body of the religious tenets, formularies and church Government observed in the church for a long series of years before the community became dissentient amongst themselves.” 20

(Last sentence in para 38 of Ext. B110)

Ext. B323

223. This case which related to the management of the affairs of the St. George's Church, Puthupally and its properties, arose out of a suit filed by the parishioners of the church against those in actual management of the church for accounts etc. It had been apparently contended there by the first defendant that he was in management as per the provision of an Udampady executed in favour of the Patriarch and he was accountable only to him. Chief Justice Chatfield said there:- 30

“The Patriarch is not the absolute owner of St. George's Church, Puthupally and its properties but there is a trust of those properties in favour of the parishioners of the Church”

(emphasis mine)

Concurring with Chief Justice Chatfield's view, Justice P. K. Narayana Pillai said:- 40

“In order to distinguish the church in question, the appellant relies on two Udampadies.....The executants of Exhibit II are but a few of the parishioners. If they executed in their individual capacity, it is not binding on the other parishioners. If on the other hand, they purported to act in a representative capacity their authority to take the steps has not been made out.”

224. This decision certainly proceeds on the basis of the exclusive right of the parishioners in respect of the temporalities of the local church. 50

A. S. No. 269 of 1960 of the Kerala High Court – Ext.B322

225. The next decision relied on by the Patriarch side in regard to their stand on the individual churches is a decision of a Division Bench of this Court in A. S. No. 269 of 1960 of this Court, which is marked as Ext. B322 in the case. This decision is after the judgment of the Supreme Court in the Samudayam Case and Justice Raman Nair, as he then was, speaks at the outset of the decision (he rendered the judgment on behalf of the Division Bench consisting of himself and Justice Raghavan):-

“Even when that suit was pending the fight had been carried- 10
and it is still being carried by the rival parties, with a
fore-thought worthy of a better cause, to individual churches
and their properties, the general pattern followed being for
the party for the time being victorious to assert that the
Jacobite Church was an episcopal church so that the tempora-
lities of all the individual affiliated churches, if we may use
that expression, vested in the bishop or the metropolitan
(by which honorific title the bishops of this particular church
seem to be kown), and for the party for the time being defeated 20
to aver that the church was more or less a congregational church
in matters temporal so that the temporalities of the individual
churches vested, not in the Metropolitan, but in the parishio-
ners of each church. The present suit is one such battle
fought over an affiliated church, the St. George’s Jacobite
Syrian Christian Church, pudupally, and its properties.”

The learned Judge then said:-

“As we have already indicated, the previous suits were con-
cerned with the Jacobite Church as a whole and its properties,
not with individual churches of the Jacobite faith or their
properties excepting that the Cochin case was concerned with 30
certain individual churches of which the suit church was not
one – see in this connection the observation in Rt. Rev. Poulose
Athanasius v. Moran Mar Basselios Catholicos (1946 T. L. R.
683 at page 774) to the effect that that suit was not concerned
with the rule or practice relating to the properties held by
different churches under the same bishop but was concerned
only with the properties belonging to the former diocese of
Malankara which subsequently became divided into several
dioceses. To the extent that the former suits were representa-
tive suits the parties thereto were the members of the entire 40
Jacobite Syrian Christian community, not, as in the present
case, the parishioners of the suit church. It would appear
from what is said at page 806 of Rt. Rev. Mar Poulose
Athanasius v. Moran Mar Basselios Catholicos (1946 T. L. R.
683) that the plaintiffs in the Samudayam suit sued on behalf
of themselves and of the body of the Jacobite Syrian Christians
belonging to the Patriarch’s party and that the contesting
defendants therein, belonging to the Catholicos’s party, were
sued in a representative character. But, although the dispute
in the present suit has arisen out of the faction between the 50

Patriarch's party and the Catholicos's party, the suit is in no sense a suit between the members of the Patriarch's party and the members of the Catholicos's party. The suit is a representative suit brought under section 72 of the Travancore Civil Procedure Code on behalf of all the parishioners of the church, and the defendants are sued only in their personnel capacities and not as representing the members of the Catholicos's party. If, therefore, the suit church and its properties have a separate identity as alleged by the plaintiffs, what has been said or decided in the previous cases relating to the Jacobite Church seems to us irrelevant excepting to the extent that any question arises regarding that church in which case the decision might be relevant under section 13 of the Evidence Act or even, if *res judicata* had been pleaded, as constituting *res judicata*." 10

The Bench then considers the decision of the Travancore Case about the same church, the judgment in respect of which is marked as Ext. B323 and states:-

"Whether or not that finding is *res judicata* in the present suit we need not stop to consider, for, notwithstanding to extreme position taken in the pleadings, both parties are now prepared to accept that finding and to proceed on the basis that the church and its properties constitute a trust in favour of the parishioners of the church. The dispute is now confined to the right to the management of this trust." 20

I would now quote in extension paras 12 to 17 of the judgment which will be of great relevance to the question in hand.

"12. Turning next to the M. D. Seminary meeting of 1934 and the constitution, Ext. P26, passed at that meeting, we are by no means satisfied that that meeting had any authority to frame a constitution for the suit church. That was a meeting of the Sabha, constituted as we have seen, by the Mulanthuruthu Synod of 1876, a synod convened by Patriarch Peter III to curb the powers of the metropolitans by vesting powers in the congregation; and it was for this purpose that the Sabha was constituted to represent the congregation. The suit church was admittedly founded long before that, and, admittedly, its properties and their management have all along vested in trustee elected by the parishioners although the appellants would have it that these trustees derive their authority not from their election by the parishioners but by reason of their acceptance by the Metropolitan, which, even according to them, invariably follows. It would thus appear that the suit church was an autonomous unit so far as temporal matters were concerned, the power of management being vested in trustees elected by the parishioners. In order to vest the Sabha with the power to frame a constitution binding the suit church it must first be shown that this autonomy was surrendered to the Sabha. No evidence of any kind has been adduced to show that there was any such surrender, neither the 30 40 50

proceedings of the Mulanthuruthu Synod nor those of the M. D. Seminary meeting are in evidence in the case, and, although we have been taken through extracts of those proceedings in the judgments in other suits — which as we have already said cannot be taken as evidence in the present suit — our attention has not been drawn to anything in these extracts which makes out a surrender of the autonomy of the suit church to the Sabha.

13. Reliance is placed on the observations of the Supreme Court in **Mar Basselios Catholicos v. Mar Poulos 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.

14. It is pointed out that notice of the M. D. Seminary meeting of 26-12-1934 went to all the individual churches including the suit church (Ext. D28 dated 3-12-1934 being the notice to the suit church) and that the Edavaka Yogam of the suit church having sent three representatives to the meeting with full power to vote on their behalf as shown by the proceedings, Ext. D19 dated 23-12-1934, are bound by the constitution, Ext. P26 which as Ext. D27 dated 26-12-1934 the minutes of the M. D. Seminary meeting show, was unanimously adopted at that meeting. We do not think that there is much substance in this contention. In the first place, both sides have proceeded on the basis that the suit church and its properties constitute a trust of which the parishioners of the church are the beneficiaries, and, while it would be a perfectly intelligible rule that the beneficiaries of a trust should elect the trustees, whether the beneficiaries have the right to frame a constitution for the trust or to empower some outside agency to do so seems open to question. In the absence of any rules of the founda-

tion, that would appear to be a matter for the court. That apart, it does not appear that the Edavaka Yogam which deputed three representatives to attend the M. D. Seminary meeting and vote on their behalf authorised the meeting to frame a constitution for the suit church or their representatives to vote in respect of such a constitution. Ext. D28 dated 3-12-1934 is the notice issued by the Catholicos to the suit church stating that a meeting of the Sabha would be held on the 26th December 1934 and asking the suit church to send three representatives, a priest and two laymen, to the meeting with full power to express their opinion on the matters mentioned in the agenda appended to the notice. There are five subjects mentioned in the agenda and the fourth is, "To pass the Bharanaghatana passed by the Association Managing Committee." The evidence shows that no copy of the constitution passed by the managing committee was sent to the suit church, and, in the context, the Bharanaghatana referred to could only have meant the Bharanaghatana of the Sabha which Ext. P26 indeed is. But that the constitution so framed would contain a chapter relating to the management of the individual churches of the faith could not have been within the contemplation of the Edavaka Yogam of the suit church when they sent their representatives to the M. D. Seminary meeting, and it is significant that the constitution, Ext. P26, was never accepted by the Edavaka Yogam, an attempt made six years later to secure the acceptance of the Edavaka Yogam ending in failure as shown by the minutes Ext. P2 dated 7-2-1116 (22-9-1940) of a meeting of the Yogam.

15. We might, in this connection, point out that all the affiliated churches are members of the Sabha entitled to send three representatives to participate in all meetings of the Sabha. The fact that the representatives of the Individual churches were summoned to the M. D. Seminary meeting and did attend and participate in that meeting is therefore no indication that the meeting was competent to take any decision in respect of the affiliated churches and their properties.

16. Ext. P26 was passed by the Sabha in December 1934 and it is said that the very fact that the present suit was brought only nine years later is an indication of acquiescence in and, therefore, of acceptance of, Ext. P26. We do not think that it is any such indication. In fact, Ext. P2 to which we have already referred, proves the contrary. The reason why the present suit was not brought earlier is not far to seek. The management of the temporalities of the suit church was the subject-matter of the previous suit, O. S. No. 100 of 1091, and, in the course of the final decree proceedings in that suit, the court had ordered the election of two trustees in place of the removed trustee, and it was thus that defendants 3 and 4, who were the persons so elected, became trustees. That matter, regarding the appointment of the trustees, was finally

dispossd of only in 1118 (1942-43), and the present suit was brought soon after that.

17. We hold that it has not been established that the temporalities of the suit church and therefore the management of the trust is vested in the Metropolitan or that the rules in Ext. P26 are the rules of the trust."

The different nature of the powers of the parishioners and the Metropolitan are well brought out in the following passage in the judgment:-

"So far as the second part is concerned, the evidence on both sides is to the effect that the temporalities of the church are to be administered by trustees elected by the Edavakakkars and accepted by the metropolitan. The evidence further shows that the trustees have to submit their accounts to the Metropolitan who approves them and sends them back. The vicar and other priests of the church are also elected by the Edavakakkars and are ordained and appointed by the Metropolitan. Whether the theoretical source of the trustees' powers of management is the election by the Edavakakkars or the acceptance by the metropolitan, we need not stop to consider, but there is no evidence to show that the Metropolitan has any authority in respect of the temporalities of the church beyond the acceptance of the trustees elected by the Edavakakkars and the passing of the accounts submitted by the trustees. These are duties of a mere supervisory nature, and we uphold the finding of the court below that the properties of the trust are to be managed by the Kaikars or trustees elected by the Edavakakkars and that the rights of the bishops and other ecclesiastics with regard to the temporal matters of the church are only supervisory in nature—visatorial powers, the court below has named them. We might add that it is not disputed that, in respect of spiritual and ecclesiastical matters relating to the church, complete authority is vested in the bishop and his ecclesiastical superiors."

226. The manner in which the controversies in the suit in which the appeal to this Court arose where Ext. B322 judgment was rendered, was finally settled, which was sought to be proved by production of some additional documents at the time of hearing cannot in any way detract any segment in the force of the reasoning by which the court had come to the conclusion about the nature of the individual churches, the manner of its administration and in whom it vested etc.

227. Though bound by the common spiritual discipline it is apparent that the parish churches were considered to be rather independent units in the Malankara Church. That the Jacobite Church in Malankara is not a purely episcopal church is clear from the fact that even in regard to the ecclesiastical headship of the Malankara diocese as a whole the people's acceptance was considered a relevant factor. This insistence on acceptance by the people, the Travancore Royal Court judgment Ext. B74 points out was probably due to a precaution on their part to prevent foreigners sent out by the Supreme Head of the Church, the Patriarch from assuming the management of the tempo-

ralities of the church without the consent and the wishes of the community. The various constitutions of the individual churches produced in the case are indicative of the supremacy of the parishioners of the church in the matter of the administration of the temporalities of the church. That the wishes of the parishioners of a church even in the matter of acceptance of the Metropolitan is given emphasis in the petition which Mar Joseph Dionysius sent to the Madras Government which is quoted in extension both in Ext. B74 and Ext. B110 judgments of the Travancore and Cochin Royal Courts of appeal respectively. There the Metropolitan pointed out;—

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“That in a recent case before the High Court of Madras, well known as the Royapuram Church Case, where the congregation were divided some adhering to the Vicar Apostolic and some to the Goanese Jurisdiction, the High Court directed that the wishes of the community should be ascertained by voting; the votes were taken by Sir Adam Bittleston, and, in conformity with the views of the majority, the funds and the Church were handed over to the Vicar Apostolic party.

That in two of the Syrian Churches within the Cochin State where a similar difference of opinion existed in 1860, the then Resident of Travancore, Mr F. N. Maltby and the Dewan Shungoonny Menon, adopted the same measure as that referred to in the immediately preceeding paragraph (16) for an adjustment of such difference, as will be seen from the last communication appended to the enclosure; and be it noted, such a measure met all objects to be desired.”

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The Metropolitan in the last paragraph of his petition prayed for the issue of a proclamation,

“simply declaring that each and every one of the Syrian Christians are at liberty to openly profess their adherence to, and subject themselves to the jurisdiction of, the Bishop of their own choice without any lay restraint upon their moral obligations, and adding that if there be any division of opinion as to such choice, commissioners be appointed to ascertain the wishes of the majority of the Syrian Christians attached to each church,.....etc.

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(Para 197 of Ext. B74 & Para 27 of Ext. B110.)

228. The independent status of the individual churches is also brought out in the resolutions of the Mulanthuruthy Synod presided over by the Patriarch Peter III.

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

(2) That a Fund, out of public subscriptions in their community, should be formed for the purpose of meeting the expenses of litigation etc. to settle the disputes that had

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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;

(3) That the Committee had full authority subject to the supervision of the See of Antioch to administer the Fund to regulate the affairs of the Church and to alter the existing rules and frame new rules etc. 10

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

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

(Para 285 of Ext. B74)

229. Otherwise why the people of each parish asked to execute and register deeds of covenant binding themselves to the See of Antioch. And the resolutions are also pointers to the fact that the Syrian Christian Association was established with Patriarch as Patron and Metropolitan as President to administer the Common Trust Fund of the Malankara Church to regulate the affairs of the Church. The Association cannot interfere with the temporalities of the Parish church. Nor could the Metropolitan either as President of the Association or ecclesiastical head do that. No doubt in the matter of spiritual supervision the Metropolitan's powers are there. The Travancore decisions are reflective of the true legal position and I have no hesitation with due respect in endorsing what Mr. Justice Raman Nair, as he then was, said in Ext. B322. This can very well explain why the then Catholicose--first defendant in O. S. No. 111 of 1113 stated in para 21 of the annexure of his written statement (Ext. B307):- 20 30

"21. പട്ടിക 26-ാം നമ്പർ വസ്തു ആലപ്പുഴ പള്ളി ഇടവകക്കാരുടെ വകയും പള്ളി മുതലായ കെട്ടിടങ്ങൾ ടി ഇടവകക്കാരുടെ പണം കൊണ്ട് പണിയിച്ചിട്ടുള്ളതും അതുകൾ ആ ഇടവകക്കാരുടെ കൈവശം ഇരിക്കുന്നതുമാകുന്നു. വാദികൾക്ക് ഇതിന്മേൽ യാതൊരു അവകാശവും ഇല്ല."

230. The decision in the Samudayam suit finally rendered by the Supreme Court cannot be a bar to the plea taken by the Patriarch side in these suits regarding individual churches or their properties. What was the exact scope of the Supreme Court decision, I have discussed earlier. And as Justice Raman Nair pertinently pointed out in Ext. B322 the previous suits were concerned with the Jacobite Church as a whole and its properties and not with the individual churches of Jacobite faith or their properties. 40

Canons:-

231. One of the prime questions that had been put forward before me by the learned counsel on both sides, based on an issue raised in O. S. No. 4 of 1979 is, what is the true book of canons which is accepted by the Malankara Church as a whole. As was correctly pointed out by the learned District Judge in Ext. A16, his judgment 50

in the Samudayam suit the determination on questions of this nature can come within the cognizance of a civil court only to the extent such decision will affect rights to properties or other civil rights between the parties to the suit on the matters involved in the action. Section 9 of the Code of Civil Procedure confines the court's jurisdiction to matters of a civil nature and it is not part of the civil court's duty to determine a religious doctrine unless it is so essential for the purpose of a right to property or office or such other right of a civil nature. And the District Judge again rightly said in Ext. A16 it is an almost impossible task of laying down which is the correct or genuine version 10 of the Hudaya Canons compiled by Bar Hebraeus which canons admittedly bind the Jacobite Church. In Ext. A16, the learned Judge observed:-

"183. Though the question as to which version of the canons is the correct and genuine one was argued at great length by both sides at the close of the argument it was conceded by the defendants' advocate Mr. T.J. Mathew that the determination of this issue either in the broad aspect as indicated by the wording of the issue or even within the limited sphere of the questions and matters specified above, is un- 20 necessary for the purpose of this suit. Though the plffs, advocate Mr. Ananthapadmanabha Iyer was not prepared to freely concede this matter, he too was not able to urge any argument to support the position that this issue in the broad aspect or in the limited aspect is one that should be decided by this court."

He had earlier said:-

"179. As regards the first of the above two questions it is conceded by both sides that the canons (either BP or XXVI) do not contain any provision as to what conduct if any would amount to schism etc., and whether the holding on to a 30 particular tenet or tenets, would amount to schism, heresy or going out of the church or not. Nor is there any provision in Ext. BP or XXVI to the effect that the failure to accept the particular version of the canon as the correct and genuine version of the Hudaya canon will amount to schism, heresy etc., or will render the particular member or members of the church liable to any ecclesiastical penalty involving punishment like excommunication, expulsion from church, loss of membership or separation from the church."

However, we find the court going into the question as to whether 40 Ext.BP or Ext. XXVI in that case, (corresponding to Ext.B161 or Ext. A206 here) has ever been authoritatively accepted by the Patriarch of Antioch or the whole Jacobite Church or the Malankara Church as the correct and genuine version of the Hudaya Canons of Bar Hebraeus and whether the one or the other version should be or can be held to be the version binding on the whole Jacobite Church or the Malankara Church.

232. As in respect of most of the questions arising in the suit both the parties have taken extreme positions on this matter also and in support of their view depend purely on one or other of the earlier 50

decisions in the Vattipanam Case or the Samudayam suit and their binding nature in this action. The Patriarch side naturally would say that the finding in respect of the Canons in 41 T. L. R. 1 conclude the parties, the review resulting in 45 T. L. R. 116 being expressly limited to only some points specifically excluding among others the finding on the 'Canons'. The Catholicos side would put it that the matter stands finally decided by Ext. A16 judgment which according to them stands confirmed by the Supreme Court decision. According to me, both the parties are in error and there is no earlier decision on the question of canons which now binds this court. 10

233. As far as 41 T. L. R. 1 is concerned, I need only reiterate what I said about it in my discussion on the subject of 'res judicata'. Adverse findings against a successful party to the litigation will not constitute res judicata in a subsequent suit between the same parties. Mr. Poti, learned counsel for the plaintiffs had placed before me the following decisions in support of this principle which, according to me, represent the true legal position.

1. A. I. R. 1922 P. C. 241.
2. A. I. R. 1977 Mad. 25
3. A. I. R. 1974 Raj. 21
4. A. I. R. 1968 All. 282
5. A. I. R. 1974 Pat. 1 and
6. A. I. R. 1956 Nag. 273.

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I do not consider it necessary to go into authorities closely. Suffice to say, the position as put forward by Mr. Poti is fairly well settled. I need here quote the following passage from Spencer Bower on Res Judicata-in para 215 at page 186 of the Second Edition of the book.

"Not every finding of fact in a judge's judgment, not every issue of fact determined by a judge or jury, is res judicata between the parties in later proceedings. Thus, a decision of fact or law against the party in whose favour the substantial dispute was ultimately decided will not find an estoppel in a later proceeding; and this because it cannot have been necessary to the substantive decision." (emphasis mine). 30

I need not add that we will have to take 41 T. L. R. 1 with 45 T. L. R. 116 for finding out the substantive decision.

234. As regards the Supreme Court decision that also I have dealt with rather elaborately earlier as to how far it could have been said to have confirmed the findings in Ext. A16. I have found in definite terms that it cannot be said at all that the findings in Ext. A 16 as a whole have been affirmed by the Supreme Court. I have explained the scope and ambit of paras 34 to 38 of the Supreme Court judgment where the court only examines whether the new charges put forth by the learned counsel for the respondents- plaintiffs in that suit had any basis in the pleadings in the case. When the Supreme Court observed that in order to decide these charges and counter charges it is absolutely necessary to determine which is the correct book of canons and that was why issue 13 came into the picture, the court was not considering the correctness of the decision on the said issue. The court was only answering the contention raised by the 50

respondents' counsel that issue along with issue 16 indicated that the charge on the basis of the acceptance of the wrong canon was in the pleadings and came within the scope of the two issues. The court did not examine the correctness or otherwise of the findings on those issues which the trial court had to take a decision in view of the contentions of the parties but rested its decision on the question whether the defendants therein had become heretics or aliens or had gone out of the church by establishing a new church because of the specific acts and conducts imputed to the defendants in that suit on res judicata based on the decision in 45 T. L. R. 116. I would reiterate what I said earlier in this judgment that a judgment cannot be taken to have decided more than it decides expressly or impliedly. At the risk of repetition I want to make my finding on the question clear. 10

235. Now I have to go into the question as to what is the correct book of canons. I might state that in this case there is lack of positive evidence on the question for the court to come to a firm conclusion. No doubt in a civil action decisions will have to be arrived at on the basis of preponderance of probabilities but that does not mean that in the absence of clear evidence the court can come to a decision on the basis of conjectures and surmises. I have noted the elaborate discussion on the question on the evidence before the respective courts in 41 T. L. R. 1, Ext. A16 and 1957 K. L. T. 721. I will not be justified as such in going into the evidence which had been adduced in those cases and not actually before me. Nor could I say that as in the majority of cases a particular view has been taken that would be the correct view as long as it is not made out, that the findings therein bind me. 20

236. Any how I will examine the findings on the question entered into in 41 T. L. R. 1 and Ext. A16. In 41 T. L. R. 1, the Full Bench of Travancore High Court points out that Ext. 18 in that case (Ext. BP in the Samudayam Case=Ext. B161 here) was filed on the side of the plaintiff in the first Arthot Case (Ext. B 110 is the judgment of the Cochin Royal Court of Appeal in that case). The Full Bench further points out that Ext. 18 bears on it endorsements of its having been produced in other cases, such as O. S. No. 1402 of 1063, Quilon District Munsiff's Court, Sessions Case No. 9 of 1069, Quilon District Court and the Muvattupuzha Summary Case No. 1 of 1087 and O. S. No. 66 of 1088, Trichur District Court. The Court then said that it was not so much concerned just then with these endorsements of production of Ext. 18, as with the fact of its production in the first Arthot case as an exhibit on the side of then plaintiff- Metropolitan Mar Joseph Dionysius. The next Metropolitan Mar Gheevarghese Dionysius was a witness on the side of Joseph Dionysius in the Arthot Case. And strangely Mar Gheevarghese Dionysius who had appeared on the plaintiffs' side as a witness in the Arthot Case contended in the subsequent case in which he was a party that Ext. 18 is a fabrication. The Court speaks of the halting nature of the evidence given by Mar Gheevarghese Dionysius regarding Ext. 18 as produced in the Arthot Case. The court refuses to believe his evidence that he did not remember or had no knowledge what the canon book that was produced in the Arthot Case was and 50

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.

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.

(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 from the evidence that from 1069 Chingom Kora Mathen Malpan was in possession of Ext. 153 a very old manuscript which is seen to have come into his possession from proper custody. There does not appear to be any reason for doubting the genuineness of Ext. 153 or of doubting that it is not so ancient as it purports to be. He suppressed that and produced Ext. BP in courts of law apparently with sinister motives because Ext. 153 would not have served the purpose which the production of a canon book was then intended to serve. Ext. 68 canon book corresponding to Ext. 153 and 156 tallies with other manuscript versions which were even then in vogue and in use in the community. These manuscripts 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

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” —(കാനോനാകൾ—വ്യാഖ്യാനം—ചരിത്രം)

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:- 40

“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 plaitmiffs' 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. 10 20

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. 30

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.” 40

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 50

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 Bhadrasanas 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 പത്രാക്കന്മാർ” 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 പട്ടപത്തിനു 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.” 20 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 കിട്ടാത്തതും ശമയോൻ ഭിവന്നാസ്യോസിനും യൂലിയോസിനും ആണ്. ഇവർ രണ്ടുപേരും മരണം വരെ മലങ്കരയിൽ തന്നെയായിരുന്നു. അവർ രണ്ടുപേരും പ്രാർത്ഥിച്ചും ഭാരോസ്ഥലങ്ങളിൽ കർമ്മങ്ങൾ നടത്തിയും ഇരുന്നിരുന്നു.... ഈ ആറുപേരെയും മെത്രാന്മാരായി വാഴിക്കുന്നതിന് 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 പ്രതിപുരുഷന്മേലും കൂടിട്ടുണ്ടോ. ചോ. മലങ്കര മെത്രാപ്പോലീത്തയായിരുന്ന മാർ ജോസഫ് ഭിവന്നാസ്യോസ് അവരെ സ്വീകരിച്ചിട്ടുണ്ട്. അവരെ സ്വീകരിക്കുന്നതിനായി മലങ്കര അസോസിയേഷൻ കൂടിട്ടുള്ളതായി അറിവില്ല. അതാതു എടവകകളിൽ യോഗം കൂടി അവരെ സ്വീകരിച്ചിട്ടുണ്ടോ എന്നറിഞ്ഞുകൂടാ.

.... ..
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 എട
വക ജനങ്ങൾ വെളിപ്പെടുത്തിയതു് ആ മെത്രാന്മാരെ ആ എടവകകളിൽ
സ്വീകരിക്കുകയോ അവരുടെ അധികാരം ചെലുത്താൻ സമ്മതിക്കുകയോ ചെയ്യാ
ത്തതാണ്.”

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. **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

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).....

50

(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 പഠനത്തിലും 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 പഠനപാത്രിയർക്കീസ് ബാവാമാർ നിശ്ചയിക്കപ്പെടുന്ന ആരംഭാധികാരിയും 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 മലങ്കരയ്ക്കായിരുന്നിട്ടുണ്ട്. ആ പള്ളികൾക്ക് എം. ഡി. സിമിനാരിയിലെ 110 ധനുവിലെ പള്ളി പ്രതിപുരുഷയോഗത്തിന് നോട്ടീസയച്ചിട്ടില്ലാ. 50

ആ പള്ളികൾ മലങ്കരയുള്ള മേൽപട്ടക്കാരുടെ അധികാരത്തിന് കീഴിൽ അല്ലാത്തതുകൊണ്ടാണ് ആ പള്ളികൾക്കു 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 എടവകക്കും മെത്രാനായി അദ്ദേഹത്തെ തിരഞ്ഞെടുക്കുകയോ സ്വീകരിക്കുകയോ ചെയ്തിട്ടില്ല. സിംഹാസനപള്ളി എന്ന പേരിൽ ചില പള്ളികൾ മാർ ഒസ്താന്ത്യോസിന്റെ അവസാന കാലം മുതൽ സ്ഥാപിച്ചു തുടങ്ങി എന്നാണ് എന്റെ അറിവ്. ആ പള്ളികളെ മലങ്കര സഭയിൽപ്പെട്ട പള്ളികളാണെന്നു മലങ്കര മെത്രാപ്പോലീത്തമാർ സ്വീകരിച്ചിട്ടില്ല. ആ സിംഹാസന പള്ളികൾ എടവക പള്ളി അല്ല".

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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."

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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.

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Knanaya Community:-

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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

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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. 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. 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. 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. 30 40

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

factions had not settled the real controversies between them. In the face of the evidence in the case, I do not think I could agree with the rather uncharitable contention raised on behalf of the plaintiffs that it is only after 1973 "when certain dissidents in the church started to precipitate the Malankara Church with dissensions and discord, as a convenient handle for themselves, they raked out the question of the Patriarch's supremacy etc. and finding that a divided church here would gain for him undue powers which he did not have with, the Patriarch started unlawful interferences by ordaining Bishops in the teeth of the opposition of the Synod here." On the other hand, the Patriarch showed farsightedness in the matter, no doubt the then Catholicos also an abundant measure of good sense but then the unification efforts failed because of the sharp conflict generated by the demand for a completely independent church system on one side and the church tradition of centuries besides the insistence which some parish churches have of the continuance of their autonomy. No question of any estoppel here arises. The fact that out of a genuine desire for effectuating a total settlement of the disputes between the parties, both the groups worked in co-operation for some time will not prevent either party from reverting back to the original position in case no final settlement is arrived however unfortunate such a development may be.

Does any invalidity attach to the election of Mathews Mar Athanasius to succeed to the office of Catholicos-cum-Malankara Metropolitan

318. This is a question that is raised in O. S. No. 3 of 1979, a suit filed on the Patriarch side against the present Catholicos-cum-Malankara Metropolitan Mathews Mar Athanasius. The grounds of attack in the case are on three grounds.

(i) There is no precedent in the church to elect a successor to the Catholicos or Malankara Metropolitan during the life time of the earlier incumbent.

(ii) That the meeting dated 13-12-1970 at which he was elected is invalid as all the churches were not given notice and further representatives of several Bahya Kerala Diocese attended the meeting though they do not form part of Malankara and

(iii) The clubbing of the two offices of the Catholicos and Malankara Metropolitan and elected one person to both offices is void.

319. As regards the first question what Mr. John learned counsel for the plaintiffs contends is that there is no provision in the Cochin Award or even in the constitution framed by the Association Exts. A1 or A2 which allows election before the vacancy opens. Similarly he would point out that Ext. A14 (a) also does not provide for an election before the vacancy opened. There Abdul Messiah had directed:-

“കാതോലിക്കാ നിര്യാതനാകുമ്പോൾ തൽസ്ഥാനത്തു ഒരു കാതോലിക്കായെ വാഴിക്കുവാൻ നിങ്ങളുടെ മെത്രാപ്പോലീത്തന്മാർക്കു അനുവാദം അധികാരവും ഉണ്ടു്.”

320. Mr. John would depend upon the decision of Madras High Court in A. I. R. 1928 Madras 327 (**Chockalingam v. Duraiswami and Others**) where at page 340 it is stated:-

“In the case of public trust, a power of appointment unless

there is something to the contrary in the instrument of trust itself, should be regarded as a power to be exercised at or about the time when the appointment is to take effect having regard to the state of things then and therefore any appointment so called previously made is in its very nature revocable."

He also quoted from American Jurisprudence, Vol. 10 page 667 para 113 which states:-

"In the event of a failure of the creator of a testamentary trust to designate the manner of appointing successors to the trustees named therein, a court of equity has upon the death, resignation, failure to qualify or disqualification of such trustee, the power to appoint trustees as their successors. Such power can be exercised only on proof of vacancy."

321. According to me Mr. John has failed to note that in this case, there is no appointment of a trustee when the other trustee is alive. The Association made a selection of the person who is to succeed to the ecclesiastical affairs of Catholicos and Malankara Metropolitan. No doubt a Malankara Metropolitan when he succeeds to the office becomes a trustee of the common properties of the Malankara Church.

322. It might be noted that even in regard to Trusts where the trustees are to be appointed by an express provision in a written statement, where the power conferred is in general terms but there is an incidental direction for example that it shall be exercised at a prescribed time or within a prescribed period, it has been held that such a direction is only directory in nature. Such a direction does not restrict the exercise of the power even if the prescribed conditions are not fulfilled. "The wrongful omission of the donee to exercise the power in accordance with the direction is not fatal: the power continues to subsist nonetheless. Thus in *A.-G. v. Flower* (1716) 2 Vern. 748; there was a direction in a will that when the six trustees were reduced to three others should be appointed, and the sole surviving trustee was allowed to appoint others. In *Doe d. Dupleix v. Roe* (1794), 1 Anst 86, at 91, the opposite happened: vacancies were to be filled when the trustees were reduced to a certain number and it was held that the trustees might elect before the event occurred. A residential qualification may be merely directory; and a provision that there should be a particular number of trustees may likewise be merely directory, so that an appointment in excess of the number authorised is valid. The same principles of construction apply whether the power is in a trust instrument an Act of Parliament or an order of the court." (Page 345-40 The Law and Practice Relating to Charities by Picarda.).

323. And what has been done by the Association is not in any way unusual. Mar Geevarghese Dionysius was selected for succeeding to Mar Joseph Dionysius - See Exts. A57, 58 and 59, letters of Mar Joseph Dionysius to British Resident.

324. In regard to the contention that no notice had been issued to all churches, there is absence of proof that any church has not been notified. Ext. A51 is the copy of the notice issued, Ext. A52 is the book containing the certificate of posting of notices to the churches and Ext. A118 is the paper publication for the meeting.

325. As regards Bahya Kerala Diocese members attending the meeting, it may be noted that this Diocese itself is one created by the Malankara Church for the large number of Jacobite Syrians domiciled in Kerala, but residing and earning their livelihood in the cities of Madras, Bombay, Calcutta, Delhi and so on. (See Ext. A162(g), Ext. A10(o) and Ext. A10(q). Hence there is nothing illegal in the members of that Diocese taking part in the Association meeting to elect the Catholicos and Malankara Metropolitan.

326. Nor I am able to find out any illegality in the clubbing of the offices of the Catholicos and the Malankara Metropolitan. Not only does the precedent in the church point to the contrary, even the tallest spiritual authority in the church, Patriarch did not raise any objection but presided over the Synod meeting when Augen I was installed as Catholicos-cum-Metropolitan. 10

Court Fee

327. I do not find any basis for the contention that is raised that proper court fees has not been paid which should be ad valorem. In O. S. No. 4 of 1979 the leading suit, A to E reliefs in the plaint are for declarations while prayers F to H are for injunction consequent on the declarations. No recovery of movable properties is sought for, nor any claim in respect of title to immovable property. The declarations that are sought are (1) that the Malankara Church is governed by the constitution, (2) that defendants 1 to 3 are not legally consecrated metropolitans and so incompetent to ordain priests, (3) that priests who refuse to recognise the authority of the Catholicos and Metropolitans are not entitled to minister in any of the churches and the consequential prayers are to restrain defendants 1 to 3 from ordaining priests, to prohibit defendants 4 onwards from performing religious services in Malankara Churches or interfere in their administration. The churches 1000 and odd belonging to the Malankara Church are listed in the schedule. Mr. Poti, learned counsel for the plaintiffs, is quite right in contending that the subject matter of the suit is not immovable property but intangible rights relating to management or performance of sacraments etc. This right is not capable of valuation and come under Section 25(d) (ii) of the Kerala Court Fees and Suits Valuation Act. 20 30

328. I need here only refer to the decision of the Travancore Cochin Court in I. L. R. (1953) T. C. 1170 F. B. (**Mathews Kathanar v. Easus Kathanar**) and of the Supreme Court in A. I. R. 1964 S. C. 457 (**State of Maharashtra v. Mishrilal**). In the latter case the court said:—

“Claims not based on any asserted right but dependent on the decision of the disputed right and reliefs in regard to which are in the discretion of the court do not come within the purview of the expression “subject matter in the plaint or memo of appeal.” ” 40

In regard to the other suits, the same principle should apply.

Whether the suits or any of them are barred by Section 9 C. P. C.

329. I do not think any of the suits are not maintainable on account of any legal bar. The Supreme Court has said in A. I. R. 1974 S. C. 1126 (**Ganga Bai v. Vijay Kumar**) that unlike in the case of appeals for which a statutory provision has to be shown, in the case of suits the 50

law is that any suit of a civil character can be filed, provided it is not shown to be barred expressly or impliedly. Section 9 C. P. C. as I pointed out at an early stage provides by way of explanation that a suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. The scope of the provision has been explained in A. I. R. 1940 P. C. 24; A. I. R. 1951 Orissa 64; A. I. R. 1952 S. C. 245; A. I. R. 1961 S.C. 1720 and A. I. R. 1971 S. C. 2540. In all these suits what are involved are the right to hold certain offices, the right to administer institutions or the denial of such rights. Therefore the suits are maintainable. 10

Whether O. S. No. 4 of 1979 is a properly filed representative suit. Are the individual churches to be separately impleaded for a binding decision on them?

330. In paragraph 19 of the plaint it is stated that a section of the community is attempting to question the authority of the church and its Catholicos and Malankara Metropolitan and create foreign domination and divide the loyalty of its members. This group is said to have organised itself under the name of the Malankara Jacobite Syrian Christian Association for this purpose and also forming groups under different names in order that they may unitedly work to obstruct the administration of the church and its parishes. The co nomine defendants are stated to be persons of this category and as such persons are numerous, permission is sought to sue the defendants in the representative capacity. The further fact is that the plaint is accompanied by an application under Order I Rule 8 C. P. C. The affidavit filed in support of such application refers to the activities of persons in the church who are interested to fight the authority of the first plaintiff and other lawful authorities under him and the proper administration of the church under the constitution. In the application itself it is prayed to permit the defendants to be sued as representing the section of the community who are generally acting in defiance of the authorities of the Catholicos- cum-Malankara Metropolitan and the constitution of the Malankara Orthodox Syrian Church. I have no hesitation in agreeing with the plaintiffs that the defendants on the party array are desired to represent the body of members of the church who question the jurisdiction of the first plaintiff and the hierarchy of authorities of the church functioning under him in the church and who challenge the Bharanaghatana of the Malankara Church. I do not also consider that the non impleading of some persons who wanted to get themselves impleaded either on their behalf or on behalf of certain individual churches have in any way prejudiced those persons who are represented in the suit by the defendants already on record. As this court pointed out in the order dismissing a series of revision petitions filed against the order of the District Court for non-impleading some persons who came forward to get themselves formally made parties to the suit "it is not disputed nor it is pretended that the defendants already on record will not effectively defend the suit filed by the plaintiffs. The defendants filed written statements meeting all the contentions in the plaint. Every issue and every disputed fact is met in the written statement filed by the defendants. Therefore it cannot be said that the non-impleading of the present 50

petitioners will in any way scuttle the defence available to the revision petitioners. Their interests are sufficiently safe-guarded by the defendants already on record."

331. The individual churches are in the nature of unincorporated associations though it may be that they are independent trusts. The parishioners, the members of the unincorporated body are the beneficiaries of the trust and the managing committee elected by them will be in the position of trustees. As Salmond in his Jurisprudence, 12th Edition, at page 325 states (Para 73):

"Unincorporated associations are in law nothing other than the sum of their members. The members are contractually related with one another, but the Association itself has no legal personality. Legal personality is something which the law may or may not confer."

Salmond says in the same book at page 307, para 66:

"that if the law so pleases it may regard a church or a hospital or a library as a person and attribute personality to it, but our law does not so deal with the matter."

The law in India may not be different. In fact dealing with firms, the Supreme Court has said which also is considered to be an unincorporated body even in the face of several provisions in the Indian Partnership Act recognising certain specific rights and liabilities in the firm that as regards the nature of a firm and its property in Indian Law is the same as in English Law. A.I.R. 1980 S.C. 176. In Corpus Juris Secundum Vol. 76, paragraph 102 in page 891 it is stated that voluntary religious associations which are unincorporated bodies cannot sue in the name of all its members or in the names of one or more members for the benefit of all. In paragraph 103 at page 893 the same principle is said to apply in suits against unincorporated religious societies.

332. In 10 C.L.R. 290, 4 C.L.R. 492 and I.L.R. 27 Madras 452, there are observations indicating that a mosque or church may have a juristic personality. But as pointed out by Mr. Poti, these decisions were rendered long prior to A.I.R. 1940 P.C. 116 where the Privy Council said that they do not approve the Lahore decision which states that a mosque may have a legal personality. The Privy Council said that such conferment of legal personality to institutions is not permissible merely because it is convenient. The Privy Council observed that any holding of a property or disposing of property or suits by or against them can be equally conveniently had through the instrumentality of persons who in charge of it. These observations were approved by the Supreme Court in A.I.R. 1969 S.C. 563—not dealing with a tank as an institution. A church unlike a Hindu deity which is a juristic person, is not such a legal entity. The members of the parish of a church are represented in the suit as they are members of the Malankara Church, if they are of the view that the Constitution of the Malankara Orthodox Syrian Church will not bind the parish church and their pleas are well covered by the pleas of the co nominee defendants.

A Retrospect:—

333. Now we come to the end of the story. When one looks back it is found that at least from the time of the Oath of Coonan Cross till

the latter half of the nineteenth century the Patriarch of Antioch had been recognised by the Syrian Christian Community (excluding those who went to the Roman fold with the advent of the Portuguese) all through as the Ecclesiastical Head of their church in Malabar, though the Patriarch never interfered in the internal administration of the temporalities of the Church of Malankara which in this respect was an independent church. But in respect of spiritual matters his voice was supreme. One finds Mar Thoma VIII disregarding personal interest replying to the questions of the Madras Government recognises the absolute spiritual suzerainty of the Patriarch. In the second half of the nineteenth century, a metropolitan consecrated by the Patriarch (Mar Mathews Athanasius) and afterwards his nominee—a person consecrated as Metropolitan by the previous Metropolitan himself, Mar Thomas Athanasius questioning the Patriarch's powers over the church and asserting the absolute independence of the Malankara Church in spiritual matters also. This is resisted by the majority in the community resulting in the Seminary Case. Mar Thomas Athanasius lost his case as he could lay no claim to apostolic succession as understood in the church and the highest court of the land both in Travancore and Cochin where were centred the Syrian Christian population, finds that the Syrian Church has all along recognised the Ecclesiastical Supremacy of the See of Antioch and this supreme power consisted in ordaining Metropolitans from time to time to manage the spiritual matters of the local church either directly or by duly authorised delegates, in sending Morone (Holy oil) to be used in the churches in this country for Baptismal and other purposes and in general supervision of the spiritual government of the church. In the subsequent Vattippanam and Samudayam Cases which arose after the establishment of a Catholicate in the church with its headquarters in Malankara, in the final judgments of the Travancore High Court (45 T.L.R. 116) and of the Supreme Court (1958 K.L.T. 721) there is no finding about any deprivation of the general power of supervision of the spiritual government vested in the Patriarch though in the words of the trial judge (in Ext. A16 judgment) the principle that Mar Geevarghese Dionysius and his adherents and subsequently the Catholicos and his adherents had been and are fighting for is to retain the autocephalous nature or status which the Malankara Church had attained by and since the valid establishment of the Catholicate. And now unequivocally the Catholicos side has said that the Malankara Church is an autocephalous church which means the Patriarch has no more any power over the church. A segment of the Malankara Church bounded as the church is to the See of Antioch for centuries is not prepared to sever the tie with the Antioch. No question of deviation from the fundamental tenets of Orthodox faith has been committed by either party for the court to declare them as heretics or that they became aliens to the church. In these circumstances the court has no option but to recognise the split in the church and there could be no question of its interference when the parish church or other autonomous organisations within the church in a decision duly taken in accordance with their constitution, associate with one or other of these factions. As I said in the beginning itself a satisfactory settlement of the dispute maintaining unity in the church can only be taken when

leaders of ecclesiastical and laity of both the groups sit together and solve the problems. Courts can interfere only when one does something against law or violate another's right. The decision here will certainly not stand in the way of settlement of the disputes between the parties themselves. It could be said that the court is recognising the existence of two Orthodox churches in the nature of the decision. As is pointed out in *Encyclopedia Britannica*—15th (1979) Edition—(Vol. VI) at page 142 now in the Orthodox church several of the autocephalous churches are de facto national churches, though it is not the criterion of nationality but rather the territorial principle that is the norm of church organisation. Both these may not allow the growth of two churches here. But as pointed out in that book itself (at page 142 itself) in recent times there has been much turmoil and administrative conflict within the Orthodox Church. In Europe and America, in particular, overlapping jurisdictions have been set up and political passions have led to the formation of ecclesiastical organisations without clear canonical status. No case of a conflict within an Orthodox Church where both groups cannot be condemned to be heretics but where one group wants to establish a totally independent church cut off from the moorings of the old church tradition while the other group wants to retain the old traditions have not been brought to my notice. I think in the circumstances, what I have decided is the only way in which the court could resolve the controversy.

334. In the light of the conclusions I have entered into on the questions that arise in the suits, I will now make my findings on the issues raised in each of the case. First I will deal with O. S. No. 4 of 1979.

O. S. No. 4 of 1979

Issue No. 1. The constitution is binding on the Malankara Syrian Orthodox Church and its members as regards the management and administration of its common properties. As regards the institutions of the church, autonomous or semi-autonomous, its parish churches etc. the constitution would not be binding as far as their management and administration are concerned unless there has been an express surrender of its autonomy by any of such institutions or churches. Any such institution or church which by a decision taken in accordance with its own constitution or rules accepts the constitution or rules would be bound by the same. The constitution framed by the Association cannot make any inroad without such acceptance into the management of such churches and institution.

Issue No. 2. I have found that the establishment of the Catholicate and none of the earlier decisions of the court have deprived the Patriarch of Antioch of the General Powers of supervision he had over the Malankara Church. However, I have also held that the plaintiffs and their adherents have now de facto established an autocephalous church independent of the Antiochean See. The Patriarch would have no power over such a church. Such establishment cannot amount to heresy or deviation from an essential fundamental tenet of Orthodox faith though it might be against the tradition of the Malankara Church. However by establishment of such an autocephalous church, they cannot be said to have drawn to their fold any of its members, institutions or parish churches who want to continue the ties with the Antiochean See. The overlapping of jurisdiction of two churches springing into existence in the same geographical territory on account of

such a situation though it might be an infraction of the original practice of Orthodox faith are now being accepted and tolerated in some countries on account of compulsions and national and sentimental factors.

Issue No. 3. The Malankara Church is neither truly episcopal nor congregational. In the spiritual sphere it is episcopal to a limit for there also there are curbs on the highest ecclesiastical authority in the church in some respect for example in respect of a Metropolitan ordained by the Patriarch, unless he belonged to Malankara Church and accepted by the people in Malankara he could not function. In matters of temporalities the church can be said to be congregational. 10

Issue No. 4. A metropolitan could be consecrated by the Patriarch or Catholicos. He has to be accepted by the people of the Malankara Church as such, though there is no particular form in which such acceptance is to be expressed. If he is to function in a diocese he has to be accepted by the people of the Diocese.

Issue No. 5. Defendants 1 to 3 are properly consecrated metropolitans and they are competent to function as metropolitans in the Malankara Church in such diocese, parish churches or institution where they are accepted.

Issue No. 6. The answer to this issue is contained in my finding on issue No. 2. The Catholicos cum Malankara Metropolitan becomes the primate of the autocephalous church which his adherents have established de facto though he cannot expect or enforce such recognition from those who want the antiochean tie to continue. 20

Issue No. 7. In the circumstances and for the reasons I have explained earlier the defendants are entitled to function as Metropolitans, priests and deacons in the dioceses and parish churches where they are accepted.

Issue No. 8. The provisions of the constitution cannot in any way prevent the ordination or appointment or functioning in the Malankara Church of Metropolitans, priests and deacons owing allegiance to the Patriarch and accepted by the people of the particular dioceses, parishes or other institutions. 30

Issue No. 9. The parish churches are independent autonomous units as far as governance and administration of its temporalities are concerned. Nor could they be compelled to sever their relationship with Patriarch of Antioch against the wishes of its congregation and compelled to enter the fold of the autocephalous church the plaintiffs are bringing into existence.

Issue No. 10. Though the overall spiritual supervision of the Diocesan Metropolitan accepted by the diocese would be over the parish church, the direction, control and supervision in respect of the management and administration of the parish church would be subject to the constitution of the parish church itself. In regard to appointment of vicars, priests and office bearers and their approval by the diocesan Metran, it will be subject to the constitution of the parish church and the decision of the general body of the parishioners. 40

Issue No. 11. The plaintiffs are therefore not entitled to the declaration prayed for.

Issue No. 12. The plaintiffs are not entitled to the injunctions prayed for.

Issue No. 13. The plaintiffs are not entitled to the reliefs prayed for.

Issue No. 14. In the circumstances of the case the parties will bear their costs. 50

Issue No. 15. Answered in dealing with issue No. 2.

Issue No. 16. In the light of the discussion that I have made, no question of estoppel against the plaintiffs arises regarding the jurisdiction of the Synod and the validity of the decision taken therein.

Issue No. 17. Answered in dealing with issue No. 2.

Issue No. 18. In the light of my discussion on the question my answer will be in the negative.

Issue No. 19. The issue is to be answered in the negative in the light of my discussion on the topic.

Issue No. 20. There is no acceptable evidence as regards the present 10
existence of such an association. Nor is there anything to show that the defendants are entitled to represent such an Association.

Issue No. 21. The suit is not bad for non joinder of parties.

Issue No. 22. The decision in the suit would be applicable to parish churches, private chapels and other institutions in the Malankara Church.

Issue No. 23. The second plaintiff is entitled to continue the suit. Defendants have not placed before me anything as to why he has no locus standi to file the suit.

Issue No. 24. Answered in dealing with Issue No. 1

Item No. 25. In the light of my conclusion that the plaintiffs and their 20
adherents have established an autocephalous church, the Universal Episcopal Synod referred to by the defendants would have no jurisdiction to declare that the plaintiffs are apostates and aliens to the Malankara Church as such though they have no right to function in dioceses and parish churches owing allegiance to Patriarch of Antioch and hence refusing to accept them.

Issue No. 26. On the subject of canons I have said that 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 30
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.

Issue No. 27. The tradition which has been accepted by the courts of law from Ext. B74 onwards and also the community as such is that Christianity was introduced into Malankara by St. Thomas and he established 7 churches here. St. Thomas can in that sense be said to be the founder of the Christian church here. If the introduction of Christianity to the west coast of India can be equated to the laying out of the foundation of 40
the Malankara Church, in that sense St. Thomas can be termed as the founder of the Malankara Church. But to equate him as the founder of the church in the sense of the Orthodox Syrian Church, will be historically erroneous. Nor are any materials available to the court for coming to the conclusion that there had been unbroken Apostolic Succession from St. Thomas in the Malankara Church. Nor could this court come to any conclusion on the purely religious question as to whether Apostolic Succession can be claimed through St. Thomas.

Issue No. 28. The consecration of defendants 1 to 3 by the Patriarch as Metropolitan is valid. But it will be operative only in respect of the 50

dioceses, parish churches and institutions which accept them.

Issue No. 29. Already dealt with in issue No. 3

Issue No. 30. This issue is answered when dealing with issue No. 2.

Issue No. 31. I have found that the Knanaya Church in Malankara is not distinctly, independent and separate from the Malankara Church. It is part of the Malankara Church.

Issue No. 32. The plaintiffs cannot have any right or authority over the parish churches of the Knanaya community unless the churches accept them.

Issue No. 33. 1934 Constitution relied on by the plaintiffs is not binding 10
on the Knanaya church as the said church though a part of the Malankara Church has not accepted the said constitution.

Issue No. 34. I need here only say that the plaintiffs have not established any cause of action for any relief as against the Knanaya Parish Churches in this case.

Issue No. 35. This has been dealt with under issue No. 2.

Issue No. 36. Injunction prayed for is not allowable as against the 19th defendant also.

In the circumstances, I dismiss the suit without costs.

O.S. No. 1 of 1979:-

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Issue No. 1. Dealt with under issue No. 3 in O.S.No. 4 of 1979.

Issue No. 2. I have dealt with this question arising here under issue Nos. 1, 6, 9, etc. in O.S. No. 4 of 1979. The Malankara Metropolitan ordained as Catholicos of the east will be entitled to exercise powers of supervision over the diocesan Metropolitans to the extent the said dioceses accept him.

Issue No. 3. If the parishioners of the plaint schedule church want to maintain their ties to the Patriarch of Antioch in decision taken in accordance with the provisions of the churches on their own constitution and rules, the Catholicos and Philipose Mar Theopilose cannot act 30
as spiritual, temporal and administrative authorities who can exercise powers of supervision over the said church.

Issue No. 4. Plaintiffs have not established that they are entitled to get an injunction restraining the defendants from denying the episcopal authority of the Catholicos and Philipose Mar Theophilos over the plaint schedule church and its properties.

Issue No. 5. Plaintiffs have not established that they are entitled to get an injunction restraining the defendants from accepting the episcopal authority of Thomas Mar Devaniosis or any other metropolitan not appointed by the Catholicos over the plaint church or its institutions. 40

Issue No. 6. Plaintiffs are not entitled to get an injunction for suspending the decisions taken in the parish meeting and its committee meeting where they deny the right of the Catholicos and the diocesan Metropolitan.

Issue No. 7. I have answered this issue when dealing with issue No. 9 in O. S. No. 4 of 1979.

Issue No. 8. The church is to be governed by the terms of the udampadi dated 24-5-1110.

Issue No. 9. The constitution of the Malankara Sabha would be valid and binding on the plaint schedule church and its institutions only if such constitution is accepted by the parishioners. As no such acceptance, 50

has been proved in the case, the issue has to be answered in the negative.

ISSUE No. 10 There is no evidence that the plaintiff church has accepted the constitution of 1934.

ISSUE No. 11 The plaintiff church represented by its kaikars and edavakayogam are entitled to recognise as their superiors, priests Metropolitans or Catholicos ordained by the patriarch without the concurrence of the Malankara Sabha if they so desired.

ISSUE No. 12 There is no evidence in this case that Metropolitan Philipose Mar Theophilose had exercised episcopal and administrative functions over the plaintiff church on the basis of the Malankara Sabha constitution. 10

ISSUE No. 13 Parishioners are bound to remember the name of the Metropolitan in the Thubden whom they accept.

ISSUE No. 14 If the name of a Metropolitan is not mentioned in the Thubden, it is for the concerned ecclesiastical authority to take action and not for the civil court.

ISSUE No. 15 The declaration and injunction prayed for in the suit are not allowable.

ISSUE No. 16 In the light of my finding on the issues aforementioned, I dismiss the suit but in the circumstances of the case without costs. 20

O. S. No. 2 of 1979:

ISSUE No. 1 The defendants have not established that the suit is not maintainable.

ISSUE No. 2 The plaintiffs have not established that they have got a cause of action in the matter.

ISSUE No. 3 The first plaintiff has no inherent right to be the Patron of the 2nd defendant Association by virtue of his position.

ISSUE No. 4 The 2nd defendant Association can exist and function in Malankara Church as an ecclesiastical Association attached to the Malankara Church without the permission and control of the first plaintiff in view of the split in the Malankara Church and as I have found in the light of my discussions earlier that both the factions have not gone out of the church and they can function in their own independent way one group under the Catholicos the first plaintiff and the second group attached to the Antiochean See. 30

ISSUE No. 5 The first plaintiff is not irremovable from the patronship of the 2nd defendant Association by virtue of his position.

ISSUE No. 6 The plaintiffs have not established in any manner the resolutions passed by the second defendant Association removing the first plaintiff from his patronship had not been properly passed in a validly held meeting. The resolutions are not invalid. 40

ISSUE No. 7 The first defendant is entitled to enter in any of the churches or institutions of Malankara without the permission of the 1st plaintiff or the concerned Metropolitan. He is entitled to act in an episcopal capacity only in regard to churches and institutions which accept him.

ISSUE No. 8 The first defendant is competent to exercise episcopal function touching or affecting the Malankara Church in the parish churches and institutions which accept him and which are continuing 50

the ties with the Antiochean See.

ISSUE No. 9 Plaintiffs are not entitled to the declaration sought for.

ISSUE No. 10 Plaintiffs are not entitled to the injunction prayed for.

ISSUE No. 11 Plaintiffs are not entitled to any reliefs in the suit.

ISSUE No. 12 Both parties should bear their costs.

Therefore the suit is dismissed without costs.

O. S. No. 3 of 1979

ISSUE No. 1 The suit is maintainable.

ISSUE No. 2 The plaintiffs have not established that the suit is barred under Order II Rule 2 and Order IX Rule 9 by reason of the dismissal of O. S. No. 125 of 1970 of the Sub Court, Ernakulam. 10

ISSUE No. 3 It is not established that the suit is barred by res judicata by reason of the decisions in O. S. No. 1 of 1963 of the District Court, Kottayam and in Civil Appeal No. 267 of 1958 of the Supreme Court.

ISSUE No. 4 I have dealt with the question under issue No. 9 in

O. S. No. 4 of 1979.

ISSUE No. 5 No argument had been advanced before me that the present Malankara Jacobite Syrian Christian Association is a different one from that formed in 1876.

ISSUE No. 6. It has not been proved that the election of 31-12-1970 is vitiated by procedural irregularities. 20

ISSUE No. 7 In the light of my earlier discussions I do not find anything improper or incompetent in the matter of electing a successor to the Catholicos-cum-Malankara Metropolitan.

ISSUE No. 8 There is nothing improper to elect one person to the two offices of Malankara Metropolitan and Catholicos.

ISSUE No. 9 I do not find that the clubbing of the two offices into one has affected the election in the matter of either nomination of candidates or the electorate.

ISSUE No. 10 The plaintiffs have not established that the election of the Catholicos by the Malankara Association is not valid and proper. 30

ISSUE No. 11 I do not find any acceptable evidence to come to the conclusion that the second defendant has actively influenced the election so as to vitiate the same.

ISSUE No. 12 Nothing has been produced before me to show that the first defendant is disqualified to be the Malankara Metropolitan and, or Catholicos.

ISSUE No. 13. I find no invalidity in the election of the first defendant.

ISSUE No. 14. The plaintiffs are not entitled to the declaration and injunction prayed for. 40

ISSUE No. 15. Plaintiffs are not entitled to any reliefs. The parties will have to bear their costs.

The suit is dismissed without costs.

O. S. No. 5 of 1979:-

ISSUE No. 1 The suit is maintainable as it is not one concerning purely religious matters. I have discussed the question earlier.

ISSUE No. 2 Defendants have not in any way persuaded me to hold that the suit is bad for want of sanction under section 92 of the Code of Civil Procedure. 50

ISSUE No. 3 to 9. As a Simhasana Church, the plaintiff church has been established to be always under the supervision and authority of the Patriarch of Antioch. It is certainly a constituent parish of the Malankara Jacobite Syrian Church. The Patriarch of Antioch can exercise his powers of supervision in spiritual matters over that group of Malankara church which wants to continue its tie with him. It is not correct to say that the relationship of the Patriarch of Antioch with the Malankara Church is only the one envisaged by the constitution of the Malankara Orthodox Syrian Church as framed in 1934 and subsequently. How far this constitution is valid and binding, I have discussed in detail in O. S. No.4 of 1979 and my answer there would be the answer here also. The constitution of the Malankara Orthodox Syrian Church is not binding on the plaintiff parish church and is not being administered by the provisions of the said constitution. 10

ISSUE No. 10 It is not correct to state that the Catholicos of the East and Malankara Metropolitan and the Metropolitans under him including the first plaintiff have become apostates.

ISSUE No. 11 The decision of the Universal Episcopal Synod would be valid and binding only on those parish churches and institutions in the Malankara Church and its members who accept the continuance of the tie with the Antiochian See and do not accept the coming up of an autocephalous church. 20

ISSUE No. 12 The ex-communication issued by the Patriarch against the Catholicos of the East and the first plaintiff is not valid. It is unenforceable though the Catholicos of the East and the first plaintiff may not be entitled to act on their own in the churches and institutions which do not accept them.

ISSUE No. 13 The administration of the Simhasana Churches will not come under the Catholicos of the East and Malankara Metropolitan as contended by the plaintiffs. 30

ISSUE No. 14 The first plaintiff is not entitled to exercise any power of administration over the plaintiff parish as its diocesan Metropolitan.

ISSUE No. 15 In the circumstances and facts which I have dealt with earlier, the parishioners of the plaintiff church could deny the powers of the Catholicos of the East and Malankara Metropolitan as well as that of the first plaintiff.

ISSUE No. 16 There is no worthwhile evidence to show that Vicars and priests were being appointed by first plaintiff.

ISSUE No. 17 The parishioners are entitled to nominate a priest or vicar of their own, though they have to be approved by the Metropolitan having jurisdiction over the church concerned. 40

ISSUE No. 18 In the circumstances of the case the first plaintiff is not entitled to the administration of the plaintiff parish church and is not entitled to get the dues claimed by him in the church.

ISSUE No. 19 The first plaintiff is not entitled to the amount claimed and hence he could not realise the same.

ISSUE No. 20 The second plaintiff is not the lawfully appointed vicar of the plaintiff church entitled to function as such.

ISSUE No. 21 In the nature of the establishment of the church, the defendants can manage the affairs of the plaintiff parish church without 50

the junction of the first plaintiff.

ISSUE No. 22 Plaintiffs are not entitled to the declaration prayed for.

ISSUE No. 23 Plaintiffs are not entitled to the injunctions prayed for.

ISSUE No. 24 Plaintiffs are not entitled to any reliefs in the suit.

ISSUE No. 25 Parties have to bear their costs.

The suit is dismissed without costs.

O. S. No. 6 of 1979:

ISSUE No. 1 The suit is not bad for non joinder of necessary parties.

ISSUE No. 2 The plaintiffs have not established any right title and possession over plaint schedule item No. 8 church which apparently belongs to Evangelistic Association. 10

ISSUE No. 3 There is no acceptable evidence that plaintiffs have exercised any temporal or ecclesiastical powers over that church at any time.

ISSUE No. 4 Issue No. 4 is covered by my decision in O. S. No. 4 of 1979.

ISSUE No. 5 It can only be said that there has been a valid establishment of the Catholicate which the Catholicose side would characterise as the Catholicate of the east.

(a) Some time after the establishment of the Catholicate, the Catholicos adherents have been claiming that the Catholicate is an independent institution. There is no acceptable evidence to show that the Patriarch's powers of consecration have been taken away at any time. 20

(b) It is not possible to come to a conclusion on the evidence in the case that there was territorial delimitation of jurisdiction as between the Patriarch of Antioch and Catholicos of the East in 1964.

(c) The Evangelistic Association is an autonomous institution within the Malankara Church, independent in its temporal activities but spiritually bound to the Malankara Church. 30

(d) Who are the lawful ecclesiastical authorities in Malankara Church will depend upon, to which side a member of the church, any institution or parish church adhere to – whether to the Patriarch side or Catholicos side. Both the groups are not heretics to Orthodox faith and the concerned ecclesiastical authorities recognised by each group will be supervising or controlling the religious activities or movement of the particular group in the Malankara Orthodox Syrian Church lawfully.

(e) The answer to the question whether there is a church by name Universal Syrian Orthodox church of which Malankara Orthodox Syrian Church is a part will depend upon whether one belongs to the Patriarch group or the Catholicos group. According to members of Patriarch group Malankara Orthodox Syrian Church is part of the Universal Syrian Orthodox Church while according to Catholicos group the Malankara Church is a totally independent church. As long as both the groups have not deviated from the fundamental faith of the church, the secular authorities have no option but to recognise both the groups and the groups are entitled to function in their own manner. 40

ISSUE No. 6 There is no question of any overlordship even by the highest ecclesiastical authority over the Metropolitans or the dioceses 50

in any of the Orthodox Churches. The first plaintiff has general supervision in respect of ecclesiastical activities over the Metropolitans and the dioceses who accept him in the light of the present conflict in the church.

ISSUE No. 7 There is no reason why the defendants are not entitled to claim themselves to be Metropolitans of the Malankara Orthodox Syrian Church.

ISSUE No. 8 The parish churches are fully autonomous in their administration of their temporalities but in respect of ecclesiastical affairs they are under the supervision of the Metropolitan of the diocese. 10

ISSUE No. 9 Malankara Church has under it parish churches which in regard to temporal matters are fully autonomous and in respect of spiritual or ecclesiastical matters functioning under the general supervision of the metropolitan of the diocese wherein the particular church is concerned. Whether in the circumstances Malankara Church can be equated to a federation of such churches is a matter of opinion.

ISSUE No. 10 It is not established that the suit is barred under Order 2, Rule 2 C. P. C. by reason of O. S. No. 274/73 and O. S. No. 97/74 of the Subordinate Judge's Court, Kottayam. 20

ISSUE No. 11 This has been dealt with under issue No. 1 in O. S. No. 4 of 1979.

ISSUE Nos. 12 & 13 These have been dealt with under Issue No. 26 in O. S. No. 4 of 1979.

ISSUE No. 14 Plaintiffs are not entitled to any reliefs in the matter.

ISSUE No. 15 In the circumstances of the case, parties have to bear their costs.

The suit is dismissed without costs.

O. S. No. 7 of 1979

ISSUE Nos. 1 and 2 I have dealt with this question under issue Nos. 2, 15 and 17 in O. S. No. 4 of 1979. 30

ISSUE No. 3 I have dealt with this question under issue No. 6 in O. S. No. 4 of 1979.

ISSUE Nos. 4 to 7 I have dealt with the matter under issues Nos. 2 and 15 to 17 of O. S. No. 4 of 1979.

ISSUE No. 8 Bessaliose Poulouse II is validly consecrated and installed as Catholicos. The consecration of the defendant by him is valid. The plaintiffs cannot question that consecration.

ISSUE No. 9 I have dealt with this question under issue No. 1 in O. S. No. 4 of 1979. 40

ISSUE No. 10 This matter has also been dealt with under issue Nos. 2, 15 and 17 in O. S. No. 4 of 1979.

ISSUE No. 11 This has been dealt with under issue No. 18 in O. S. No. 4 of 1979.

ISSUE No. 12 The effect of Kalpana No. 163/64 dated 14-6-1964 was only delegation of the powers exercised by the Patriarch to the Catholicos but this delegation has subsequently been withdrawn. The first plaintiff can now claim no right under it.

ISSUE No. 13 It is not established that the defendant has any connection with the Yacobaya Syrian Christian Association. 50

ISSUE No. 14 The decision of 22-6-1975 mentioned in para 17 of the plaint and proceedings leading up to that decision could have no significance or validity as regards adherents of the Patriarch side are concerned.

ISSUE No. 15 The first plaintiff can certainly claim that he is a duly ordained and installed Catholicos. Catholicos side has termed the Malankara Catholicate as Catholicate of the East. This term of 'East' could not have much significance or importance in the present context.

ISSUE No. 16 The suit is maintainable.

ISSUE No. 17 The plaintiffs have not established any right to relief 10 in this case.

ISSUE No. 18 In the circumstances of the case, the parties will bear their costs.

The suit is hence dismissed without costs.

O. S. No. 8 of 1979:

ISSUE No. 1 I hold the suit is maintainable.

ISSUE No. 2 There is proper notice under Order I Rule 8 of the Code of Civil Procedure.

ISSUE Nos. 3, 4 & 5 I have dealt with these questions under issue Nos. 2, 5, 6 and 7 in O. S. No. 4 of 1979. 20

ISSUE No. 6 I have dwelt upon the matter under issue No. 1 in O. S. No. 4 of 1979. 30

ISSUE No. 7 There are two parties in the Malankara Church, and they are now commonly called the Patriarch Party and the Catholicos or Metran Party.

ISSUE Nos. 8 and 9 Malankara Metropolitan has control over the other metropolitans in the matter of spiritual and ecclesiastical matters.

ISSUE No. 10 I find no illegality in the election to the office of Malankara Metropolitan and Catholicos. The second plaintiff is competent to sue. 30

ISSUE No. 11 There has been an establishment of the Catholicate which has been found to be legal by the decision in 45 T. L. R. 116.

ISSUE No. 12 I have considered this question and expressed the finding of the court in the other suits. The Patriarch has not withdrawn his administrative powers over the Simhasana Churches. He had for a time delegated his powers to the Catholicos but that has been withdrawn.

ISSUE No. 13 The Patriarch of Antioch is competent to consecrate Metropolitans for the Malankara Churches. Their right to act will depend upon their acceptance by the people here. 40

ISSUE No. 14 The defendant is validly consecrated as Metropolitan for the Malankara Church.

ISSUE No. 15 The plaintiffs have not established that the defendant was not competent to act as Vicar of St. John's church, Mepral, nor does he forfeit his Vicarship for any of the reasons stated in the plaint.

ISSUE No. 16 The declaration prayed for is not allowable.

ISSUE No. 17 The injunction prayed for is not allowable.

ISSUE No. 18 Plaintiffs are not entitled to any reliefs in the suit. Parties are to bear their costs in the circumstances of the case.

Addl. ISSUE No. 19 Neither the plaintiffs nor the defendants have 50

become schismatics and aliens to the Malankara Jacobite Syrian Orthodox Church.

The suit is dismissed without costs.

335. Before concluding I might state that the issues in the case have not been happily or properly framed. Not only is there overlapping of matter which is bound to be there in such cases in the different issues, some of them have been framed in rather ambiguous and equivocal terms. Some are framed on the assumption on certain factors which are itself in dispute. I have answered these issues on the basis of the decisions that I have rendered on the broad questions arising in the case which I have dealt with in detail on the basis of the evidence before me. 10

336. I think it is only proper on my part to express my indebtedness to the great assistance that I received in the matter from the counsel on both sides. Mr. S. Narayanan Poti, ably assisted by Mr. M. Abraham and Mr. K. George, presented the case of his clients with his usual clarity and analytical approach. Mr. Thaikkad Subramonia Iyer with sustained energy and perseverance truly amazing at his age eloquently presented the case on the Patriarch side. The other counsel appearing on behalf of some parties on the Patriarch side, Mr. S. Easwara Iyer, Mr. C. K. Sivasankara Panicker (counsel for the 19th defendant - Knanite Association), Mr. P. P. John, Mr. T. T. Uthup, all did their best to present the facts and law on the matter in the best possible manner. Without their valuable assistance, it would not have been possible for me to come to a decision which I consider to be proper in the case. 20

As I have already stated all the suits - O. S. Nos. 1, 2, 3, 4, 5, 6, 7 and 8 of 1979 - of this court are dismissed. Parties will bear their costs.

Sd/- T. Chandrasekhara Menon (Judge)

6th June, 1980.

(True copy)

(Sd)

Assistant Registrar

Appendix

Plaintiff's Exhibits

A1. of 1967	Printed copy of the Constitution as amended and approved by the Managing Committee and referred to in the Kalpana No. 156/67 of the Catholicos.	
A2. of 1934	Printed copy of the Constitution of the Malankara Orthodox Syrian Church.	
A3. of 15-12-1934	Issue of Malayala Manorama containing Notice of Catholicos of the East.	
A4. of 12/1934	Copy of Circular Kalpana of Catholicos No. 16/34.	10
A5. From 113 M. E. (Book) to 18-2-60	Minutes Book pertaining to the Meeting of the Managing Committee.	
A5 (a) do	Page Nos. 67 to 76 of do	
A5 (b) do	Page No. 72 of do	
A5 (c) do	Page Nos. 76 to 82 of do	
A5 (d) do	Page No. 70 of do	
A5 (e) do	Page No. 84 of do	
A5 (f) do	Page Nos. 98 to 101 of do	
A5 (g) do	Page No. 100 of do	
A5 (h) do	Page Nos. 108 to 111 of do	20
A5 (j) do	Page No. 110 of do	
A5 (k) do	Page Nos. 111 to 116 of do	
A5 (l) do	Page Nos. 115 & 116 of do	
A5 (m) do	Page Nos. 206 to 213 of do	
A5 (n) do	Page No. 210 of do	
A5 (o) do	Page No. 188 of do	
A5 (p) do	Page Nos. 191 to 195 of do	
A5 (q) do	Page Nos. 194 & 195 of do	
A5 (r) do	Page Nos. 196 to 203 of do	
A5 (s) do	Page Nos. 203 to 206 of do	30
A5 (t) do	Page No. 211 of do	
A6 of 1951 (1126 Meenam 9)	Circular Kalpana of Catholicos of the East and Malankara Metropolitan No. 733.	
A7. 17-5-1951 (Book)	Minutes Book of the Meeting of the Malankara Association.	
A7 (a) do	Page No. 5 of do	
A7 (b) do	Page Nos. 8 and 9 of do	
A8 of 1951 (small book)	Printed copy of the Constitution with the Amendments proposed by Managing Committee.	
A9 of 1954	Printed copy of the Constitution passed in the Association held on 17-5-1951 and approved by Synod on 29-3-1954.	40
A10: 19-10-60 to 27-12-1965	Minutes book of the Meetings of Managing Committee.	
A10 (a) do	Page Nos. 3 to 8 of do	
A10 (b) do	Page Nos. 9 to 14 of do	
A10 (c) do	Page Nos. 12 to 14 of do	
A10 (d) do	Page No. 20 of do	
A10 (e) do	Page No. 21 of do	
A10 (f) do	Page No. 31 of do	50

A10 (g)	do	Page Nos. 39 to 44 of	do	
A10 (h)	do	Page No. 42 of	do	
A10 (j)	do	Page Nos. 47 to 56 of	do	
A10 (k)	do	Page Nos. 49 & 50 of	do	
A10 (l)	do	Page Nos. 67 & 68 of	do	
A10 (m)	do	Page Nos. 71 to 76 of	do	
A10 (n)	do	Page No. 75 of	do	
A10 (o)	do	Page Nos. 78 & 79 of	do	
A10 (p)	do	Page Nos. 82 to 88 of	do	
A10 (q)	do	Page Nos. 84 to 86 of	do	10
A10 (r)	do	Page Nos. 88 to 96 of	do	
A10 (s)	do	Page Nos. 96 to 102 of	do	
A10 (t)	do	Page Nos. 99 to 102 of	do	
A11.	24-3-66 to 21-5-1970	Minutes Book of the Meeting of the Managing Committee.		
A11 (a)	do	Page Nos. 1 to 7 of	do	
A11 (b)	do	Page No. 5 of	do	
A11 (c)	do	Page Nos. 23 to 31 of	do	
A11 (d)	do	Page No. 30 of	do	
A11 (e)	do	Page Nos. 55 to 64 of	do	20
A11 (f)	do	Page No. 60 of	do	
A11 (g)	do	Page Nos. 172 to 174		
A12	26-6-1967	Circular Kalpana No. 156/67		
A13	Kanni 2nd 1912	Kalpana of Abdul Missiah Patriarch of Antioch issued to the Malankara Church from Niranam Church.		
A13 (a)	do	Malayalam Translation of	do	
A14	Kumbham 8 1913	Kalpana from Parumala Seminary.		
A14 (a)	do	Malayalam Translation of	do	30
A15	of 1938 March (book)	Copy of plaint in O.S. 111/113 M.E. of the Kottayam District Court.		
A16	18-1-1943	Certified copy of the trial court judgment in O.S. 111/1113 of the Kottayam District Court (6 Volumes).		
A17	of 1952	Record of Proceedings submitted before the Supreme Court of India (book)		
A18	12-9-1958	Certified copy of the judgment of the Supreme Court of India in Civil Appeal No. 267 of 1958.		
A19	9-12-1958	Kalpana from Patriarch Yacob III to the Metropolitan and others under him.		40
A19 (a)	do	Malayalam Translation of	do	
A20	16-12-1958	Copy of Kalpana of Catholicos of the East to Metropolitan and Others under him.		
A21	17-12- 1958	Issue of Malayala Manorama (in 8 pages) containing the report of mutual acceptance of Catholicos of the East and Patriarch of Antioch.		
A22	do	Issue of Kerala Bhushanam (4 pages) containing the report regarding the mutual acceptance of Catholicos and Patriarch.		
A32	8-4-1959	True translation of Kalpana No. 118 of Patriarch of	50	

		Antioch.	
A24	8-6-1959	Reply issued by Catholicos of the East to Item No. 17 (A23)	
A25	16-7-1960	Copy of letter from Patriarch of Antioch to the Catholicos of the East.	
A26	13-8-1960	Reply from Catholicos of the East No. 70/60 to item No. 19 (A25)	
A27	8-11-1960	Letter No. 73/1960 by Catholicos of the East to Patriarch.	
A28	4-4-1961	Letter No. 20/61 of Catholicos of the East to Patriarch of Antioch.	10
A29	6-6-1961	do No. 26/61 to do (copy)	
A30	16-6-1961	Translation of a letter in Syriac from Patriarch to Catholicos of the East.	
A30 (a)	do	Copy of letter in Syriac of Patriarch of Antioch to Catholicos of the East.	
A31	27-10-1961	Letter from Patriarch to the Catholicos of the East	
A31 (a)	27-10-1961	Translation of do (A31)	
A32	18-1-1962	Copy of letter from Catholicos of the East to the Patriarch Yacob III.	20
A33	26-6-1962	Copy of letter No. 167/62 from Catholicos of the East to the Patriarch of Antioch Yacob III.	
A34	21-8-1962	No. 22 of 1962 letter from Patriarch of Antioch to Catholicos of the East.	
A34 (a)	do	True Malayalam Translation of A. 34	
A35	13-1-1964	Copy of letter of invitation from the Episcopal Synod of the Malankara Church to the Patriarch of Antioch.	
A36	12-1-1959	Memorandum submitted by thirty-six members including defendants 13 and 14	30
A37	22-12-1958	Letter from Poulose Mar Philexinos to Baselios Gheevarghese II.	
A38	25-2-1959	Copy of Circular Kalpana No. 31/1959 issued by Catholicos of the East.	
A39	2-6-1959	Circular Kalpana issued by Poulose Mar Severios Metropolitan of Cochin Diocese No. 39.	
A40	25-3-1960	do No. 47	
A41	29-4-1964	Circular Kalpana issued by Mar Ivanios Mar Gregorios Mar Daniel Philexinos	
A42	of 1951	Record Certificates of posting of the notices regarding meeting of Malankara Syrian Christian Association on 17-5-1951 (book)	40
A 43	26-12-1958 to 17-5-1962	Book containing minutes of the meeting of the Malankara Syrian Christian Association.	
A43 (a)	do	Page Nos. 3 & 4 of do	
A43 (b)	do	Page Nos. 5 to 11 of do	
A43 (c)	do	Page Nos. 12 & 13 of do	
A43 (d)	do	Page No. 6 of do	
A44	28-12-1958	Issue of Kerala Bhushanam giving Photograph of the Metropolitans of the Malankara Church.	50

A45	24.8.1959	Notice Kalpana No. 101/59 convening meeting of Association to be held on 16.9.1959.	
A46	of 1959	Record of certificate of posting for meeting of 1959 in 3 books.	
A46 (a)	do	do	do
A46 (b)	do	do	do
A47	of 1959	Record of Authorisation of Delegates from Parish Churches of Malankara Church for the Association Meeting of 1959.	
A47 (a)	do	do	do
A47 (b)	do	do	do
A47 (c)	book	do	do
A47 (d)	do	do	do
A47 (e)	do	do	do
A47 (e)(1)	do	Page 25 of Ext. A47 (e)	do
A47 (f)		do	do
A47 (g)		do	do
A47 (h)		do	do
A48	4.11.65	Printed notice of Malankara Syrian Church Association Meeting held on 28.12.1965.	20
A48 (a)	11.11.1965	Printed notice of Malankara Syrian Church Association Meeting held on 28.12.1965.	
A49	of 1965	Record of certificate of posting for Association Meeting held on 28.12.1965.	
A49 (a)	do	do	do
A49 (b)	do	do	
A50	do	Record of Authorisation of delegates from the Parish Churches of Malankara Church for the Association Meeting of 1965.	
A50 (a)	do	do	do
A50 (b)	do	do	do
A50 (c)	do	do	do
A50 (d)	do	do	do
A50 (e)	do	do	do
A50 (f)	do	do	do
A50 (g)	do	do	do
A50 (h)	do	do	do
A50 (j)	do	do	do
A51	25.9.1970	Notice Kalpana No. 201/70 convening Association Meeting to be held on 31.12.1970	40
A52	of 1970	Record of Certificate of posting for the Association Meeting of 1970	
A52 (a)	do	do	do
A52 (b)	do	do	do
A53	of 1970	Record of Authorisation of delegates from the Parish Churches for the Association Meeting of 1970.	
A53 (a)	do		do
A53 (b)	do		do
A53 (c)	do		do
A53 (d)	do		do

A53 (e)	do	do	
A53 (f)	do	do	
A53 (g)	do	do	
A53 (h)	do	do	
A53 (j)	do	do	
A54	14.6.1964	Copy of Kalpana No. 163/64 issued by Patriarch of Antioch.	
A55	29.12.1964	Attested copy of letter No. 417/64 from Patriarch of Antioch.	
A56	27.6.1975	Letter No. 310/75 from Patriarch of Antioch to Catholicos of the East	10
A57	28.5.1909	Letter from Most Rev. Mar Dionisius Senior to Malankara to R. C. C. Carr.	
A58	19.6.1909	Letter from R. C. C. Carr (ROC. No. 1017) to Rev. Konattu Kora Mathan Kathanar & C. J. Kurian	
A59	20.7.1909	Letter from Korah Mathan Kathanar and C. J. Kurian to R. C. C. Carr.	
A60	of 1929	No. 1 of 1929 Circular Kalpana of Catholicos of (Kumbham)(February) the East	
A61	10.8.1107 M.E.	Circular Kalpana No. 465 issued by Catholicos of the East to Manthuruthel Church.	20
A62	3.6.1110 M.E.	Kalpana of do No. 50	
	1935		
A63	24.4.1113 M.E.	do No. 275	
	1937		
A64	6.4.1114 M.E.	Kalpana No. 56	
	1938		
A65	24.6.1118 M.E.	Kalpana No. 328	
	1943		
A66	24.1.1959	Circular Kalpana of Catholicos and Malankara Metropolitan	30
A67	23.2.1960	Kalpana No. 22 of 1960	
A68	7.9.1961	Kalpana No. 59 of 1961	
A69	9.3.1962	do No. 19/62	
A70	16.2.1963	do No. 26/63	
A71	of 1948	Suriyani Sabha Charithram Vol. I by Abdul Ahad Remban published by Thakadiyil Jacob Kassissa	
A72	of 1088	Affidavit sworn to by Mar Kurilos filed in O.S. 66/1088 of Trichur District Court.	
	Mithunam 119		
A73	21.2.1977	Kalpana of Baselius Poulose II	40
A74	27.6.1970	Kalpana No. 203/70 issued by Patriarch of Antioch to the Catholicos of the East.	
A74 (a)	do	Malayalam Translation of do. do.	
A75	26.8.1970	Reply letter of Catholicos of the East to Patriarch of Antioch (Copy) Syriac.	
A75 (a)	do	Malayalam Translation of do. do.	
A76	16.2.1972	Copy of letter from Baselius Ougen I to the Patriarch of Antioch.	
A77	16.5.1972 &	Letter and attached cable from Aprem Themotheos Metropolitan to the Catholicos of the East.	50
A77 (a)			

A78	19-6.1973	Copy of letter from P. C. Abraham Secretary of the Malankara Syrian Christian Association.	
A79	7-8.1973	Letter of Catholicos of East rejected and returned by Patriarch of Antioch.	
A80	30-1.1974	Bill of charges issued by Patriarch of Antioch to Basilius Ougen I Catholicos of the East.	
A81	9-3.1974	Copy of reply letter of Catholicos of the East to the Patriarch of Antioch No. 81/74	
A82	5-3.1974 &	Letter No. 1/1974 from the Secretary of the	
A82 (a)		Malankara Episcopal Synod with enclosure.	10
A83	5-7.1971	Copy of the letter issued by Catholicos of the East to Patriarch of Antioch No. 29/61	
A84	of 1966	Memorandum of the Association of the Evangelistic Association of the East.	
A85	27-7.1964	Application of the General Secretary Geevarghese Kathanar represented by Evangelistic Association.	
A86	27-7.1964	Kalpana No. 169/64 to the Evangelistic Association	
A87	15-9.1973	Circular letter from 1st plaintiff communicating the Synod decision.	
A88	21-9.1973	Copy of notice to the 1st defendant	20
A89	22-9.1973	Copy of notice to the 2nd defendant	
A90	of 1952 (book)	Hudaya Canon in Malayalam (Taken from O. S. 12/77).	
A91	12-9.1958	Attested copy of Decree in C. A. No. 267/58 of Supreme Court of India	
A92	25-6.1957	Attested copy of the commissioner's report in O. S. 111/1113 M. E. of the Kottayam District Court	
A93	1-11.1971	Attested copy of written statement filed by 6th defendant Mar Clemis in O. S. 60/71 of the Kottayam Sub Court.	30
A94	16-12.1970	Letter from Mar Clemis No. 181/ 70 to P. C. Abraham Secretary of Malankara Association.	
A95	1-1.1963	Photostat copy of letter from President	
A95 (a)	"	Knanaya Medical Mission to Catholicos of the	
A95 (b)	"	East with endorsement	
A96	20-2.1966	Joint Circular Kalpana of Mar Thomas Mar Ivanios Mar Gregorios, Mar Athanasius and Mar Clemis.	
A97	(book)	Attendance Register for the Managing Committee for the period 21-5-1964 to 4-6-78.	40
A98	of 1959	Oaths taken by some members of the Managing Committee (Series 9 in number)	
A99	of 1966	Oaths taken by some members of the Managing Committee (Series 18 in number)	
A100	(book)	Managing Committee Minutes Book	
A101	nil	Authorisation letter to representatives	
A102	nil	Authorisation letter of representatives of Association	
A103	of 1110	Office copy of Constitution	
A103 (a)		Page No. 1 of do	
A104	3-10.1935	Certified copy of Pothuyoga Natapati	50

A105	28.9.1968	Kalpana No. 54/58 from Abraham Mar Clemis	
A106	of 1890	Letter from Joseph Mar Dionisius to Knanaya Committee.	
	(Makaram 8th)		
A107	of 1917	Attested copy of circular Kalpana from Mar Osthathios Mar Severios and Mar Athanasius (issued to Vadakara Pally)	
	(Dhanu 12)		
A108	of 1920	Copy of Circular Kalpana from Mar Severios	
	(Meenam 21)		
A109	of 1927	Copy of Mangalapathram given to Michael Mar Dionisius and Thomas Mar Dios Coros.	10
	(Makaram 30)		
A110	of 1117	Circular Kalpana from Michael Mar Dionisius	
	(Chingam 12)		
A111	24.8.1966	Issue of Kerala Bushanam	
A112	of 1110	Circular Kalpana No. 71 to Manthuruthel Church from Catholicos-cum- Malankara Metropolitan.	
	(Kumbhom 9)		
A113	of 1126	Circular Kalpana No. 733 from Catholicos-cum- Malankara Metropolitan	
	(Meenam 9)		
A114	of 1951	1934 constitution amended by Managing Committee and sent to Parish Churches along with Kalpana No. 733.	20
A115	26-6-1967	Circular Kalpana No. 156/67 issued to Manthuruthel Church.	
A116	of 1911	Circular Kalpana issued by Patriarch from Alwaye seminary	
	(Kanni 12)		
A117	of 1911	Copy of Circular Kalpana of Patriarch attested by Mar Osthathios, Mar Koorilose, Mar Severios and Mar Poulose Athanasius.	
	(Kanni 29)		
A118	6-10-1970	Issue of Malayala Manorama (Notice of 1970 Association Meeting).	
A119	29-11-1965	Issue of do. (Notice of 1965 Association Meeting).	30
A120	of 1110	Udampady of Kothamangalam Mar Thoma Cheriapalli.	
A121	13-5-1962	Authorisation of the representatives of the Malankara Suriyani Christian Association.	
A122		Kurbanakramam, printed book of Kothamangalam Cheriapalli.	
A123	10.1.1959	Kalpana No. 447 by Yacob III Ignathios Patriarch.	
A124	27.4.1969	Petition by lay Secretary of the Parish to the plaintiff.	
A125	27.4.1969	Letter from Trustee, St. Mary's Simhasana Church to the Vicar St. Mary's Church, Meenadam.	40
A126	Nil	Petition submitted to 1st plaintiff by members of the Managing Committee.	
A127	26.7.1970	Letter from Vicar Fr. Abraham Ancheri requesting for approval and appointment of Managing Committee.	
A128	3.7.1971	Letter from Fr. V. S. Joseph, reporting that he took charge in the church on appointment by 1st plaintiff.	
A129	17.1.1975	Kalpana issued to Fr. C. G. Samuel by 1st plaintiff.	
A130	of 1971	Copy of Balance Sheet signed by Vicar of the Church submitted to 1st plaintiff.	
A131	9.4.1970	Receipt books No. III showing payment of Dasamsam	50

		and Kaimuthu for the year 1969.	
A131 (a)	do	Page No. 245 of do.	do.
A132	31-12-1971	Receipt Book No. 1 showing payment of do. of Rs. 120/- and Rs. 13/-	
A132 (a)	do	Page No. 224 of do.	do.
A133	21.13.1969	Receipt Book No. IV showing payment of Rs. 100/- for October under Salary Scheme.	
A133 (a)	do	Page No. 344 of do.	
A134	27.11.1969	Receipt Book No. V showing payment of Rs. 100/- for November towards salary scheme.	10
A134 (a)	do	Page No. 429 of do.	do.
A135	27.3.1972	Receipt Book No. VI. showing payment of Rs. 180/- for March towards Salary Scheme.	
A135 (a)	do	Page No. 2832 of do.	do.
A136	27.5.1972	Receipt Book No. 2 showing payment of Rs. 180/- towards salary scheme.	
A136 (a)	do	Page No. 3389 of do.	do.
A137	do	Acquittance Roll showing receipt of salary by Fr. Samuel C. G. for services in Church.	
A137 (a)	do	Entry 18 in the book for January 1973.	20
A137 (b)	do	Entry 18 in the same book for February 1973.	
A138	of 1970	Acquittance Roll showing receipt of Salary by Fr. Abraham Ancheri.	
A138 (a)		Entry 53 of do.	do.
A139	9.7.1974	Kalpana from Catholicos of the East to Mepral St. John's Church.	
A140	13-8-1974	Kalpana from Catholicos of the East to Omalloor St. Thomas Church.	
A141	2-12-1971	Photostat copy of letter sent by Fr. George Kurian to Mar Thoma Dionisius.	30
A141 (a)	2-12-1971	Attested copy of letter from Fr. George Kurian to Thoma Mar Dionisius.	
A142	4-1-1972	Photostat copy of letter sent by Fr. George Kurian to Mar Thoma Dionisius.	
A142 (a)	4-1-1972	Attested copy of letter from Fr. George Kurian to Mar Thoma Dionisius.	
A143	25-6-1972	Photostat copy of letter sent by Fr. George Kurien to Mar Thomas Dionisius.	
A143 (a)	25-6-1972	Attested copy of letter from Fr. George Kurian to Thoma Mar Dionisius.	40
A144	7-2-1960	Kalpana from Mar Thoma Dionisius to Mepral St. John's Church.	
A145	18-8-1975	Letter No. 153/75 from the Catholicos of the East to the Managing Committee.	
A146	24-9-1975	Circular Kalpana No. 175/75 from Catholicos of the East and Malankara Metropolitan	
A147	25-9-1975	Issue of Malayala Manorama	
A148	11-10-1975	Kalpana No. 177/75 from Catholicos of the East to Synod Members.	
A149	22-5-1967 to	Minutes book of the Holy Episcopal Synod of the	50

	15-5-1977	Malankara Orthodox Syrian Church	
A149 (a)	do	Page Nos. 205 & 206 of	do.
A149 (b)	do	Page Nos. 138 to 144 of	do.
A149 (c)	do	Page No. 87 of	do.
A149 (d)	do	Pages 17 to 20 of	do.
A149 (e)	do	Page No. 23 of	do.
A149 (f)	do	Page No. 27 of	do.
A149 (g)	do	Page No. 95 of	do.
A149 (h)	do	Page Nos. 100 to 103 of	do.
A149 (j)	do	Page No. 117 of	do. 10
A149 (k)	do	Page Nos. 122 to 127 of	do.
A149 (l)	do	Page Nos. 182 & 183 of	do.
A149 (m)	do	Pages 184 to 191 of	do.
A149 (n)	do	Pages 154 and 155 of	do.
A149 (o)	do	Pages 171 to 174 of	do.
A149 (p)	do	Pages 163 to 170 of	do.
A149 (q)	do	Pages 175 to 181 of	do.
A150	of 1876	Mulanthuruthy Synod Resolution.	
A151	of 1966	Book Entitled Mulanthuruthy Sunnahadose in Malayalam by Z. M. Paret.	20
A152	of 1934 to 1958	Minutes of the Holy Episcopal Synod of the Malankara Orthodox Syrian Church (Book).	
A152 (a)	do	Page No. 5 of do. (Book)	
A152 (b)	do	Page Nos. 84 to 89 of	do.
A153	12-1-1959 to 7-6-60	Attested copy of the minutes of the Holy Episcopal Synod of the Malankara Syrian Church	
A153 (a)	do	Page Nos. 13 to 15 of	do.
A153 (b)	do	Page Nos. 1 to 9 of	do.
A154	22-12-1958	Letter from Poulouse Mar Severios to Catholicos of the East (Photostat copy)	30
A155	do	Attested copy of	do.
A156	8-4-1959	Letter No. 118 from Patriarch of Antioch to Catholicos of the East in Syriac.	
A156 (a)	do	Photostat copy of	do.
A157	16-7-1960	Letter from Patriarch to Catholicos of the East No. 166 (Photostat copy).	
A158	16-6-1961	Letter from Patriarch to Basilius Gheevarghese II (Photostat copy) in Syriac.	
A159	21-2-1962	Letter from Patriarch of Antioch No. 67/62 to Catholicos of the East (Photostat) (Syriac)	40
A160	21-2-1962	English Translation of A. 159.	
A161	28-10-1964	Letter taken from O. S. 192/77 (Syriac).	
A161 (a)	do	Malayalam Translation of	do.
A162	17-11-1961 to 22-5-1967	Minutes Book of the Holy Episcopal Synod of the Malankara Orthodox Syrian Church.	
A162 (a)	do	Page No. 6 of	do.
A162 (b)	do	Page No. 22 of	do.
A162 (c)	do	Page No. 31 of	do.
A162 (d)	do	Page Nos. 38 and 39 of	do.
A162 (e)	do	Page No. 48 of	do. 50

A162 (f)	do	Page No. 20 of	do.
A162 (g)	do	Page No. 5 of	do.
A162 (h)	do	Page No. 40 of	do.
A163	19-11-1963	Certified copy of judgment in O. S. 1/1963 of the Kottayam District Court (Taken from O.S. 78/77)	
A164	9-12-1969	Certified copy of judgment in A.S. 115/64 of the Kerala High Court (Taken from O.S. 78/77)	
A165	12-5-1964	Letter from Poulose Mar Philixinos to Augen Thimothios Metropolitan (Photostat copy)	
A165 (a)	do	Attested copy of	do 10
A166	12-5-1964	Letter No. 105/64 from Augen Themotheos Metropolitan to Poulose Mar Philixinos (Photostat copy)	
A166 (a)	do	Attested copy of	do
A167	12-5-1964	Letter from Poulose Mar Philixinos to Augen Themotheos Metropolitan (Photostat)	
A167 (a)	do	Attested copy of	do
A168	31-7-1964	Letter from Ethiopian Ambassador to Secretary Malankara Episcopal Synod.	
A169	24-8-1964	Letter from Ethiopian Ambassador to Secretary Malankara Episcopal Synod with enclosure.	20
A170 & A170 (a)	31-10-1964	Letter from Emperor Hailese Lassia I to Cotholicos of the East with enclosures.	
A171 & A171 (a)	26-7-1975	do	do
A172	14-4-1967	Letter from Abba Theophilos Ethiopia Patriarch to Catholicos of the East.	
A173 & 173 (a)	6-10-1971	Letter from Abana Theophilos to Catholicos of the East with enclosures.	
A174	11-1-1971	Letter in reply from Catholicos of the East to Abana Theophilos Patriarch of Ethiopia No. 167/71.	30
A175	17-1-1972	Letter from Abana Theophilos Patriarch of Ethiopia to Catholicos of the East	
A176	of 1966	Report of the Rule Committee	
A177	do	do	
A178	of 1965 and 1970	Photostat copy of the Minutes of the Malankara Syrian Christian Association	
A179	do	Attested copy of	do
A180	25-6-70 to 31-5-76	Minutes books of the Managing Committee	40
A180 (a)	do	Page 117 of	do
A180 (b)	do	Page 122 of	do
A181	24-11-1970	Copy of plaint in O. S. 125/70 of the Sub Court, Ernakulam (taken from O.S. 78/77).	
A182	9-2-1973	Certified copy of judgment in O.S. 125/70 of the Sub Court, Ernakulam (taken from O.S. 78/77)	
A183	20-1-1971	Certified copy of I. A. 339/71 and affidavit in O. S. 125/70 of the Sub Court, Ernakulam	
A184	17-11-1972	Certified copy of I. A. 1432/72 & affidavit in O. S. 125/70 of the Sub Court, Ernakulam	50

A185	14-12-1972	Certified copy of I. A. 4883/72 & Affidavit in O.S. 125/1970 of do	
A186	13-2-1973	Certified copy of I. A. 465/73 & Affidavit in O. S. 125/70 of do	
A187	do	Certified copy of I. A. 467/73 & Affidavit in O. S. 125/70 of do	
A188	22-5-1971	Certified copy of C. M. P. No. 6322/71 in C. R. P. 485/71 of the High Court, Ernakulam	
A189	7-4-1972	Certified copy of order in C. M. P. 6322 in C. R. P. 485/71 of the High Court, Ernakulam	10
A190	4.3.1968	Letter from Abraham Mar Clemis No. 183 to Catholicos of the East	
A191	8.10.1973	Copy of written statement of the 1st defendant Mar Clemis in O.S. 62/73 of the Pathanamthitta Sub Court	
A192	9.7.1973	Letter No. 263/73 from Patriarch of Antioch to the Association Secretary P. C. Abraham	
A193	18.7.1974	Malayala Manorama Daily Paper	
A193 (a)	do	Particular portion of publication of do.	
A194	8.3.1974	Copy of letter from Catholicos of the East to Patriarch of Antioch.	20
A195	8.3.1974	Copy of Circular Kalpana No. 80/74 from Basilius Ougen I to Malankara Parish Churches.	
A196	15.7.1974	Photostat copy of letter from Patriarch to Catholicos of the East.	
A196 (a)	do	do. of attested copy.	
A197	18.7.1974	Letter No. 202 from Patriarch to Catholicos of the East	
A198	29.1.1975	Report (photostat) submitted by Konattu Abraham Kathanar to Holy Episcopal Synod of the Malankara Church.	30
A199	10.5.1975	Do. by Thomas Mar Makarios to do.	
A200	14.4.1975	Do. by Poulouse Mar Gregorios to do	
A201	30.5.1975	Supplementary report by Poulouse Mar Gregorios to Episcopal Synod	
A202	10.1.1975	Letter from Patriarch No. 15/1975 to Catholicos of the East with enclosures six in numbers (a, b, c, d, e & f).	
A203	5.2.1975	Copy of letter with enclosure from Secretary to the Malankara Episcopal Synod to Patriarch of Antioch.	40
A204	9.4.1975	Letter from Patriarch No. 161/1975 to Mathews Mar Athanasius.	
A205	18.3.1968 to 7.7.1977	Attendance Register of the H. E. Synod	
A206	of 1898	Hudaya Canon by Paulus Bedjan	
A207	nil	Kalpana issued by Patriarch Peter III to the Malankara Managing Committee	
A207 (a)	nil	True copy of the same	
A207 (b)	nil	Malayalam Translation of the same	50

A208	of 1934	Minutes of the Meeting of the Malankara Syrian Christian Association	
A209	of 1973	The Orthodox Syrian Church, its Religion and Philosophy (Book) (taken from O. S. 12/77).	
A210	17-1-1975	Kalpana No. 47/75 from Mathews Mar Ivanios Metropolitan (taken from O. S. 82/77).	
A211	11-2-1970	Report submitted by the Vicar St. Mary's Church Nadama, Trippunithura to Yuhanon Mar Severios Metropolitan	
A212	of 1957	Visudha Subhopadesa Pusthakam	10
A213	of 1957	Catholica Sabha & Roma Vadamgal by Mosa Salomi Ramban	
A214	25.12.1958	Nomination paper of the representatives of the Malankara Suriyani Christian Association of St. George Church, Kattappuram	
A215	26.12.1953	Attendance register of the members of the Association of Niranam Bhadrhasanam of Malankara Suriyani Christian Association.	
A216	of 1951	The Book named 'Suriyani Sabha' written by Fr. Kurian, Kaniamparambil	20
A216 (a)	do.	Page No. 53 of do.	
A216 (b)	do.	Page No. 69 of do.	
A216 (c)	do.	Page No. 78 of do.	
A216 (d)	do.	Page No. 81 of do.	
A216 (e)	do.	Page No. 19 of do.	
A217	of 1927	The book named "Visudha Sabhayum Viswasavum" written by Vanchithattil Kuriakose Kathanar.	
A218	of 1948	The book named "Vusudha Pathrosinte Paramadhikaram" written by Pukkunnel Kuriakose Kathanar.	
A219	10.2.1965	Petition submitted by Paikkandathil George Kurian Kassisa, Vicar of Mepral Valia Pally	30
A220	23.6.1975	Letter sent by Ignatius Yacob III Patriarch of Antioch to the 1st plaintiff.	
A221	do.	do. by do to 2nd plaintiff	
A222	nil	Cover address to Basilius Augen I, Catholicos of the East & Malankara Metropolitan.	
A223	16.6.1975	Photostat Copy of the proceedings of the alleged Synod of the Universal Syrian Orthodox Church held at Damascus.	
A224	27.12.1969	Petition sent by Maliyil Kochittan Isahakk and Others to philipose Mar Theyophilose Metropolitan.	40
A225	3.7.1977	Report submitted by Kuttipuzha Joseph Kathanar Kothamangalam Marthoma Cheria Palli to the Angamali Bhadrhasana Metropolitan	
A226	13.9.1967	Report submitted by Keeppanasseril Varkey Scaria Kathanar to Sri Philipose Mar Theyophilos Metropolitan.	
A227	18.3.1968	Report submitted by Olappura George Kathanar to Sri Philipose Mar Theyophilos Metropolitan.	
A228	6.1.1969	Report submitted by Keeppanasseril Mathai Kathanar	50

- A229 6.1-1969 to Sri Philipose Mar Theyophilos Metropolitan.
Report submitted by Olappura George Kathanar
to Sri Philipose Mar Theyophilos Metropolitan.
- A230 13-7-1969 Petition submitted by Keeppanasseril Mathai
Kathanar to Sri Philipose Mar Theyophilos
Metropolitan.

DEFENDANT'S EXHIBITS

- B1 19-5-1962 Acknowledgement by H.H.Mar Baselios Geevarghese II
(Devalokam Aramana), Kottayam
- B2 21-7-1959 Notice by P. N. Nainan, Deputy Secretary, Catholi- 10
cate Office, Kottayam.
- B3 28.9.1962 Certified copy of deposition of PW. 1 Nainan
in O. S. 315/1960 of the Kottayam Munsiff's Court.
- B4 of 1110 Constitution of Malankara Orthodox Syrian Sabha
- B5 25.12.1951 Printed book of the Malankara Suriyani Knanaya
Samudaya Bharanaghatana of 1951 II Edition of 1959
- B6 1st Makaram 1123 Printed book of the Malankara Suriyani Knanaya
Samudaya Bharanaghatana of 1123.
- B7 1st Dhanu 1915 Attested copy of the Constitution of the Malankara
Suriyani Knanaya Association 20
- B8 16.2.1976 Printed circular issued by the Vicar General of the
Knanaya Church to all Members of the Parishes.
- B9 28.2.1976 Attested copy of the plaint in O. S. 87/1976 of the
Munsiff's Court, Thiruvalla now as O. S. 123/77 of
the Special Court, Ernakulam
- B10 17.9.1976 Attested copy of the plaint in O. S. 160/76 of the
Sub Court, Alleppey now O. S. No. 193/77 of the
Special Court, Ernakulam
- B11 nil Attested copy of the Memorandum submitted by 19
Knanaya Priests to the Metropolitan delegate of the 30
Patriarch of Antioch.
- B12 nil Page No. 113 of Malankara Syrian Knanaya
Association Minutes Book.
- B13 16.12.58 Kalpana No. 105 from the Catholicate Aramana.
- B14 of 1960 Diary of Edavaka Pothuyogam of Mar Thoma
Cheriyapally, Kothamangalam (taken from O.S 12/77)
- B14 (a) do. Page No. 64 of Ext. B14
- B14 (b) do. Page No. 65 of do.
- B14 (c) do. Page No. 69 of do.
- B14 (d) do. Page No. 72 of do.
- B14 (e) do. Page No. 127 of do. 40
- B14 (f) do. Page No. 134 of do.
- B14 (g) do. Page No. 16 of do.
- B14 (h) do. Page No. 75 of do.
- B14 (j) do. Page No. 12 of do.
- B14 (k) do. Page No. 4 of do.
- B14 (l) do. Page No. 10 of do.
- B14 (m) do. Page No. 100 of do.
- B14 (n) do. Page No. 101 of do.
- B14 (o) do. Page Nos. 117 to 120 of do.
- B14 (p) do. Page No. 132 of do. 50

B14 (q)	do.	Page No. 114 of do.	
B15	17-12-1967	Report submitted by the Committee members of the Kothamangalam Mar Thoma Cheria Palli.	
B16	nil	Reception photo of Metropolitans of the Kothamangalam Cheriya Pally.	
B16 (a)	nil	do. do.	
B16 [b]	nil	do. do.	
B16 [c]	nil	do. do.	
B16 [d]	nil	do. do.	
B16 [e]	nil	do. do.	10
B17	nil	Minutes book of Mar Thoma Cheriya Palli, Kothamangalam [taken from O. S. 12/1977].	
B17 [a]	nil	Page No. 38 of do.	
B17 [b]	nil	Page No. 41 of do.	
B17 [c]	nil	Page No. 43 of do.	
B17 [d]	nil	Page No. 1 of do.	
B17 [e]	nil	Page No. 3 of do.	
B18	7-9-1970	Minutes Book of Mar Thoma Cheriya Palli, Kothamangalam [taken from O. S. 12/77].	
B18 [a]	do.	Page No. 160 of do.	20
B18 [b]	do.	Page No. 155 of do.	
B18 [c]	do.	Page No. 166 of do.	
B19	18-11-1115	Certified copy of compromise petition in O. S. No. 1059/1110 of the Tiruvalla Munsiff's Court.	
B20	nil	New Testament of Our Lord and Saviour Jesus Christ	
B21	12/1974	Supplementary issue No. 2 of the Publication edited by the Ecuminical Foundations Pro-orient Vicuna (book).	
B21 [a]		Page No. 200 of do.	30
B22	2-11-1106	Kalpana No. 437 of Mar Geevarghese Dionisius	
B23	of 1935	Book entitled 'The Malabar Syrians and the Church Missionary Society 1816-1840, by P. Cherian a Judge of High Court of Travancore	
B23 (a)	do.	Page No. 390 of do.	
B24	of 1974	Sunday School - Text Book of Part II for Class VIII	
B24 (a)	do.	Page No. 10 of do.	
B25	nil	Sunday School Text Book Part I for Class VII	
B25 (a)	of do.	Page No. 61 of do.	40
B26	4-4-1840	Certified copy of Cochin Panchayat Award produced in O. S. No. 111/1113 of Kottayam District Court.	
B27	2-6-1083	Original Kalpana by Mar Divenyasious Metropolitan of Malankara to the Koothattukulam Church.	
B27 [a]	do.	Photostat copy of do.	
B28	16-7-1083 M.E.	Original Kalpana by Mar Divenyasious Metropolitan of Malankara to koothattukulam Church.	
B28 [a]	do.	Photostat copy of do.	50

- B29 3-3-1071 Kalpana by Mar Divenyasious Metropolitan to Kallungathara Church [taken from O. S. 78/77]
- B30 17-7-1974 Certified copy of order on I. A. V. in O. S. 78/74 [New number 192/77] of Principal Munsiff's Court, Puthur, S. Kanara
- B31 9-1-1965 Certified copy of letter No. 32/65 produced in the High Court in A. S. 200/74 [taken from O.S. 192/77].
- B32 25-6-1965 Letter sent by 1st plaintiff to Patriarch of Antioch in Syriac [taken from O. S. 192/77]. 10
- B32 [a] do. True translation of do.
- B33 15-10-1115 M.E. Certified copy of Teer Deed executed by varghese son of Erali Mathew Kathanar in favour of Joseph Attipetti Metropolitan.
- B34 4-11-1091 Circular Kalpana by Mar Dionisious of Malankara Edavaka.
- B34 [a] do. Photostat copy of do.
- B35 12-10-1933 Ordination certificate issued by Geevarghese Mar Dionisious in favour of Thenguvilayil Thomas Deacon. 20
- B35 [a] „ Malayalam Translation of do.
- B36 of 1964 Mathopadesa Saram [Book]
- B37 of 1951 Holy Bible.
- B38 of 1963 Penkeesa-Published from Mar Julius Press, Pampakuda by Fr. Abraham Konattu.
- B38 [a] Malayalam Translation of certain portion of do.
- B39 of 1960 Prayer Book in Malayalam printed at Mar Julius press, Pampakuda.
- B40 nil Orthodox Suriyani Sabha's Vydika Kanona Namaskaram. 30
- B41 nil Namaskara Kramom of Suriyani Christians Valiya Noimbu and Kashtanubhava Azhcha.
- B42 of 1902 Qurbana Susrusha [Krama] Pusthakam.
- B42 (a) do. Malayalam Translation of last page of do. book translated by V. Rev. Kurian Cor Episcopa, Kaniamparambil.
- B43 of 1972 Aneeda Book (Susrusha Kramangal)
- B44 of 1976 Nayarazhcha Namaskaram and Kurbanakramam (Book)
- B45 Nil Prayer book in Syriac printed in Mar Julius Press. 40
- B45 (a) Nil Malayalam Translation of Page No. 124 of do.
- B45 (b) Nil do. do. of Page No. 486.
- B45 (c) Nil do. do. of Page No. 332.
- B45 (d) Nil do. do. of Page No. 414.
- B46 9-2-1967 Letter from Mathews Athanasius Metropolitan to the Very Rev. Aboodi Ramban, Patriarchal representative, Manjanikara Daira. (taken from O. S. 192/77)
- B47 27-6-1967 Letter from 1st plaintiff to Patriarch of Antioch (Syriac). 50

B47 (a)	do.	Malayalam Translation of do.	
B48	27-11-66	Letter from 1st plaintiff to Patriarch of Antioch (Syriac) (taken from O. S. 192/77).	
B48 (a)	do.	Malayalam Translation of do.	
B49	4-8-64	Letter from 1st plaintiff to Patriarch of Antioch (Syriac) (Taken from O. S. 192/77)	
B49 (a)	do.	Malayalam Translation of do.	
B50	18-5-1965	Letter from 1st plaintiff to Patriarch of Antioch (Syriac) (Taken from O. S. 192/77)	
B50 (a)	do.	Malayalam Translation of do.	10
B51	of 1971	The Orthodox Syrian Sunday School Association of the East 7th Annual Report 1971.	
B52	of 1965	The Orthodox Syrian Sunday School Association of the East Annual Report and Accounts 1965.	
B53	29th Midhunam 1967	Letter in Syriac. (taken from O. S. 192/77)	
B54	of Dhanu 18, 1967	Letter from Basselious Augen I Catholica to Aphraim Aboodi Rambachan representative of Antioch (Syriac)	
B54 (a)	do.	Malayalam Translation of do.	20
B55	11-2-1971	Letter from Mar Theyophilose Philipose Metropolitan to Patriarch of Antioch (taken from O. S. 192/77)	
B56	8-9-1971	Letter from Mar Theyophilose Philipose Metropolitan to Patriarch of Antioch (taken from O. S. 192/77)	
B56 (a)	do.	A copy of loan application from the sister of Bethlehem St. Mary's Convent to the Rubber Board sent along with Ext. B56.	
B57	1-7-1962	Kalpana No. 143/62 from Mathews Mar Athanasius to Rev. Fr. Thomas Moothedan (taken from O. S. 192/77)	30
B58	27-8-65	Letter from Orthodox Syrian Church of the East Mathews Athanasius Metropolitan to P. O. Mathai, Kayamkulam (taken from O. S. 11/76.)	
B59	23-5-1964	Pages 1, 2, 5 and 6 of the Malayala Manorama Daily Paper published from Kottayam (taken from O. S. 192/77.)	
B60	27-10-1975	Malayala Manorama News Paper.	
B61	..	Copy of deposition of D. W. 27 in O. S. 111/1113 of the Kottayam District Court.	40
B61 (a)		Page No. 61 of do.	
B61 (b)		Page No. 66 of do. do.	
B62	8-8-1962	Attested copy of the deposition of D. W. 2 in O. S. 96/1961 of the Addl. Sub Court of Kottayam.	
B63	of 1952	Book entitled Spiritual Grace and Ordination by M. T. Ittira Kathanar.	
B63 (a)	do.	Pages 64 to 71 of do.	
B64	26-4-1052	Agreement executed by Geevarghese Kassisa.	
B65	of 1942	Certificate of Ordination issued by Kuriakose Mar Gregorios.	50

B66	of 1946	Document similar to Ext. B65	
B67	Nil	Ordination Book used in the church.	
B67 (a)	do.	Translation of the extracts from page No. 2 of B67	
B67 (b)	do.	Page No. 79 of do.	
B67 (c)	nil.	Page No. 80 of Ext. B67	
B67 (d)		Page No. 2 of do.	
B67 (d) (a)		Translation of the extracts of page 2 of B67	
B68	2-6-1975	Mathrubhoomi Malayalam Daily.	
B69	nil	Attested copy of the Holy Episcopal Synod of the Universal Syrian Orthodox Church produced by the 2nd plaintiff in O. S. 69/73 in the sub Court of Pathanamthitta.	10
B70	24-6-1975	Certified copy of Kalpana No. 306/75 sent by the Patriarch of Antioch.	
B71	21-8-1975	Attested copy of the Kalpana No. 364/75 issued by the Patriarch to the 2nd plaintiff and produced by him in the above case.	
B72	21-8-1975	Certified copy of Kalpana No. 360/75 sent by the Patriarch of Antioch and all the East to Baselius Augen I.	20
B73	13-3-1972	Letter from Sri. K. M. Cherian to the Patriarch.	
B74	30-11-1064	Attested copy of Judgment in Case No. 3/1061 of the Royal Court of Final Appeal Travancore (Part I)	
B74	do.	do. do. (Part II)	
B75	5-3-1952	Certified copy of claim petition in O. S. 111/1113 of the Kottayam District Court.	
B76	21-7-1953	Certified copy of the Affidavit in C. M. P. 1868/52 in O. S. 111/1113 of the Kottayam District Court.	
B77	25-10-1969	Kalpana No. 491/69 issued by Philipose Mar Theophilose Metropolitan to Rev. Fr. Alexander, Mangattampillil.	30
B78	14-3-1960	Copy of letter written by Poullose Mar Philexinos.	
B79	21-5-1975	Copy of order in C. M. P. 6532/75 of High Court.	
B80	nil	History known as "ECCLESIASTIC" by Mar Hebraues.	
B80 (a)	do.	Translation of relevant portion of do.	
B81	10-12-64	Circular Kalpana by Mar Ivanios to the Neeli-mangalam Church.	
B82	28-1-66	Circular Kalpana by do. do. to the Parish Churches in the Kottayam Diocese.	40
B83	of 1961	The Holy Bible containing the old and new testaments pages 1 to 1108.	
B84	12-3-1962	Letter No. A 37/62 sent by Mar Daniel Philexinos Metropolitan of the Orthodox Syrian Church to the Knanaya Metropolitan.	
B85	21-3-62	Office copy of letter sent by Mar Clemis Abraham Metropolitan of Knanaya Church to the Metropolitan Mar Daniel Philexinos of the Orthodox Syrian Church.	50

B86	12-5-1975	Letter submitted to his Holiness the Patriarch of Antioch by Abraham Mar Clemis Metropolitan.	
B87	1-7-75	Letter sent by Abraham Mar Clemis Metropolitan to M. G. Kuriakose Mar Coorilose Metropolitan and other four metropolitans.	
B88	15 Vrischikam 1108	Attested copy of a printed draft constitution of the Powresthiya Suriyani Orthodox Sabha.	
B89	27-11-1967	Letter No. 303/67 sent by the Catholicos Baselios Augen I to the Patriarch of Antioch regarding Menathottam Hospital.	10
B90	4-1-1963	Letter from the Secretary of the Malankara Association and the Minutes of planning committee held on 15-12-1962.	
B91	1-1-1965	Printed Kalpana No. 1/65 issued by the Catholicos	
B92	10-8-1965	Kalpana No. 351/65 from the Catholicos.	
B93	3-10-1960	Attested copy of Kalpana No. 86/60, issued by the Catholicos.	
B94	11-1-1966	Attested copy of Kalpana No. 11/66 issued by the Catholicos.	
B95	18-10-1968	Attested copy of a Kalpana issued by the Catholicos.	20
B96	21-3-1962	Certificate of posting obtained from the post office on 21-3-62 regarding the posting of the letter.	
B97	14-1-1969	Printed Kalpana No. 3/69 issued by the Catholicose	
B98	23-10-1970	Attested copy of Kalpana No. 224/70 issued by the Catholicos.	
B99	11-3-1972	Attested copy of Kalpana No. 30/72 issued by the Catholicos.	
B100	26-7-1972	Certified copy of Kalpana No. 103/72 issued by the Catholicos.	30
B101	29-12-1975	Malayala Manorama Daily Paper containing 6 pages.	
B102	of 1977	Printed book named 'Doctor Yuhanon Marthoma'-Jeevithavum Sandesavum - published by Marthoma Sabha.	
B103	..	Printed Malayalam Book of Sabhayum Koodasakalum by Mathew Athanasios Metropolitan.	
B104	29-10-1963	Attested copy of deposition of D. W. 5 Baselios Catholicos Geevarghese II in O. S. No. 315/60 of the Kottayam Munsiff's Court.	40
B105	13-6-1968	Attested copy of notice Kalpana No. 151/68 and the minutes of the Episcopal Synod held on 30-4-1968.	
B106	of 1906	Printed Malayalam book of the History of the Malankara Syrian Christians by Ittoop Writer - II Edition.	
B107	nil	Certified copy of Order Sheet in O. S. 50/75 of the Principal Civil Judge at Shimoga (Taken from O. S. 169/77).	50

B108	20 Edavam 1923	Application by Geevarghese Mar Gregorios Metropolitan to Moran Mar Ignatius Patriarch.	
B108 (a)	do.	Malayalam translation of do.	
B109	13-12-1973	Certified copy of deposition of D. W. 13 in O. S. 47/61 of the Sub Court, Trichur.	
B110	31-12-1080	Attested copy of Judgment in Spl. Appeal 7 of 1076 of the Cochin Royal Court.	
B111	2-2-1971	Kalpana No. 5/71 by Mar Athanasius Metropolitan.	
B112	24-10-1968	Kalpana No. 297/1968.	10
B113	15-10-1968	Invitation Letter.	
B114	20-8-1967	Udampady by Fr. Alexander in favour of the 2nd defendant.	
B115	25-7-1973	Udampady by K. M. George to the 2nd defendant.	
B116	8-3-1956	Udampady executed by Fr. M. P. George in favour of the 2nd defendant.	
B117	7-4-1961	Udampady by P. Y. Poulouse at the time of his ordination.	
B118	nil	A small Book containing Rules and Regulations of the Evangelistic Association of the East.	20
B119	of 1933 to 1939	Diary of the Evangelistic Association of the East.	
B120	of 1941 to 1950	do. do.	
B121	of 1963 to 1966	do. do.	
B121 (a)	do.	Page No. 124 of do.	
B122	30-12-1970	Diary of the Evangelistic Association of the East.	
B123	of 1972	Registered amendment of the Constitution of the 2nd defendant.	
B124	of 1972	The Constitution of the 2nd defendant.	
B125	of 1949	Copy of memorandum of Association and Registration Certificate of the Evangelistic Association of the East.	30
B126	28-3-1973	Proceedings of D. E. O. Kottayam.	
B127	of 1960 to 1966	Annual report Book of the 2nd defendant.	
B128	of 1960 to 1966	Counter-foil receipts for life membership in the Samajam.	
B128 (a)	of 1966 to 1973	do. do.	
B129	2-12-1969	Kalpana No. 411/69 of Patriarch of Antioch and all the East (taken from O. S. 85/77)	
B130	of 1973-1975	Diary of the Evangelistic Association of the East (taken from O. S. 77/77).	40
B131	25-9-1973	Office copy of the letter No. 54/49 sent by the General Secretary of the Evangelistic Association of the East to the 1st plaintiff.	
B132	16-3-1976	Certified copy of the order of the Munsiff's Court, Puthur in O. S. 78/1974.	
B133	3-8-1973	Bond executed by Paul Ramban (taken from O. S. 77/77).	
B134	4-10-1973	Invitation Letter	
B134 (a)	8-10-73	do.	50

B134 (b) 9-10-73	do.	
B134 (c) 10-10-73	do.	
B134 (d) 14-10-73	do.	
B134 (e) 15-10-73	do.	
B134 (f) 18-10-73	do.	
B134 (g) do.	do.	
B134 (h) 28-10-73	do.	
B134 (j) 30-10-73	do.	
B134 (k) 31-10-73	do.	
B135 29 9-69	Kalpana No. 178/69 of the Catholicos (taken from O. S. 85/77).	10
B136 of 1975	Souvenir of the 2nd defendant.	
B136 (a) do.	Page No. 64 of B136.	
B137 of 1968	Annual report of the outside Kerala Diocese of the Orthodox Syrian Church.	
B138 of 1962	Malabar Diocese (Malabar & Misoor) Souvenir Book (taken from O. S. 85/77).	
B139 17-1-1958	Registration document executed by Fr. Kaniyapadikkal Varghese Kathanar in favour of Evangelistic Association (taken from O. S. 85/77).	20
B140 25-1-1958	Kalpana No. 29/202.	
B141 9-7-1958	Letter No. C. 317/58 from the Health Inspector, South Wynad Range, Kozhikode District.	
B142 6-2-1959	Kalpana No. 43 of 237 from the Samajam Metropolitan.	
B143 24-6-1973	Copy of Meenangadi Palli Pothuyoga Diary.	
B144 of 1973	49th Annual Report of the Evangelistic Association of the East.	
B145 17-11-1964	Kalpana No. 324/64.	
B146 4-11-1969	Kalpana No. 33/69.	30
B147 nil	Rules and Regulations of the Branches of Institution.	
B148 nil	Koodasa Karmangal in Syriac language with Malayalam Translation.	
B148 (a) nil	Page No. 77 of do.	
B149 nil	Photostat copies of Relevant Pages of 'Pattom Koda Pusthakam' produced by plaintiff.	
B149 (a) do.	Malayalam Translation of do.	
B150 6th Dhanu 1895	Ordination certificate issued by Mar Gregorios.	
B150 (a) do	Malayalam Translation of do.	40
B151 of 1968	News from Seema 1968.	
B151 (a)	Page No. 21 of do.	
B151 (b)	Page Nos. 55 to 58 of do.	
B152 nil	Ext. C. N. Book marked in O. S. 111/1113 of Kottayam District Court (taken from O. S. 192/77).	
B152 (a) do	Page No. 31 of do.	
B153 nil	Prayer for the Passion Week in Syriac language.	
B153 (a)	Page No. 246 of do and its Malayalam translation.	
B154 of 20 Mithunam	Copy of deposition of D. W. 52 in O. S. 94/1088	50

	1093	of the District Court, Trivandrum (Book)	
B154 (a)		Page No. 111 of do. do.	
B154 (b)		Page No. 1410 of do.	
B155	of 1929	Church History written by Sri. E. M. Philipose under the Title 'Mar Thoma Sleehayute Indian Sabha'.	
B156	nil	History of Malankara Church by Ittoop.	
B157	of 1964	Malankara Sabha 1964 June	
B157 (a)		Page Nos. 20 to 23 of do.	
B158	10th Karkitakom 1901	Kalpana issued by Poulose Mar Athanasius in connection with Jubilee Celebration of Joseph Mar Dionysius and the Prayer sent along with it.	10
B158 (a)	do	Photostat copy of do.	
B159	1st Mithunam 1901	Joint Circular issued by 3 Metropolitans.	
B159 (a)	do	Photostat copy of do.	
B160	28-12-1117	Attested copy of deposition of D. W. 28 in O.S. 111/113 of the Kottayam District Court.	
B160 (a)		Page 129 of do.	
B161		Hudaya Canon-Photostat copy (Book)	20
B162		Hudaya Canon - Malayalam Translation.	
B163	of 1946 Dhanu 7	Original Kalpana of Patriarch.	
B163 (a)	do	Malayalam Translation of do.	
B164	of 1895	Mathopadesa Sarangal - 1898 Edition.	
B165	of 1895	Malankara Edavaka Pathrika 1898 Edition.	
B165 (a)		Page No. 71 of do.	
B166		The Book 'Were the Syrian Christians Nestorians' by the Rev. P. T. Gheevarghese M.A.	
B166 (a)		Page No. 5 of do.	
B167	of 1968	Annual Special Magazine of the Orthodox Youth 1968	30
B167 (a)		Page No. 8 of do.	
B168	of 1975	Mulanthuruthy Synod Resolutions and the Padiyola published by Varghese Pattasseril.	
B169	17-11-71	Letter by Fr. Paul Varghese to the Patriarch.	
B170	15-10-68	do. do. to do.	
B171	nil	83 applications for enlistment as members of the church (Book taken from O.S. 82/77).	
B172	7-8-1951	Gift deed No. 3244 by Thomas Varkey to the delegate Mar Julius Metropolitan.	40
B173	13-3-1951	Copy of Kalpana by Mar Julius Metropolitan to Thomas Varkey.	
B174	nil	Copy of application filed by Mar Julius to Joint District Medical Officer.	
B175	31-1-1961	Kalpana No. 27/1961 of the delegate giving sanction to enlist members in the church after getting application duly signed by them.	
B176	12-9-1960	Kalpana of Mar Julius Metropolitan to Kaikaran Thomas Varkey.	
B177	2-6-1960	Kalpana No. 182 of the delegate Mar Julius to Thomas Varkey.	50

B178	25-9-1961	Kalpana No. 323 of Metropolitan Mar Julius to Kaikaran Thomas Varkey empowering him to appear and give evidence regarding the petition for sanction of the committee for the plaint church.	
B179	5-1-1961	Gift deed executed by Varghese Thomas to the Patriarch of Antioch in the name of his delegate Mar Julius Metropolitan.	
B180	5-12-1973	Tax receipt No. 412 dt. 5-12-73 issued by the Village Officer Pampady.	10
B180 (a)	24-1-77	Tax receipt No. 569 of do.	
B181	28-4-1964	Printed constitution of the Marthamariyam Simhasana Church Pampady, approved by the Patriarch.	
B182	28-4-1974	Constitution of plaint church signed by all the members of the church.	
B183	August 1973	Minutes book kept in the Marthamariam Simhasana church, Pampady (taken from O. S. 82/77).	
B184	28-1-1966	Kalpana No. 36 of Mar Ivanios sent to Pampady Marthamariam Simhasana church.	20
B185	17-10-1976	Desa-kuri issued by the Vicar of Kothala Sehion Orthodox Syrian Church.	
B186	22-1-1974	Salary receipt signed by the Priests (12 numbers)	
B186 (a)	3-2-74	do.	
B186 (b)	17-5-74	do.	
B186 (c)	19-5-74	do.	
B186 (d)	12-5-74	do.	
B186 (e)	30-6-74	do.	
B186 (f)	15-6-74	do.	
B186 (g)	28-6-74	do.	30
B186 (h)	4-8-74	do.	
B186 (j)	15-9-74	do.	
B186 (k)	20-10-74	do.	
B186 (l)	24-11-74	do.	
B187	9-8-1974	Postal acknowledgement addressed to Moran Mar Baselius Ougen I Catholicos of the East. (Taken from O. S. 82/77).	
B187 (a)	31-5-1974	do. addressed to Mathews Mar Ivanios Metropolitan.	
B188	4-8-1974	Copy of letter sent to the Catholicos by the Kaikaran.	40
B189	27-5-1974	do sent to Mar Ivanios by the Kaikaran.	
B190	24-6-1975	Kalpana No. 307/75 of the Patriarch to the Simhasana Church at Pampady.	
B191	8-9-1975	Kalpana No. 384/75 of the Patriarch to Mar Julius Yacob Metropolitan	
B192	9-1-1975	Letter from Fr. C. G. Samuel to the Trustee of the Pampady St. Mary's Simhasana Church (Taken from O. S. 29/75) (O. S. 82/77).	
B193	26-1-1117	Copy of deposition of D. W. 5 in O. S. 111/1113	50

		of Kottayam District Court (Book) (taken from O. S. 192/77).	
B194	of 1125	Amended constitution of Nadamel Jacobite Syrian Church.	
B195	of 1125 M.E.	Constitution of Tripunithura Nadamel Church.	
B196	of 1975	Minutes of Damascus synod of 1975 Arabic.	
B196 (a)	do.	Photostat copy of do.	
B196 (b)	do.	Affidavit of Patriarch of Antioch.	
B196 (c)	do.	Affidavit of the photographer.	
B197	30-11-1957	Kalpana No. 82 of the Patriarch.	10
B197 (a)	do.	Malayalam Translation of do.	
B198	16-6-1975	English Translation of B196 proceedings of the Holy Episcopal Synod.	
B198 (a)	..	English Translation of B196 (a)	
B198 (b)	..	do. B196 (b)	
B198 (c)	..	do. B196 (c)	
B199	4-7-1974	Letter from George Kurian (Taken from O. S. 192/77).	
B200	16-9-1964	Decree copy in O. S. 72/1961 of Alleppey District Court (taken from O. S. 192/77).	20
B201	of 1953 Feb.	Minutes book maintained in Mepral St. John's Jacobite Syrian Church.	
B201 (a)	do.	Page No. 17 of do.	
B201 (b)	do.	Page Nos. 22 and 23 of do.	
B202	1st Makarom 1919	Copy of Kalpana No. 705 issued by Mar Severios Metropolitan.	
B203	15th Kanni 112	Kalpana No. 797 and a constitution of Malankara Knanaya Association.	
B204	3-11-1116	Copy of circular No. 270/23.	
B205	do.	Copy of circular No. 271/24.	30
B206	18-5-1959	Circular Kalpana dt. 18-5-1959 from the Knanaya Metropolitan.	
B207	nil	Copy of abstract of the Travancore Gazette Notification.	
B208	3-10-1943	Copy of letter No. 11/43 to the Knanaya Diocese.	
B209	24-3-1916	Copy of letter to the Knanaya Association.	
B210	of 25th Makaram 1915	Copy of identity letter issued to the elected representative for the Association.	
B211	8th Kanni 1922	Copy of Kalpana No. 854 issued by Mar Severios Metropolitan.	40
B212	10th Kumbham 1927	Copy of Notice Kalpana by Mar Severios Metropolitan.	
B213	10th Vrischigom 1922	Printed constitution of the Knanaya Vydika-Varumana Niyamam.	
B214	16 Medom 1924	Kalpana No. 49 issued by Mar Severios Metropolitan.	
B215	13th Edavam 1930	Copy of Kalpana No. 231 by Mar Dioscorose Thoma Metropolitan.	
B216	19-1-1123	Attested copy of Association Notice No. 68/573.	
B217	24-1-1126	Certified copy of Association Notice No. 99.	50

- B218** 18-11-1115 Copy of a letter No. 76 sent by the Administrator of the Knanaya Church to Rev. Fr. Lukose Cor-Episcopa.
- B219** 21-8-1116 Copy of Kalpana No. 19/205 dated 21-8-1116 by the Administrator of the Knanaya Samudayam.
- B220** 26-6-1118 Copy of Circular Kalpana No. 122/40 from the Administrator of the Knanaya Samudayam.
- B221** 19-7-1957 Copy of Kalpana No. 437 issued by Mar Clemis Abraham Metropolitan.
- B222** 29-7-1960 Copy of Kalpana from Mar Clemis Abraham Metropolitan.
- B223** 15-10-73 Copy of Kalpana No. 105/73 issued by Mar Clemis Abraham Metropolitan.
- B224** 2-3-1961 Printed Kalpana No. A 52/61 from the Administrator of Knanaya Church.
- B225** 2-3-1961 Printed Kalpana No. A 53/61 from do to do.
- B226** 15-11-1961 Printed circular Kalpana No. A. 120/61 do.
- B227** 21 Chingam 1910 Certified copy of Sthathicon issued to Mar Severios Metropolitan.
- B228** 19 Oab 1927 Certified copy of Sthathicon issued to Mar Dioscorose Metropolitan.
- B229** 5th Medam 1951 Certified copy of Sthathicon issued to Mar Clemis Abraham Metropolitan.
- B230** 26 Makaram 1932 Attested copy of Kalpana No. 42 issued by the Patriarch of Antioch.
- B230 (a)** do Original Kalpana No. 42 issued by the Patriarch of Antioch (Syriac.)
- B230 (b)** do Photostat copy of Kalpana No. 42 (Syriac)
- B230 (c)** do Malayalam Translation of do.
- B230 (d)** do Photostat copy of the above Malayalam Translation.
- B231** 15th Kumbham 1940 Attested copy of Kalpana No. 64 from the Patriarch of Antioch ex-communication of Dioscorose Metropolitan.
- D232** 28-11-1939 Copy of Kalpana No. 412 from the Patriarch of Antioch.
- B233** 10 Midhunam 1922 Printed Malayalam Translation of Kalpana No. 329 issued by the Patriarch of Antioch to Knanaya community.
- B234** 4 Idavam 1942 Letter sent by Julius Elias Metropolitan to Abraham Cor-episcopa.
- B235** 1st Kumbham 1947 Kalpana No. 33 from Julius Elias Metropolitan to the Kottayam Valia Pally.
- B236** 8-4-1959 Copy of Kalpana No. 118 issued by Patriarch of Antioch.
- B237** 22-11-1973 Attested copy of Kalpana No. 370/71 issued by the Patriarch of Antioch and All the East.
- B238** 11-6-1975 Kalpana No. 299/75 issued by the Patriarch of Antioch & All the East.
- B239** 3-4-1102 Attested copy of Regd. Udampady No. 873/1102 made by Late Chacko Kuruvilla.

B240	15-12-1953	Gift deed No. 3257 of Chengalam Knanaya Church.	
B241	17-9-1954	Gift deed No. 2794 of Ramangalam Knanaya Church.	
B242	2-4-1956	Gift deed No. 1295 of Thuruthy Parel Knanaya Church.	
B243	18-1-1954	Copy of gift deed of Vakathanam Puthussery Pally.	
B244	7-1-1954	Attested copy of gift deed of Eraviperoor Knanaya Church.	10
B245	8-1-1954	Attested copy of Gift deed of Neelamperoor Church.	
B246	21-7-1955	Attested copy of gift deed of St. Thomas Valia Pally, Ranni.	
B247	3-12-1953	Copy of gift deed No. 2911 of 1953 of St. Mary's Knanaya Church, Kuttoor.	
B248	15-3-1956	Certified copy of Gift Deed No. 971/56 of St. Mary's Knanaya Church.	
B249	13-12-1943	Attested copy of Udampady executed by Rev. Fr. E. O. Mathews.	20
B250	nil.	A small Book signed by 32 priests of Knanaya.	
B251	17-9-1973	Copy of Memorandum dated 17-9-73.	
B251 (a)	do.	Original Memorandum.	
B252	15-10-1973	Copy of application.	
B252 (a)	do.	Original Application.	
B253	nil.	Printed Malayalam Book of True Faith by M. T. Itteera Kathanar (Question & Answer)	
B254	8-10-1971	Edavaka Register of St. George Knanaya Church of Thuruthi Parayil.	
B255	1968	Printed Malayalam Book of the Ancient Songs of the Knanaya Christians.	30
B256	8-3-1968	Printed Book – Christianity in India and a Brief History of Mar Thoma Syrian Church.	
B257	May 1971	Attested copy of plaint in O. S. 60/71 on the file of the Sub Court, Kottayam.	
B258	16-9-1975	Attested copy of Judgment in O. S. 60/71 of do.	
B259	1116 Thulam 11	Constitution passed by the Pothuyogam held in Parur Yacobaya Syrian Church (taken from O. S. 106/77).	
B260	29-4-1958	Election Rules of the Parur Yacobaya Syrian Church (Taken from do case).	40
B260 (a)	do.	Page No. 45 of do. do.	
B261	4-10-1937	Certified copy of Memorandum of Association of the St. Antony's Educational Society in O. S. No. 482/69.	
B262	20-11-78	Attested copy of the common judgment in O. S. 32/73 and O. S. 11/74 and O. S. 12/74 of Civil Judge, Mangalore.	
B263	of 1954	Book published by Konat Abraham Kathanar-II Edition.	50

B264	do.	Malayalam Translation of the Syriac words in Ext. B263 book.	
B265	13-6-1964	The Power of Attorney executed by Patriarch Ignatius Yacoob III.	
B266	2-12-1957	The will executed by Mar Julius the delegate of the Patriarch.	
B267	30-5-1973	Letter from D. W. 10 Very Rev. Kore Episcopa, Jacob Kuriakel addressed to Abraham Mar Clemis Metropolitan.	
B268	of 1122 Makaram to 1123 Dhanu	Report of the Church Accounts.	10
B269	..	Printed copy of the amended constitution of the Mulanthuruthy Marthoman Church.	
B270	30-11-76	Certified copy of petition in O. S. 1/1124 of the District Court, Ernakulam.	
B271	nil	Certified copy of Memo filed by M. Abraham on behalf of Catholicos and Malankara Metropolitan in O. S. 1/1124 of District Court, Ernakulam.	
B272	31-7-1967	Certified copy of final decree passed by Dist. Court in O. S. 1/1124.	20
B273	31-7-1967	Certified copy of final judgment in do. case.	
B274	nil	Certified copy of constitution passed and adopted for Mulanthuruthy Marthoman Church by the District Court, Ernakulam in O. S. 1/1124.	
B275	nil	Printed copy of do. published by Mulanthuruthy Marthoman Church.	
B276	20-5-1972	Certified copy of I. A. 463/72 in O. S. 1/1124 of the District Court, Ernakulam filed by Adv. Sri. T. T. Uthup.	
B276 (a)	30-3-1972	Order on the said I. A. dated 30-5-72.	30
B276 (b)	4-7-72	Order on the said I. A.	
B277	10-7-72	Certified copy of petition I. A. 735 of 1972 filed by Advocate Sri. T. T. Uthup in I. A. 520/72 in O. S. 1/1124.	
B278	nil	Certified copy of amended constitution of Mulanthuruthy Marthoman Church.	
B279	5-1-1052	Certified copy of Udampady registered at Thripunithura Sub Registry Office executed by Thoppil Cheria Kathanar and others.	
B280	13-1-1967	Certified copy of Objection filed by the plaintiff in I. A. 1100/66 in O. S. 1/1124 of District Court, Ernakulam.	40
B281	of 1974	Mar Koorilose Souvenir published by Mulanthuruthy Marthoman Church.	
B281 (a)	do.	Page No. 13 of part 3 of do.	
B281 (b)	do.	Page No. 15 of part 3 of do.	
B282	2-9-1974	Mar Koorilose Souvenir published by do. do.	
B283	Jan. 1975	Kalpana Nos. 15, 16 and 17 of 1975 from Patriarch to all the Metropolitans.	
B284	20-1-1975	Postal acknowledgement signed by the 1st	50

		plaintiff for the invitation to the Universal Episcopal synod.	
B285	4-2-1975	do. do. by 2nd plaintiff.	
B286	5-2-1975	do. do. by Poulose Mar Philexinose.	
B287	do.	do. do. by Kuriakose Mar Coorilose.	
B288	24-6-1975	Copy of Kalpana No. 306 from the Patriarch to the 7 Metropolitans in Malankara.	
B289	do.	Postal acknowledgement signed by the 2nd plaintiff for receipt of Kalpana No. 306.	
B290	21-8-1975	Copy of Kalpana No. 360/75 of the Patriarch issued to the 1st plaintiff.	10
B291	21-8-1975	Postal acknowledgement of do.	
B291 (a)	do.	Postal receipt of do.	
B292	21-8-1975	Copy of Kalpana No. 366/75 of the Patriarch to Mathews Mar Coorilose.	
B292 (a)	do.	Copy of Kalpana No. 366/75 of do. to Philipose Mar Theophelus.	
B292 (b)	do.	Copy of Kalpana No. 367/75 of do. to Thomas Mar Themothiose.	
B292 (c)	do.	Copy of Kalpana No. 362/75 of do. to Mathews Mar Ivaniose.	20
B292 (d)	do.	Copy of Kalpana No. 361/75 of do. to Yohannan Mar Severius.	
B292 (e)	do.	Copy of Kalpana No. 363/75 of do. to Danial Mar Philexinose.	
B292 (f)	do.	Copy of Kalpana No. 364/75 of do. to Mathews Mar Athanasius.	
B293	do.	Postal receipt No. 666 of Kalpana No. 365/75.	
B293 (a)	..	do. No. 663 of Kalpana No. 366/75.	
B293 (b)	..	do. No. 662 of Kalpana No. 367/75.	30
B293 (c)	..	do. No. 660 of Kalpana No. 362/75.	
B293 (d)	nil	do. No. 664 of Kalpana No. 361/75.	
B293 (e)	nil	do. No. 659 of Kalpana No. 363/75.	
B293 (f)	nil	do. No. 661 of Kalpana No. 364/75.	
B294	of 1892	Certified copy of 'Mathasangathikal' by Malpan Geevarghese.	
B295	of 1962	Prayer book used by Malankara Jacobite Syrian Christians translated by Malankara Malpan & Published by Abraham Kathanar.	
B296	23-3-1923	Copy of Judgment of the High Court of Travancore in A. S. 68/1096.	40
B297	nil	Travancore Law Report Vol. 45.	
B298	31-12-56	Copy of Judgment in A. S. 1/1119 of the Kerala High Court.	
B299	12-8-1114	Kalpana of Ougen Themothiose,	
B300	17-11-1106	Joint Kalpana by Ougen Themothiose and 3 other Metropolitans.	
B301	nil	Book by Ramban M. Kuriakose.	
B302	nil	Book by Malpan Fr. N. A. Yohannan published in 1962.	50

B303	6-9-1964	Attested copy of constitution of Kallungathara St. George Church (taken from O. S. 60/77).	
B304	of 1957	Constitution of Marthasmoonni Church, Thiruvvarpu.	
B305	of 1090 M. E.	Attested copy of registered Udampady of Pampady Marthamariam Church.	
B306	13-9-1959	Copy of notice issued by Thomas Kathanar to the President of the Malankara Association.	
B306 (a)	17-9-1959	Postal acknowledgement of do.	
B307	2-4-1114	Attested copy of the Written Statement of the 1st defendant Baselius Gheevarghese II in O. S. 111/1113 of Kottayam Dist. Court.	10
B308	5-6-1118	Copy of decree in O. S. 111/1113 of the Kottayam District Court (Trial Court decree).	
B309	11-2-1952	Attested copy of objection filed in O. S. 111/1113.	
B310	27-11-1969	Attested copy of Sale deed executed by Philipose Mar Theophilos to Parur St. Thomas Church No. 3360/1969.	
B311	26-5-76	Copy of sale deed executed in favour of Mathews Mar Kurilose by Johnson and his wife concerning a church property owned by them.	20
B312	30-12-64	Copy of document executed by Markose Kathanar to Mathews Mar Kurilose.	
B313	21-3-60	Copy of a document of Chatayamangalam Sub Registry executed in favour of Catholicos by Gheevarghese and others. (concerning church building and accessories).	
B314	28-1-1958	Copy of a document executed by Ithappiri Chacko and wife (gift Deed No. 349/58) concerning a church and properties.	30
B315	18-4-1960	Copy of document, executed by Koshi Gheevarghese Kathanar to Catholicos, of Church and properties.	
B316	24-6-1966	Copy of Udampady executed by Cheriyan Thommi, to Niranam Mar Dionisius.	
B317	14-7-1955	Copy of document No. 3074 to Catholicos as president of Synod by Oommen T. Jacob.	
B318	22-12-59	Copy of gift deed executed by Mathoo Tharakan Ittappiri Tharakan to Catholicos concerning church and properties.	40
B319	18-6-1955	Copy of document to Catholicos conveying Church and properties by Koshi Gheevarghese and others, No. 249.	
B320	17-6-1070	Copy of Udampady executed in favour of Mar Gregorios by Mepral Puthiyodu Kuruvilla.	
B321	23-4-1963	Copy of deposition of Baselius Gheevarghese II in O. S. 315/1960 of Kottayam Munsiff's Court.	
B322	3-4-1964	Copy of judgment in A. S. 269/60 of the High Court of Kerala.	
B323	28-6-1107	Copy of judgment in A. S. 173/1105 of the	50

Travancore High Court.

- B324** 16-12-1964 Copy of judgment of District Court, Quilon in A. S. 339/1964.
- B325** 13-3-1975 Copy of plaint and judgment in O. S. 410/74 of Pathanamthitta Munsiff's Court.
- B326** 15 Thulam 1935 Attested copy of Constitution passed by Pothuyogam of Vadakode Jacobite Church (O. S. 46/1109 of District Court, Parur).
- B327** of 1069 Printed copy of constitution of Ankamali Akaparambu Church registered as No. 11/1069 of Alangad Sub Registry. 10
- B328** 29-11-1094 Udampady of Kadamattathu Jacobite Church showing its 'Natapadikramangal etc.'
- B329** 8-6-1105 do. of Kadamattam Yacobaya Pally.
- B330** 16-7-1083 Another copy of Kalpana.
- B331** nil Book entitled 'Ithu Oru Indian Sabhayo' by Rev. V. C. Samuel.
- B322** (series 5 in numbers) a, b, c & d. Calendars for 1967, 1971, 1975 and 1977-78 (Calendar for 75, 77 and 78) 20
- B333** of 1966 Issue of 'Sabha Chandrika' of 1966 September Edition-11th.
- B334** nil Copy of Malankara Sabha Supplement (Supplement to Magazine 'Malankara Sabha') containing speech delivered by Augen I concerning 19th Centenary of St. Thomas.
- B335** 2-12-1952 Attested copy of translation of Kalpana of Patriarch issued to Malankara concerning change of calendar.
- B336** 3-7-67 Kalpana No. 188 by Mathews Mar Ivanios to Manarkadu Church. 30
- B337** 13-10-1959 Copy of translation of Kalpana by Patriarch to Poulose Mar Philexenos.
- B338** 10-7-73 Kalpana No. 268/73 issued to Fr. P. S. Sacharia & others (By Patriarch).
- B339** 24-1-1975 Photostat copy of letter No. 11/1975 sent by Augen I to Patriarch.
- B340** 26-9-72 Issue of Keraladwani containing report of interview of U. N. I. with Augen I.
- B341** 10-7-71 True copy of minutes of working committee meeting produced by plaintiff on requisition by defendants concerning use of heading paper with throne of St. Thomas. 40
- B342** 25-8-72 Issue of Malayala Manorama containing report of walkout of some members from the Managing Committee on the controversy as to use of St. Thomas Throne.
- B343** 21-11-78 Copy of plaint in O. S. 667/1978 filed by Kurien Abraham against Baselius Marthoma Mathews I and others. 50

B344	18-7-1102	Copy of udampady, executed by Augen Themothios before his consecration as Methran, of the Koothattukulam Sub Registry No. 91/1102.	
B345	9-5-1962	Issue of Malayala Manorama of 9-5-1962 containing a report about parishioner of the outside Kerala diocese.	
B346	nil.	Malayalam Translation of the writing on the wall of Marthoma Cheria Pally, Kothamangalam (taken from O. S. 12/77).	
B347	nil	Photograph of another writing on the wall of Marthoma Cheria Pally, Kothamangalam.	10
B347 (a)	nil.	Negative of B347.	
B348	nil.	True Malayalam Translation of the above writing.	
B349	nil.	Photograph of writing on the wall of Marthoma Cheria Pally, Kothamangalam.	
B349 (a)	nil.	Negative of B349.	
B350	23-1-79	Bill issued from Job Studio to Mar Thoma Cheria Pally, Kothamangalam.	
B351	26-4-1110	Copy of registered Udampady of 1110 of Marthoma Cheria Pally, Kothamangalam.	20
B351 (a)	do.	Original of B351 - Udampady.	
B352	3-7-1088	Udampady written by Maliyil Isahak Kathanar.	
B353	11-1-1077	Udampady written by Nedumthallil Scharia Kathanar.	
B354	2-9-1973	Election Rules of Kothamangalam Cheria Pally.	
B355	31-12-1973	Balance Sheet of Marthoma Cheria Pally, Kothamangalam.	
B356	July 1971	Acquittance Roll Book of Marthoma Cheria Pally, Kothamangalam.	
B357	5-3-1974	Application from the 4 Kathanars to the Managing Committee of Kothamangalam Cheria Pally.	30
B358	nil.	Pothuyogam Notice Book of Kothamangalam Cheria Pally.	
B359	25-3-1974	Committee Notice Book of do. do.	
B360	7-4-1109	Udampady of Mar Thoma Cheria Pally, Kothamangalam.	
B361	20-9-1950	Kalpana from the Metropolitan of Angamali Bhadrasana Edavaka.	
X (1)	4-5-1951	Photostat copy of Malayala Manorama Daily Paper.	40

PLAINTIFF'S WITNESSES

P. W. 1	-	Nainan
P. W. 2	-	P. C. Yohannan
P. W. 3	-	N. K. Abraham
P. W. 4	-	Fr. Jacob
P. W. 5	-	Philip
P. W. 6	-	George Mathew
P. W. 7	-	Alexander Kodiat
P. W. 8	-	Baselius Marthoma Mathews-I
P. W. 9	-	Abraham

DEFENCE WITNESSES

D. W. 1	-	T. C. Alexander
D. W. 2	-	Kurian Cor-Episcopa
D. W. 3	-	Abraham
D. W. 4	-	K. K. Kuruvilla
D. W. 5	-	Varghese
D. W. 6	-	N. Abdul Hameed
D. W. 7	-	Kuriakose Coorilose Metropolitan
D. W. 8	-	Mathew
D. W. 9	-	Ivan
D. W. 10	-	Jacob Kurian Cor-Episcopa
D. W. 11	-	Kunjachan
D. W. 12	-	Chacko
D. W. 13	-	Mathew
D. W. 14	-	Gheevarghese