SUPREME COURT OF INDIA

Moran Mar Basselios Catholicos

Vs.

Thukalan Paulo Avira

C.A.No.267 of 1958

(S. R. Das, C.J.I., N. H. Bhagwati, B. P. Sinha, K. Subba Rao And K. N. Wanchoo, JJ.)

12.09.1958

JUDGEMENT

S. R. DAS, C. J.:

1. In order to appreciate the points urged before us in this appeal it is necessary to briefly narrate some facts which will bring out the genesis of the controversy that has been going on between the two rival sections of the Malankara Jacobite Syrian Christian community for a considerable length of time and which has brought in its train protracted litigation involving ruinous costs.

2. In Malabar there is a Christian community commonly known as Malankara Jacobite Syrian Christians. That community traces its origin to 52 A. D. when St. Thomas, one of the disciples of Jesus Christ, came to Malabar and established the Christian Church there. In 1599 A. D., under the influence of the Portuguese political power on the West Coast of India, the community accepted the Roman Catholic faith. This affiliation, however, did not last long. At a meeting known as Mattancherry Meeting held in 1654 the Roman Catholic Supremacy was thrown off and the Church in Malabar came under the authority of the Patriarch of Antioch who began to depute Metropolitans for ordaining Metropolitans in Malabar. Later on the Patriarch himself also ordained Metropolitans for Malankara. Thus in 1840 the then reigning Patriarch of Antioch personally ordained one Mar Mathew Athanasius who had gone to Syria for the purpose.

3. In 1808 a trust for charitable purposes was created by one Moran Mar Thoma VI, popularly called Dionysius the great, by investing 3,000 Star Pagodas with the British Treasury at Trivandrum on interest at 8 per cent., per annum in perpetuity. The trust property in dispute consists of this amount and the accretions thereto. It appears that a Society called the Church Mission Society and the Malankara Jacobite Syrian Church had come to jointly hold certain properties including this trust property. Disputes arose between the Church Mission Society and the Malankara Jacobite Syrian Church with regard to such properties. Those disputes were settled by what is known as the Cochin Award made in 1840. This award divided the properties between the two bodies and so far as the properties allotted to the Malankara Jacobite Syrian Church were concerned, it provided that they should be administered by three trustees, namely, (i) the Malankara Metropolitan, (ii) a Kathanar (that is priestly) trustee, and (iii) a lay trustee.

4. In 1876 Patriarch Peter III came to Malabar. He called a meeting of the accredited representatives of all the churches in Malabar which accepted the ecclesiastical supremacy of the Patriarch of Antioch. The said representatives met together in a Synod called the Mulunthuruthu Synod under

the presidentship of Patriarch Peter III. The proceedings of that meeting were recorded in writing, a copy of which is marked Ex. F. o. At that Synod the Malankara Syrian Christian Association, popularly called the Malankara Association, was formed to manage all the affairs of the churches and the community. It consisted of the Malankara Metropolitan as the ex-officio President and three representatives from each church. A managing committee of 24 was to be the standing working committee of the said Malankara Association.

5. On March 4, 1879 one Mar Joseph Dionysius claiming to be the properly consecrated Metropolitan of the Malankara Jacobite Syrian Church and the President of the Malankara Association filed a suit (O. S. No. 439 of 1054) in the Zilla Court of Alleppey against one Mar Thomas Athanasius who claimed to have been ordained by his brother Mar Mathew Athanasius as is successor and two other persons who claimed to be the Kathanar an lay trustees for the recovery of the church properties. Mar Joseph Dionysius asserted that the supremacy of the Patriarch consisted in consecrating and appointing Metropolitans from time to time to govern and rule over the Malankara Edavagai, sending Morone (the sanctified oil) for baptismal purposes, receiving the Ressissa from the community to maintain his dignity and generally in controlling the ecclesiastical and temporal affairs of the Edavagai. Mar Thomas Athanasius totally denied such alleged supremacy of the Patriarch. According to him the Patriarch could not claim, as a matter of right, to have any control over the Jacobite Syrian Church in Malabar either in temporal or spiritual matters, although, as a high dignitary in the churches of the country where their Saviour was born and crucified, the Malabar Syrian Christian community did venerate the Patriarch. That suit was, after various proceedings, finally disposed of by the Travancore Royal Court of Final Appeal by its judgment (Ex. DY) pronounced in 1889, which, by a majority of 2 to 1, dismissed the appeal of the defendant Mar Thomas Athanasius and confirmed the decree of the lower courts in favour of the plaintiff respondent Mar Joseph Dionysius. The conclusions arrived at by the majority of Judges, as set forth in paragraph 347 of that judgment, were, amongst others, that the ecclesiastical supremacy of the See of Antioch over Jacobite Syrian Church in Travancore had been all along recognised and acknowledged by the Jacobite Syrian Christian Community and their Metropolitans; that the exercise of the 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 to be used in the churches for baptismal and other purposes and in general supervision over the spiritual government of the Church; that the authority of the Patriarch had never extended to the government of temporalities of the Church which, in this respect, had been an independent Church; that the Metropolitan of the Jacobite Syrian Church in Travancore should be a native of Malabar consecrated by the patriarch or by his duly authorised Delegate and accepted by the people as their Metropolitan. The finding was that the plaintiff-respondent has been so consecrated and accepted by the majority of the people and had succeeded to the Metropolitanship on the death of Mar Mathew Athanasius. As a result of the aforesaid judgment Mar Joseph Dionysius came into possession of the office of the Malankara Metropolitan and of the church properties. The Patriarch peter III did not, naturally enough, approve of that judgment, for it denied to him any authority over the temporalities of the Church.

6. Up to 1905 one Abdul Messiah was the reigning Patriarch of Antioch. It was a matter of dispute whether there was a valid Synodical removal of Abdul Messiah from the office of Patriarch. There is no dispute; however, that the Sultan of Turkey had withdrawn the Firman he had issued recognising Abdul Messiah as the Patriarch and had issued a fresh Firman in favour of one Abdulla II who began to perform the duties of the Patriarch.

7. In 1909 Mar Joseph Dionysius died and the Malankara Association elected and installed one Mar

Geevarghese Dionysius (who, in 1907, had gone to Syria and got himself ordained as a Metropolitan by Patriarch Abdulla II) as the Malankara Metropolitan and as such he became the ex-officio President of the Malankara Association and one of the trustees of the Church properties. The other two co-trustees of Mar Joseph Dionysius, namely, Kora Mathan Malpan and C. J. Kurien continued as cotrustees of Mar Gee-varghese Dionysius.

8. In 1909 Abdulla II came to Malabar with the object of regaining his temporal authority over the Malankara Jacobite Syrian Christian Church. After his arrival he convened a meeting of the Malankara Association at the Old Seminary of Kottayam and demanded that the said Association should accept and acknowledge the temporal authority of the Patriarch. This the congregation declined to do and the meeting ended in confusion. Abdulla II thereafter started approaching the parish churches separately and attempted to get from them Udampadis (Submission Deeds) acknowledging the spiritual and tempor supremacy of the Patriarch. He actually succeeded in getting such Udampadis from some of the churches but not from many. He started rewarding persons who gave Udampadis by ordaining them as Metropolitans ,and ex-communicating those who declined to do so. In 1910 Mar Poulose Athanasius (the first plaintiff in the present suit and now the respondent in the present appeal arising out of that suit) gave an Udampadi and was ordained as a Metropolitan. Mar Geevarghese Dionysius declined to submit and give any Udampadi and consequently in 1911 Abdulla II ex-communicate Mar Geeverghese Dionysius whom he himself had ordained in 1907 and ordained one Mar Kurilos as the Malankara Metropolitan so as to make him automatically the ex-officio President of the Malankara Association and one of the trustees of the trust properties. The other two trustees Kora Mathan Malpan and C..J. Kurien went over to the side of Abdulla II and acknowledged his new nominee Mar Kurilos as the Malankara Metropolitan and as such the ex-officio trustee Mar Geevarghese Dionysius retaliated by convening a meeting of the Malankara Association which declared his ex-communication invalid and removed from trusteeship the two trustees who had gone over to the side of the Patriarch and appointed two new trustees, namely, Mani Poulose Kathanar who was the second appellant but has since died and one Kora Kochu Korula also since deceased. The said meeting also resolved to enquire into the real position of Abdulla II and Abdul Messiah and suspend the payment of Ressissa to the Patriarch. Abdulla II left Malabar in October 1911 and in 1912 issued a Kalpana (message or order) branding Abdul Messiah and Mar Geevarghese Dionysius as "wolves" from whom the faithful should entirely keep aloof.

9. In 1912 Abdul Messiah, whose Firman had been withdrawn by the Sultan of Turkey, came to Malabar. He declared the ex-communication of Mar Geevarghese as invalid. In 1913 he issued a Kalpana (Ex. 80) establishing a Catholicate in Malabar as it appeared to him that "unless we do instal a Catholicos, Our Church, owing to various causes, is not likely to stand firm in purity and holiness". By this Kalpana Abdul Messiah ordained one Mar Poulose Basselios as the first Catholicos and also ordained three Metropolitans. This Kalpana further provided that the Catholicos aided by the. Metropolitans would ordain Melpattakars "in accordance with the Canons of Our Holy Fathers" and consecrate Holy Morone and that the Metropolitan had the sanction and authority to instal a new Catholicos when a Catholicos died. Shortly after this Abdul Messiah left Malabar in March 1913. The position at that time,. therefore, was that there were two rival groups in the Malankara Jacobite Syrian Church who were represented by two rival sets of trustees, namely, Mar Geevarghese Dionysius (since deceased) and his co-trustees Mani Poulose Kathanar (the second appellant) now deceased and Kora Kochu Korula also since deceased on the one side and Mar Murilos and Kora Mathan Malpan and C. J. Kurien who had deserted Mar Geevarghese Dionysius and had sided with Mar Kurilos. In 1915 Abdulla II and Abdul Messiah died.

10. In the meantime in 1913 the Secretary of State for India filed an inter-pleader suit (O. S. No. 94 of 1088) in the District Court of Trivandrum. In that suit he impleaded both the sets of rival claimants as defendants, namely,(i) Mar Geevarghese Dionysius, (ii) Mani Poulose Kathanar (iii) Kora Kochu Korula being one set claiming to be trustees and (iv) Mar Kurilos, (v) Kora Mathan Malpan, and (vi) C. J. Kurien being the other set also making the same claim.The prayer was for the determination of the question as to which of the two rival sets of trustees was entitled to draw the interest on the amounts standing to the credit of the Malankara Jacobite Syrian Christian community in the British treasury. The two rival sets of trustees filed written statement interpleading against each other, the defendants Mar Geevarghese Dionysius, Mani Poulose Kathanar and Kora Kochu Korula being treated as plaintiffs and the defendants Mar Kurilos, Kora Mathan Malpan and C. J. Kurien being treated as defendants. As will appear from paragraph 3 of the trial courts judgment (Ex. 255) pronounced on September 15, 1919, the suit was converted into a representative action on behalf of the Jacobite Syrian Christian population of Malabar with the permission of the court and notice was, given of the institution of the suit under S. 26 of the Travancore Civil Procedure Code by publishing advertisements in the several jurisdictions peopled by the Syrian Christian community. Defendants 7 to 41 got themselves impleaded in the suit as defendants and supported defendants 1 to 3. During the pendency of the suit, defendant 4, Mar Kurilos died and Mar Poulose Athanasius, who claimed to be the successor of mar Kurilos as Malankara Metropolitan, was added as defendant No. 42. By the aforesaid judgment (Ex. 255) the trial court upheld the claim of defendants Mar Geevarghese Dionysius, Mani Poulose Kathanar and Kora Kochu Korula (defendants 1 to 3) as the lawful trustees of the Church properties.

11. The defendants Kora Mathan Malpan, C. J. Kurien and Mar Poulose Athanasius (defendants 5, 6 and 42), appealed to the Travancore High Court. In 1923 the Full Bench of the Travancore High Court pronounced its judgment (Ex. DZ) which will be found reported in 41 Trav. LR 1(A). By that judgment the Full Bench reversed the judgment and decree of the District Court and directed that the money lying deposited in court be withdrawn by the defendants 5 and 6 and by the person to be thereafter duly elected, appointed and consecrated as the Malankara Metropolitan.

12. Mar Geevarghese Dionysius and his two co-trustees (defendants 1, 2 and 3) applied under S. 12 of the Travancore High Court Regulation 1099 for review of the aforesaid judgment of the Full Bench. That application was admitted subject to the condition that on the re-hearing the findings recorded (i) as to the authenticity of Ex. 18 the version of the Canon Law produced by the defendants S. 6 and 42, (ii) as to the power of the Patriarch to ex-communicate without the intervention of the Synod and (iii) 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. The appeal was then re-heard by a Full Bench which by its judgment pronounced on July 4, 1928 (Ex. 256), upheld the decision of the learned District Judge and confirmed his decree. That judgment will be found reported in 45 Tr. L. R. 116 (A). The ner result of that litigation, therefore, was that Mar Geevarghese Dionysius and his two co-trustees (defendants 1, 2 and 3) became finally entitled to withdraw the moneys deposited in the court as the lawful trustees of the church properties.

13. On August 16, 1928 the Managing Committee of the Malankara Association was authorised to drawn up a constitution for the Church and the Association. On the very next day Mar Julius Elias, the Patriarch's Delegate who was in Malabar at that time and who has figured as P.W. 17 in the present proceedings, issued an order on Mar Geevarghese Dionysius calling upon him to execute an Udampadi within two days and at the same time suspending him for having "committed several grave offences against the Holy Throne of Antioch and the faith and practices of the Holy Church

and repudiated the authority of the ruling Patriarch". He also sent letters to the Governments of Travancore and Madras to withheld the payment of interest to defendant Mar Geevarghese Dionysius on the ground of his suspension.

14. On August 21, 1928 O. S. No. 2 of 1104 was filed in the District Court of Kottayam by 18 persons belonging to what, for the sake of brevity, may be called the Patriarchal party against the defendants 1, 2 and 3 of O. S. No. 94 of 1088 and 12 other persons including the second Catholicos, Mar Geevarghese Philixinos, who may be compendiously called as belonging to the Catholicos' party, and the Secretary of State for India. It may be mentioned here that in 1929 on the death of Mar Geevarghese Philixinos, Moran Mar Basselios, who was defendant No. 1 in the suit out of which this appeal arises and is the appellant before us, was installed by the local Metropolitans as the third Catholicos in terms of the procedure prescribed by the Kalpana (Ex. 80) issued by Ahdul Messiah and he was substituted as a defendant in O. S. No. 2 of l104 in place and stead of the second Catholicos mar Geevarghese Philixinos. On January 23 1931 O. S. No. 2 of 1104 was dismissed for non-compliance with the court's order for payment of certain moneys to the Commissioner appointed in that suit. The plaintiffs applied for restoration of the suit by setting a side of that order of dismissal. That application for restoration was dismissed on September 29, 1931 (Ex. 46). There was a Civil Misc. Appeal No. 74 of l107 against the order refusing to restore the suit.

15. In view of the disputes raging between the two sections of the community which resulted in acute dissensions in the Church, an attempt was made to restore good will and amity amongst the members of the community and at the instance of Lord Irwin, the then Viceroy of India, Patriarch Elias I visited Malabar in 1931. He however, died in Malabar before he could effect any settlement. In 1933 Ephraim was elected as Patriarch of Antioch without, it is said, notice to the Malabar community. Mar Geevarghese Dionysius and his supporters did not recognise Ephraim as the duly installed Patriarch.

16. Kora Kochu Korula who was one of the co-trustees of Mar Geevarghese Dionysius died in 1931 and one E. J. Joseph was appointed a trustee in his place and stead. During the pendency of the Civil Miscellaneous Appeal, hereinbefore mentioned, Mar Geevarghese Dionysius died in February 1934 and the trust properties passed into the possession of Mani Polouse Kathanar and E. J. Joseph. Shortly thereafter the draft constitution was published in the shape of a pamphlet. On December 3, 1934 three notices (Exs. 59, 60 and 61) were issued convening a meeting of the Churches to be held on December 26, 1934 at M. D. Seminary at Kottayam for, inter alia electing the Malankara Metropolitan and adopting the draft constitution. Notices were also published in two leading Malayalam newspapers (Exs. 62 and 63). The meeting was held on the appointed day and the proceedings of that meeting will be found recorded in Ex. 64. Shortly put, the third Catholicos, who was defendant No. 1 in the present suit and is now the appellant before us and who was also defendant 3 in O. S. No. 2 of l104 was unanimously elected as Malankara Metropolitan and as such he automatically became a trustee of the church properties. The meeting also unanimously adopted the constitution (Ex. A. M.), The factum and validity of this meeting are strenuously challenged on diverse grounds to which reference will be made hereafter.

17. On July 5, 1935 the Metropolitans of the Patriarchal party issued a notice (Ex. D) summoning a meeting of the Church representatives for August 22, 1935 at Karingasserai to elect the Malankara Metropolitan. In that notice it was mentioned that none of the Catholicos party should be elected, although Ex. A.M, was not referred to therein as a ground for such exclusion. The meeting was held on August 22, 1935. At that meeting Mar Poulose Athanasius, the original first plaintiff in the

present suit now deceased, was elected Malankara Metropolitan, Mar Poulose Kathanar and E. J. Joseph, the defendants 2 and 3 in the present suit were removed from trusteeship and Avira Joseph Kathanar and Thukalan Paulo Avira, plaintiffs 2 and 3 in the present suit, plaintiff No. 2 having died since, were elected trustees and the three new trustees (Plaintiffs 1 to 3 in the present suit) were authorised to file a suit for the recovery of the trust properties.

18. After these resolutions were passed at the meeting the Civil Miscellaneous Appeal No. 74 of 11O7, which was pending in the High Court, was on July 23, 1936 allowed to be dismissed for non-prosecution. On March 10, 1938 was filed in the District Court of Kottayam the suit (O. S. No. 111 of 1113) out of which the present appeal has arisen for various reliefs to which reference will hereafter be made in some detail. That suit was dismissed on January 18, 1943. The plaintiffs preferred an appeal to the Travancore High Court, which was numbered as A. S. No, I of 1119. On August 8, 1946 that appeal was allowed and the suit was decreed by a majority of Judges in the proportion of 2 to 1. The defendants applied for review which came up before the Travancore High Court. That review application having been dismissed on December 21, 1951, the defendants appealed for and obtained special leave to appeal from this Court under Art, 136 of the Constitution. That appeal before this Court was numbered C. A. 193 of 1952. By its judgment delivered on May 21, 1954, Mar Basselios Catholicos v. Mar Poulose Athanasious, 1954 Ker LT 385: 1955-1 SCR 520: (AIR 1954 SC 526) (B),this Court allowed the appeal, set aside the judgment of the High Court and admitted the review application and directed the entire appeal No. A. S. 1 of 1119 to be re-heard on all points. The Travanecore High Court thereupon took up the re-hearing of the appeal. The arguments commenced or September 15, 1956 and concluded in the first week of October 1956 when judgment was reserved. On November 1, 1956 came the States Reorganisation Act which brought into being the present State of Kerala and the Kerala High Court. In December 1956 the same Judges heard the appeal formally de nova by putting a few questions and on December 13,1956 delivered a unanimous judgment allowing the appeal and decreeing the suit. The High Court on March 2l, 1957 granted a certificate under Art. 133 of the Constitution. Accordingly Moran Mar Basselios Catholicos, the original first defendant, has preferred this appeal impleading Thukalan Paulo Avira, the original third plaintiff, and Kurian George Semmassen the original seventh defendant, as the respondents, the other parties having died in the course of the long drawn proceeding. Two individuals have been elected by the Patriarchal party under orders of this Court made on April 22, 1957 to carry on this litigation in the event of the first respondent's death during its pendency and they have since been addeed as party-respondents.

19. In the meantime on April 17, 1957 was filed a petition under Art. 32 of the Constitution by 8 persons belonging to the Catholicos party praying for a writ of certiorari or of the appropriate order or direction or writ for quashing the judgment and decree passed by the High Court of Kerala dated December 31, 1956 in A. S. 1 of 1119. That application has also come up for hearing along with the appeal. Shri T. N. Subramania Aiyer took a preliminary objection as to the maintainability of the appeal on the ground that although the final judgment of the Kerala High Court was passed on December 13, 1956 it only restored the decree of the majority of the Travancore High Court pronounced on August 8, 1946 and accordingly, that being a decree passed before the commencement of the Constitution, no appeal would lie under Art. 133 of the Constitution. This objection, however, was not seriously pressed by learned counsel and would, at any rate, not affect the maintainability of Art. 32 petition. In the circumstances nothing further need be said an this preliminary objection, except that it is rejected as untenable.

20. The plaintiffs have brought the suit out of which the present appeal has arisen claiming to be trustees and praying for a declaration of their own title as trustees and for a declaration that the

defendants were not trustees and for possession of the trust properties and other incidental reliefs. It is perfectly clear that in a suit of this description if the plaintiffs are to succeed they must do so on the strength of their own title. The plaintiffs in this suit base their title to trusteeship on their election at a meeting of the churches alleged to have been held on August 22, 1935 at Karingasserai when the original plaintiff is said to have been elected the Malankara Metropolitan and the plaintiffs 2 and 3 as Kathanar and lay trustees.

That meeting was admittedly held without any notice to the members of the Catholicos party, for they were, quite erroneously as we shall presently indicate, regarded as having gone out of the Church. In justification of this stand reference is made, rather half-heartedly, to the Kalpana (Ex. Z) which commanded the faithful not to have anything to do with the heretics. On our finding on that question to be hereafter recorded, namely, 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, it must necessarily follow, apart from the question of the competency of the convener of the meeting, that the meeting had not been held on due notice to all churches interested and was consequently not a valid meeting and that, therefore, the election of the plaintiffs was not valid and their suit, in so far as it is in the nature of a suit for ejectment, must fail for want of their title as trustees.

21. Learned counsel for the respondents, however, seek to get over this difficulty by contending that the present suit has been filed by the plaintiffs not only in their capacity as trustees, but also in their individual capacity as members of the Malankara Jacobite Syrian Christian community who claim that as such members they are entitled to come before the court for the preservation of the properties held in trust for all the members of the community including themselves. Learned counsel for the defendant-appellant contends that the present suit is not a representative suit nor a suit under S. 72 of the Travancore Code of Civil Procedure corresponding to S. 92 of our Code of Civil Procedure and that, therefore, the plaintiff cannot question the validity of the defendants' title as trustees of the church properties. Learned counsel for the defendant-appellant also points out that even if the plaintiffs may in their individual capacity as members of the community maintain this suit with a view to dislodge the defendants from their office as trustees the onus is on the plaintiffs and not on the defendants who have not come to court for a declaration of title to prove that the defendants have no title as trustees. The question of burden of proof at the end of the case, when both parties have adduced their evidence is not of very great importance and the court has to come to a decision on a consideration of all materials. Further although in the cause title or in the body of the plaint the plaintiffs do not claim to have instituted the suit for themselves and on behalf of all other members of community proceedings were taken under the provisions of the Travancore Code of Civil Procedure corresponding to O. I, R. 8 of our Code of Civil. Procedure. We, therefore, proceed to determine the questions arising in this appeal on the basis that the plaintiffs were entitled to maintain this suit as members of the Malankara Jacobite Syrian Christian community not only on behalf of themselves but on behalf of all the members of the said community.

22. The plaintiffs first 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 by establishing a new Church and consequently have lost their status as members of the Malankara Jacobite Syrian Church and have forfeited their office as trustees of the properties of that Church. The major part of the argument advanced before us on both sides has centered round the question as to how far the contentions now sought to be put forward by the plaintiffs in the present suit in, derogation of the title of the defendants are concluded by the final decision (Ex. 256) in the interpleader suit (O. S. No. 94 of 1088) and by the provisions of the Kerala Code of Civil Procedure corresponding to O. 9, R. 9 of our Code of Civil Procedure in view of the dismissal for default of the other suit (O. S. No.

2 of 1104).

23. At the forefront, of course, has come the question as to the identity of the parties in the different suits. As will appear from paragraph 3 of the judgment (Ex. 255) pronounced by the trial court on September 15, 1919 in the interpleader suit (O. S. No. 94 of 1088) that suit was, with the permission of the court, converted into a representative action on behalf of the Jacobite Syrian Christian population of Malabar. Therefore the decision in that interpleader suit (O. S. No. 94 of 1088) must be binding on all members of the Malankara Jacobite Syrian Christian community. In paragraphs 6, 9 and 32 of the plaint in the present suit the plaintiffs who represent the interests of defendants 4 to 6 in the interpleader suit (O. S. No. 94 of 1088) themselves rely on the decision in that interpleader suit as operating as res judicata as between the parties to the present suit on questions referred to in those paragraphs. Indeed in paragraph 55 of the grounds of appeal filed by the plaintiffs in the present suit the contention is put forward that the trial court should have held, inter alia, that Ex. 256 operated as res judicata in respect of the points decided in that case. It is also to be remembered that the first plaintiff in the present suit was defendant 42 in that interpleader suit and the second defendant in the present suit was the second defendant in that interpleader suit. In these circumstances there does not appear to us any difficulty as to parties in applying the principle of res judicata to the matters in issue in this suit, if the other conditions for its application are satisfied.

24. In order to ascertain exactly what are the matters in issue in the present suit between the parties thereto it is necessary to analyse the plaint in some detail. The properties claimed to belong to the Malankara Jacobite Syrian Church which have to be administered by three trustees, namely, the Malankara Metropolitan, one Kathanar (clergy) and a lay man to be elected by the Church, are referred to in paragraphs 1 and 2 of the plaint. The salient facts summarised above as constituting the background of the present disputes are then set forth in paragraphs 3 to 12. Reference is thereafter made in paragraphs 13 and 14 to the meeting said to be a meeting of the Malankara Association held in Karingasserai in August, 1935. It is alleged that at that meeting the first plaintiff was elected as the Malankara Metropolitan and the second and third plaintiffs were elected respectively as the Kathanar (priestly) trustee and the lay trustee and the second and the third defendants were removed from trusteeship. In paragraph 15 is formulated the plaintiff's claim to be in possession of the church properties. Paragraphs 16 to 21 repudiate the claims of the first defendant allegedly founded on his election as the Malankara Metropolitan and trustee at a meeting of the Malankara Association said to have been held in December 1934. It is alleged that the last mentioned meeting was not convened by any competent person nor was due notice of it given to all the churches. In paragraph 22 it is stated that for reasons stated there and more particularly specified in paragraphs 26, the first defendant was disqualified and declared unfit to be Malankara Metropolitan. The reasons set forth are five in number and each of them is characterised as amounting to a denial or repudiation of the authority of His Holiness the Patriarch of Antioch. The contentions formulated in paragraphs 23 and 25 are that the acts and pretensions referred to therein constitute heresy and that the first defendant as well as the second and third defendants who are supporting and co-operating with the first defendant, had become ipso facto heretics and aliens to the Malankara Jacobite Syrian Church. Paragraph 26 of the plaint which is very important for the purposes of our decision of this appeal runs as follows :

"The defendants and their partisans have voluntarily separated themselves from the ancient Jacobite Syrian Church and, have constituted for themselves a new church called "Malankara Orthodox Syrian Church." According to the beliefs and doctrines of that Church, such functions as, consecration of Morone, ordination of Metropolitans, granting of stations and allotting Edavagas to Metropolitans - privileges which are exclusively within the powers of His Holiness the Patriarch -

could be done by the first defendant and others, without any recourse to His Holiness the patriarch. Further it is provided, that Ressissa which is due to His Holiness the Patriarch may be paid to the person holding the dignity of Catholicos of the said Church. In short, this act which provides for the permanent constitution of the said Church without any connection with His Holiness the Patriarch, and in repudiation and negation of him as well constitutes heresy. The defendants have no right to claim membership of the ancient Jacobite Syrian Church. For these reasons also, the defendants have become disqualified and unfit to be the trustees of, or to hold any other position in, or enjoy any benefit from the Jacobite Syrian Church."

The constitution referred to above presumably is Ex. AM, which is said to have been adopted at the M. D. Seminary meeting held in December, 1934. The rest of the allegations in the plaint need not be scrutinised in detail, except that it may be noted that in paragraph 35 the plaintiffs claim to be entitled to maintain the suit not only as trustees but also in their individual capacity as members of the community. The plaintiffs claim that they be declared as lawful trustees, that the defendants be declared to have no right to retain possession of the church properties, that the defendants be compelled to surrender and the plaintiffs be put in possession of the suit properties, that the defendants be directed to pay mesne profits and render accounts of their administration and of the rents etc, realised by them and that the defendants be restrained from functioning as trustees.

25. The defendants have filed their written statement denying the contentions of the plaintiffs. In particular they deny that they have been guilty of any act of heresy or that even if they were they ipso facto ceased to be members of the Church. Paragraphs 22 to 26 of the plaint are denied in paragraphs 26 to 39 of the written statement. It is averred that there were not two different churches or two kinds of faiths and that the defendants had not established a separate church and had not separated from the Jacobite Syrian Church. They deny that the meeting said to have been held at Karingasserai in August 1935 was convened by any competent person or was held on notice to all churches. They contend that the meeting was invalid and the first plaintiff was not validly elected Malankara Metropolitan and the second and third plaintiffs had not been validly elected as trustees. It is also pleaded in paragraph 45 of the written statement that it is the plaintiffs and their partisans who had been from 1085 (1910 A.D.) contending that the Patriarch had temporal power over the properties of the church, that the patriarch had power, acting by himself to ex-communicate and ordain Melpattakars (bishop), that only the Patriarch could consecrate Morone (holy oil), that the Canon of the Church is the book, which was marked as Ex. 18 in the suit of 1913 and that the Catholicate had not been validly established and that by non-co-operating with and opposing the Malankara Syrian Church the plaintiffs had voluntarily separated themselves and had ceased to be the members of the Church. In paragraphs 46 and 47 of the written statement alternative pleas are taken that the plaintiffs and their partisans had lost their rights, if any, to the Church properties by adverse possession and limitation. The defendants contend that, in the premises, the plaintiffs, have no title and were not entitle to maintain the suit.

26-27. The allegations in the written statements are denied and the averments in the plaint are reiterated in the replication filed by the plaintiffs. Certain clarifications called Issue Papers, according to the Rules and Forms of the Code of Civil Procedure of Travancore were filed in the case. They are in the nature of interrogatories and answers thereto, obviously designed to form the basis on which the issues have to be struck.

28. Not less than 37 issues were raised on the pleadings. Of them issues 1 and 3 raise the question of the validity of the respective titles of the three plaintiffs, that is to say, title of the first plaintiff as Malankara Metropolitan and of the second and third plaintiffs as the trustees of the church

properties and the validity of the Karingasserai meeting in August 1935. Issues 6 to 9 concern the validity of the M. D. Seminary meeting in December 1934 at which the first defendant is alleged to have been elected as Malankara Metropolitan, the second and third defendants having bean previously elected trustees as the Kathanar and the lay trustees. Issues Nos. 10, 11, 13, 14, 15, 16, 17, 19 and 20 are as follows :-

"10. Has the 1st defendant been duly and validly installed as Catholicos in l104? If so by whom? And was it done with the co-operation and consent of Mar Geevarghese Dionysius and the other Metropolitans of Malankara?

(a) Were his two immediate predecessors in that office also duly and validity installed in the same manner and did they function as such?

(b) Has the institution of the Catholicate for the East exercising jurisdiction over Malankara ever existed at any time before 1088?

(c) Was the institution of the Catholicate for the East with jurisdiction in Malankara, purported to be brought into existence in 1088 for the first time? Or had it only been in abeyance for some time? And was it only revived and re-established in 1088?

(d) Was such a re-establishment effected by Abdul Messiah with the co-operation of the late Malankara Metropolitan Mar Geevarghese Dionysius and the other Metropolitans of Malankara and the Malankara Church? If so, is it valid and lawful? Was Abdul Messiah competent to do so?

(e) Did Mar Geevarghese Dionysius submit himself to the authority of the Catholicate from 1088 till his death?

(f) Have the Malankara Jacobite Syrian Association the Association Committee, and the Churches and people of Malankara also accepted the Catholicate and have submitted themselves to its authority from 1088?

(g) Are the plaintiffs estopped from contending that the Catholicate was not validly re-established in 1088 or that its authority was not accepted or recognised by the Malankara Jacobite Syrian Church?

(h) Whether after the revival of the Catholicate the powers of the Patriarch, if any, as regards ordination or appointment of the Malankara Metropolitan and the Metropolitans of Malankara have become vested in the Catholicos?

(j) Cannot the offices of Catholicos and Malankara Metropolitan be combined in one and the same person?

11. Is the Patriarch of Antioch the ecclesiastical head of the Malankara Jacobite Syrian Church or is he only the supreme spiritual head?

(a) What is the nature, extent and scope of the Patriarch's ecclesiastical or spiritual authority, jurisdiction, or supremacy over the Malankara Jacobite Syrian Church?

(b) Is the Patriarch acting by himself or through the Delegate duly authorised by him in that behalf, the only authority competent to consecrate Metropolitans for Malankara? Or is the consecration a Synodical Act in which the Patriarch acts and can act only in conjunction with a Synod of two or

more Metrans?

(c) Whether "Kaivappu" or "the laying on of hands" which is a necessary and indispensable item in the consecration of a Metropolitan should be by the Patriarch or his duly appointed Delegate alone or can it be done by the Catholicos also?

(d) Is the Patriarch alone entitled to and competent to consecrate "Morone" for use in the Malankara Church? Or is the Catholicos also entitled to do it?

(e) Whether by virtue of long-standing custom accepted by the Malankara Church and rulings of Courts, the Holy Morone for use in the Malankara Churches has to be consecrated by the Patriarch?

(f) Is the allocation of Dioceses or Edavagais in Malankara a right vesting solely in the Patriarch and whether before exercising jurisdiction in any Diocese the Metropolitan ordained and appointed by the Patriarch (by issuing a Staticon,) has only to be accepted by the People of the Diocese? Or is the allocation of Edavagais, so far as Malankara is concerned, not a right which the Patriarch or Catholicos or Malankara Metropolitan has or has ever had, but a right which vests and has always vested in the Malankara Jacobite Syrian Association? Whether a Metropolitan, before he can exercise jurisdiction in any Diocese in Malankara, must have been either elected for the office before ordination by the Malankara Jacobite Syrian Association duly convened for the purpose or accepted by the same after ordination?

(g) Is the Patriarch the sole and only authoritycompetent to ordain and appoint the Malankara Metropolitan? Is the issue of a Staticon or order of appointment by the Patriarch either before selection or election by the meeting of the church representatives or after such election or selection essential? Or is such order unnecessary and the election, or acceptance by the Jacobite Syrian Association sufficient?

(h) What is Ressissa? Is it a contribution which the Patriarch and Patriarch alone is entitled to levy as a matter of right? Or is it only in the nature of a voluntary gift which may he made to or received by the Patriarch and Catholicos?

(i) Has the Patriarch no temporal authority or jurisdiction or control whatever over the Malankara Jacobite Syrian Church? or whether, as the ecclesiastical head, he could exercise and has all along exercised temporal authority by awarding such spiritual punishment as he thinks fit in cases of mismanagement or misappropriation of church assets?

13. Which is the correct and genuine version of the Hoodaya Canons compiled by Mar Hebraeus? Whether it is the book marked as Ex. A or the book marked as Ex. XVIII in O. S. 94 of 1088?

14. Do all or any of the following acts of the 1st defendant and his partisans amount to open defiance of the authority of the Patriarch ? Are they against the tenets of the Jacobite Syrian Church and do they amount to heresy and render them ipso facto heretics and aliens to the faith?

(i) Claim that the 1st defendant is a Catholicos?

(ii) Claim that he is the Malankara Metropolitan?

(iii) Claim that the 1st defendant has authority to consecrate Morone and the fact that he is so consecrating?

(iv) Collection of Ressissa by the 1st defendant?

15. (a) Have the 1st defendant and his partisans voluntarily given up their allegiance to and seceded from the Ancient Jacobite Syrian Church?

(b) Have they established a new Church styled the Malankara Orthodox Syrian Church?

(c) Have they framed a constitution for the new church conferring authority in the Catholicos to consecrate Morone to ordain the higher orders of the ecclesiastical hierarchy, to issue Stations allocating Dioceses to the Metropolitans and, to collect Ressissa?

(d) Do these functions and rights appertain solely to the Patriarch and does the assertion and claim of the 1st defendant to exercise these rights amount to a rejection of the Patriarch?

(e) Have they instituted the Catholicate for the first time in Malankara? Do the above acts, if proved, amount to heresy?

16. (a) Have the defendants ceased to be members of the Ancient Jacobite Syrian Church?

(b) Have they forfeited their right to be trustees or to hold any other office in the Church?

(c) Have they forfeited their right to be beneficiaries in respect of the trust properties belonging to the Malankara Jacobite Syrian community?

17. Have defendants 2 and 3 by helping and actively co-operating with the 1st defendant in the above acts and pretensions become heretics or aliens to the faith or gone out of the fold? .

19. (a) Have the plaintiffs and their partisans formed themselves into a separate Church in opposition to Mar Geevarghese Dionysius and the Malankara Jacobite Syrian Church?

(b) Have they separated themselves from the main body of the beneficiaries of the trust from 1085?

20. i Do the following acts and claims of the plaintiffs constitute such separation?

(a) (i) The claim that Patriarch alone can consecrate Morone?

(ii) That the Canon of the Church is Ex. XXIII in O. S. 94?

(iii) That the Catholicate is not established?

(iv) That the Patriarch by himself can ordain and excommunicate Metropolitans?

(b) Have the plaintiffs been, claiming that the Patriarch has temporal powers over the Church?

(c) Have they been urging that Mar Geevarghese Dionysius was not the Malankara Metropolitan?

(d) Have they made alterations in the liturgy of the church?

(e) Has the 1st plaintiff executed an Udampady to the Patriarch conceding him temporal powers over the Jacobite Syrian Church and its properties?

(f) Have the plaintiffs and their partisans by virtue of the above acts and claims become aliens to the church and disentitled to be trustees or beneficiaries of the Church and its properties?

The pleadings, in which may be included the replication and the issue papers and the actual issues raised in this case, quite clearly indicate that the principal contention of the plaintiffs in the present suit is that the defendants had become heretics or aliens to the Church or had voluntarily gone out of the Church only by reason of certain conduct definitely particularised in paragraphs 19 to 26 of the plaint, namely, (i) the acceptance of Abdul Messiah as a validly continuing Patriarch; (ii) the acceptance of the establishment of the Catholicate with power to the Catholicos for the time being (a) to ordain Metropolitans. (b) to consecrate Morone (c) to issue Staticons, (d) to allot Edavagais and (e) to receive Ressissa. These are the specific acts on which is founded the charge of heresy or going out of the Church by setting up a new Church. It has not been disputed that the power to issue Staticons and to allot Edavagais are not independent powers but are incidental to and flow from the power to ordain Metropolitans. The question is whether these contentions are concluded by the final decision, (Ex, 256) pronounced on July 4, 1928 in the interpleader suit (O. S. No. 94 of 1088) which is reported in 45 Trav. L. R. l16. (A-1). This leads us to scrutinise the matters which were in issue in that suit.

29. It is unfortunate that the pleadings in that inter-pleader suit have not been exhibited in the present cases. The judgment (Ex. 255) pronounced by the trial judge in 1919 and reported in 41 Trav LR1 (A), however, summarises the pleadings and the rival contentions of the two opposing sets of trustees who interpleaded against each other. The findings of the trial judge relevant for our present purpose may be thus summarised:

"(i) that Mar Geevarghese Dionysius was the lawful Malankara Metropolitan and was recognised and accepted as such by the Malankara Syrian Church and as such had become a trustee of the Church properties (Issue 1).

(ii) that the Patriarch had only a power of general supervision over the spiritual government of the Church but had no right to interfere with the internal administration of the Church in spiritual matters which rested only in the Metropolitan and that the Patriarch has no authority, jurisdiction, control, supervision or concern over or with the temporalities of the Arch-Diocese of Malankara (Issue III).

(iii) that Patriarch Abdulla II did make an attempt to secure authority over the temporalities of the Syrian Church when he visited Travancore in 1085 but that his attempts and pretensions in regard to the government of the temporalities of the Church were illegal and against the interest and well being of the Malankara Church and the community (Issues V and VI):

(iv) that Mar Geevarghese Dionysius was ex-communicated by Patriarch Abdulla II but such ex-communication was opposed to the constitution of the Malankara Church as laid down by the Synod of Mulunthuruthu and was canonically invalid and he was still recognised and accepted as the Malankara Metropolitan by a large majority of Malankara Christian community (Issues VII to XVII);

(v) that defendants 2 and 3, Mani Paulose Kathanar and Kora Kochu Korula had been elected by the community as trustees to co-operate with Mar Geevarghese Dionysius (Issue XVIII);

(vi) that 4th defendant (Mar Kurilos) had not been elected and was not accepted and recognised as

the Malankara Metropolitan by the community and was not competent to be a trustee (Issues XIX and XX);

(vii) that defendants 5 and 6 (Kora Mathan Malpan and C. J. Kurien) had been validly removed from the office of trustee and defendants 2 and 3 (Mani Poulose Kathanar and Kora Kochu Korula) had been validly appointed in their places (Issues XXI and XXII);

(viii) that defendants 1, 2 and 3 (Mar Geevarghese Dionysius, Mani Poulose Kathanar an Kora Kochu Korula) did not accept Abdul Messiah or deny the authority of Abdulla II over the spiritual supervision of the Church and they had not by such act become aliens to the faith or incompetent to be trustees (Issue XXVII);

(ix) that the 42nd defendant (Mar Athanasius, the original first plaintiff) had not been canonically ordained or validly appointed as Malankara Metropolitan or as President of the Malankara Association (Issues XXX to XXXIII);

(x) that defendants 1, 2 and 3 were entitled to receive payment of the interest in deposit."

It was on the above findings that the learned District Judge passed a decree in favour of defendants 1, 2 and 3 in that interpleader suit declaring them as the lawful trustees of the Church properties.

30. The defendants 5 and 6 and 42 appealed to the High Court. The principal questions urged in the appeal were:

"1. What was the canon law binding on the Church and what were the powers of the Patriarch under that law in regard to the excommunication of a Metropolitan;

2. Was the excommunication of Mar Geevarghese Dionysius by the Patriarch opposed to the canon law and the constitution of the Malankara Syrian Church as laid down by the Synod of Mulunthuruthu;

3. If the Patriarch was by himself competent to excommunicate a Metropolitan, whether any procedure had been prescribed to be followed by the Patriarch before the power of excommunication could be exercised by him;

4. If no such procedure had been so prescribed, whether that power had been exercised in a manner consonant with the principles of natural justice and with no corrupt motive; and

5.Whether the excommunication of Mar Geevarghese Dionysius was valid?

A Full Bench of the Travancore High Court pronounced judgment, Ex. DZ, in 1923. The Full Bench in paragraph 80 of the judgment held that Ex. 18, which was produced by the then appellants, was the correct version of the canon law which was accepted as such by the Malankara Jacobite Syrian Church. The conclusions arrived at by the Full Bench on questions 1, 2 and 3 noted above were summarised in paragraph 124 of the judgment as follows:

"Our conclusions on the questions 1,2 and 3 formulated for decisions are:

(a) That Exhibit 18, and not Exhibit A, is the version of the Canon Law that has been recognised and accepted by the Malarkara Jacobite Syrian Christian Church as binding on it;

(b) That under Ex. 18, the Patriarch of Antioch possesses the power of ordaining and excommunicating Episcopas and Metropolitans by himself, i. e., in his own right and that it is not necessary for him to convene a Synod of Bishops and proceed by way of Synodical action, in order to enable him to exercise these powers; the person ordained being of course, a native of Malabar and accepted by the people;

(c) That there is nothing in the Mulunthuruthu Resolutions, Exhibit EL, which limits the powers possessed by the Patriarch under the Canon Law in matters of spiritual character, or which imposes restrictions on him in regard to the exercise of such powers; and

(d) That no special forms of procedure are prescribed by Exhibit 18 for observance by Patriarch before he exercises his powers of excommunication."

Then after an elaborate discussion of the relevant materials the learned Judges in paragraph 254 recorded their findings on questions 4 and 5 in the affirmative an held that Mar Geevarghese Dionysius had lost the status of Malankara Metropolitan and Metropolitan trustee. In that view of the matter they considered it unnecessary to express any opinion on the question whether Mar Geevarghese Dionysius had become schismatic or alien to the Jacobite faith by the repudiation of Patriarch Abdulla II and the recognition of Abdul Messiah. They further held that although the Malankara Association had the power to remove them, the defendants 5 and 6 had not been validly removed inasmuch as the meeting which removed them had been convened and was presided over by Mar Geevarghese Dionysius, an excommunicated Metropolitan and that the proceedings of that meeting having been 'ab initio' void, the defendants 5 and 6 continued to be trustees. It has already been stated that there was an application for review of this judgment made by Mar Gecvarghese Dionysius and his co-trustees which was admitted on three conditions hereinbefore mentioned. On a re-hearing of the appeal the Full Bench pronounced its judgment, Ex. 256, on July 4, 1928 which is the final judgment in that case. The net result of that judgment may be thus summarised:

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

(ii)That the defendants 1 to 3 had not become heretics or aliens or had not set up a new Church by accepting the establishment of the Catholicate by Abdul Messiah with power to the Catholicos for the time being to ordain Metropolitans and to consecrate Morone and hereby reading the power of the Patriarch over the Malankara Church to a vanishing point:

(iii) That the defendants 4 to 6 had not been validly elected.

31. It is said that there was no issue as to whether the acts imputed to Mar Geevarghese Dionysius had been done by him or not or whether the ordination of three Metropolitans by Abdul Messiah was valid or not and that the charge against Mar Geevarghese Dionysius and his two co-trustees (defendants 1 to 3) was only that of heresy founded on certain acts. It is true that the same acts are referred to in paragraphs 19 to 20 of the present plaintiff, but, it is contended, there was no charge of their having gone out of the Church by their having set up a new church as evidenced by those very acts. We do not think there is any force in this contention. In paragraph 32 of his judgment Chatfield C. J., held that no enquiry was held into the conduct of Mar Geevarghese Dionysius who had never been placed on his defence or apprised of the charges against him or given any opportunity of defending himself and that as such his ex-communication was invalid and he

continued to be a Malankara Metropolitan and as such one of the trustees of the church properties. To the same effect were the findings of Joseph Thaliath J. and of Parameswaran Piliai J. Learned Advocate for the then appellants, (defendants 4 to 6) then fell back on the case that quite irrespective of the validity of the excommunication of Mar Geevarghese Dionysius he and his co-trustees could not be permitted to act as trustees as they had rendered themselves aliens to the faith by reason, amongst others, of their repudiating the lawful Patriarch Abdulla II and accepting the deposed Patriarch Abdul Messiah and by upholding the Catholicate with powers to the Catholicos as hereinbefore mentioned. Reliance was placed on the decision of the House of Lords in Free Church of Scotland v. Overtoun, 1904 AC 515 (C), in support of the contention that Mar Geevarghese Dionysius and his adherents had set up a new Church effectively free from the control of the Patriarch. It is clear, therefore, that as a consequence of the finding on the breach of the rules of natural justice, it became incumbent on the Full Bench to deal with the alternative case founded on the decision in the Free Church of Scotland case (C) (supra).

32. In paragraph 34 of the judgment Chatfield C. J., sums up the contentions set out by the defendants 4 to 6 in their written statement. He points out that it was said, amongst others, that Mar Geevarghese Dionysius and his co-trustees (defendants 1 to 3) had "rendered themselves aliens to the faith." The word, "alien" is significant, for it connotes the idea of a person going outside the faith. The matter does not, however, hang on this slender thread alone. After referring to the various facts, which had taken place soon after his excommunication a and the acts and conduct of Mar Geevarghese Dionysius. e, g., the repudiation of the lawful Patriach and the acceptance of a Patriach who had been deposed and by getting the deposed Patriarch to come to Malabar to do various acts as Patriarch of Antioch e. g., to ordain certain persons as Metropolitans, to set up a Catholicate by ordaining one Mar Ivanios as Catholicos with power to ordain Metropolitans and consecrate Morone, the learned Chief Justice stated that the contentions advanced for defendants 4 to 6 were that the defendant Mar Geevarghese Dionysius and his partisans had all along desired a separation from the See of Antioch and had succeed in their attempt and that "a new church had been created". Towards the end of that paragraph the learned Chief Justice again refers to the contention advanced on behalf of defendants 4 to 6 that "by reason of the actions of the first defendant mentioned in the first part of those paragraphs the first defendant and his followers seceded from the Jacobite Syrian Church in the year 1087 and set up a different Church . . . . . " The word "seceded' in, the context in which it is used, leaves no room for doubt that the charge of having gone out of the Church by setting up a new Church which accepted the Catholicate with the powers to the Catholicos as herein before mentioned was canvassed and actually decided in the final judgment on review. Chatfield C. J. and the other judges negatived the contentions put forward on behalf of defendants 4 to 6 with the following observations:

PER CHATFIELD C. J.:

"The objection to the trusteeship of defendants 1 to 3 does not seem to have been stated in this form in the written statements of defendants 4 to 6 and 42. In any case it is not contended that the appointment of a Catholicos is a thing which is in itself forbidden and to work for which is a sign of disloyalty to the Church. 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 first defendant therefore is that he co-operated 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 Abdulla 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 said, the first 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 did not be an offence for which the civil courts could try him or express any opinion as to his guilt.

Further down :

"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. Therefore, no question of any loss or forfeiture of trusteeship by the first defendant irrespective of Ex. L or of any threatened diversion of trust funds can arise."

PER JOSEPH THALIATH J. :

"Ordinarily, it is for the ecclesiastical tribunals to pronounce whether a person is guilty of an ecclesiastical offence, and what the consequences are if one is found so guilty. The decisions of secular courts with respect to ecclesiastical matters, by the very nature of things, cannot be very satisfactory. We have also to consider the probable inconvenience that will result from the temporal courts determining whether a person is guilty of any declaration made by proper ecclesiastical tribunals. If we are now to enquire into the alleged offence of schism of the first defendant, it will come to this. Every time the Metropolitan trustee applies for the interest on the trust fund, there will be some people who are members of the Jacobite church to object to the payment of interest, on the ground that the Metropolitan cannot act as the trustee of the Church, since, according to them, he is guilty of some heinous ecclesiastical offence or other. And every time a fresh suit will have to be instituted to decide the question. For these reasons, it seems to me, that the better policy for the temporal courts to adopt will be not to enter into such questions as long as there has been no pronouncement on the subject made by the ecclesiastical authorities. There has been no such pronouncement in the present case. Hence I have to find this point also against the defendant."

PER PARAMESWARAN PILLAI J. :

"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 first 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 superior might punish him in a proper proceeding. This court has nothing to do with his spiritual offence. Free Church of Scotland v. Overtoun (C), referred to in this connection by Sir C. P. Ramaswami Iyer has no bearing upon the facts of this case."

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 17 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-trustee (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. No. 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 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.

33. Learned counsel appearing for the respondents seek to get out of this position by contending that, apart from the grounds set up in the interpleader suit (O. S. No. 94 of 1088) the plaintiffs in the present suit also rely on a cause of action founded on new charges which disqualify the defendants in the present suit from acting as trustees of the Church properties. Shri T. N. Subramania Aiyar appearing for the third respondent who has been elected Malankara Metropolitan by the Patriarchal party and made a party to the proceedings under the order of the court aforementioned formulates the new charges as follows:

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

(ii) By inserting Cl. (5) in the constitution (Ex. A. M.) the defendants have repudiated the canons which have been found to be the true canons binding on the Church (Ex. BP - Ex. 18 in O. S. No. 94 of 1088) and have thereby gone out of the Church;

(iia) The privilege of the Patriarch alone to ordain Metropolitans and to consecrate Morone has been taken away as a consequence of the adoption of wrong canon (Ex. 26 - Ex. A in O, S. No. 94 of 1088) indicating that the defendants have set up a new church;

(iib) 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;

(iv) The re-establishment of the institution of the Catholicate of the 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 (O. S. No.94 of 1088). It is necessary now to discuss these contentions separately.

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 29 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 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 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 there of 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 (ii a): Same remarks apply to these two grounds formulated above. There is no averment anywhere in the pleadings that by accepting the Hudaya canon compiled by Bar Hebreus (Ex. 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 findings 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.

36. Re. (ii b): 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 Mulunthuruthu 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 Cl. (1) 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 (ii b) is not covered by the previous 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-respondent 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 whereas 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 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 11O4 was founded or whether by allowing that suit to be eventually dismissed for default the plaintiffs can under the relevant provisions of the Travancore Code of Civil Procedure corresponding to O. 9, R. 9 of our Code of Civil Procedure maintain the present suit.

41. The next line of attack adopted by learned counsel for the respondents is that the appellant had not been validly elected as trustee by the Malankara Association. This objection affects only the appellant who was the first defendant in the suit, but does not affect the other two defendants (since deceased) who had been elected in 1931 at a meeting whose validity is not questioned. The first plaintiff claims to have been elected as the Malankara Metropolitan at a meeting of the Malankara Association held on December 26, 1934 at the M. D. Seminary. The M. D. Seminary meeting was convened by notices issued individually to all the Jacobite Syrian Christian Churches in Malabar. Three notices (Exs. 59, 60 and 61) are alleged to have been sent under the same cover and at the same time. Exhibit 59 purports to be a notice issued by the defendant Basselios Catholicos. It is addressed to Vicars, Kykers and Parishioners. The meeting was fixed for Wednesday the 11th Dhanu, 11O1 (December 26,1934). The first item of the agenda was to elect one as Malankara Metropolitan. Exhibit 60 is a notice emanating from three Vice-Presidents of the Malankara Jacobite Syrian Association named therein and addressed to the Vicars, Kykers and Parishioners. It referred to the Kalpana (meaning the notice) sent by the Catholicos (Ex. 59) and intimated that a meeting of the Malankara Jacobite Syrian Association would be held in the M. D. Seminary on the appointed day and asking them to elect a priest and a lay man from the Church as their representatives. Exhibit 61 is a notice by the Managing Committee of the Association addressed to each Church. This also refers to the notice (Ex. 59) issued by the Catholicos and fixes the meeting at the same time and place. Besides these individual notices, advertisements were issued in two leading daily newspapers, copies of which havve been marked Exs. 62 and 63. All that has been said in paragraph 18 of the plaint is that no meeting was held and that even if there was a meeting the same had not been held legally or according to the usages or convened by a competent person or after notice to all the churches according to custom. On a plain reading of that paragraph there can be no getting away from the fact that the only objection taken is that the meeting had not been convened by a competent person and that notice had not been given to all the churches. No other specific objection is taken to the validity of the notice. Learned counsel for the respondent now seeks to rely on the sentence in that paragraph which avers that the proceedings had in that meeting were illegal and void. That averment clearly is a conclusion founded on the specific objections taken previously and cannot possibly be taken as a separate and independent ground of objection expressed in so vague a language as to embrace all objections that the ingenuity of human mind may now conceive and put forward. Indeed issue 6 (a) which is the only issue relating to the election of the first defendant at this meeting quite clearly negatives such an omnibus meaning now sought to be read into paragraph 18 of the plaint.

42. The District Judge found, for reasons most of which appear to us to be cogent and well-founded, that all the churches had been duly served and that the meeting was properly convened and held. Paragraph 146 of his judgment deals with the question whether the Association meeting was

convened by a competent authority. In paragraph 147 he discusses the question whether invitations were sent to all churches. He held that all the churches had been duly served. The reasons adopted by the District Judge may be summarised thus: (i) A large majority of churches being in favour of the defendants, there could be no incentive on the part of the defendants to suppress the notices; (ii) The evidence of the plaintiff's witnesses clearly indicates that the partisans of the Patriarch would not have attended the meeting even if notices had been received by them and indeed, according to them, notices from heretics would not be read in their churchis at all; (iii) In point of fact two of the churches siding with the plaintiffs had returned the notices which were marked as Exs. 150 and 151, and lastly (iv) that, apart from the individual notices to the churches, there were advertisements issued in two leading Malankara daily newspapers which have been marked Exs. 62 and 63. Although the fact that the churches siding with the plaintiffs would not have attended the meeting does not appear to us to be sufficient reason for not giving notice to them, it nevertheless has a bearing on the question of the probability or otherwise of the suppression of notices from the churches siding with the plaintiffs. The public advertisements in newspapers also negative the alleged attempt at suppression of the notice. Further, as the Mulunthuruthu resolutions embodied in Ex. F.O., which records the proceedings of the meeting at which the Malankara Association was constituted did not provide for any particular mode of service for meetings, it was enough that the ordinary rules adopted by voluntary associations and clubs had been followed, namely, that in the absence of any specific rules, the mode of service determined by the Managing Committee should prevail. The Kerala High Court has, however, in the judgment under appeal, taken a different view. Their reasonings are set out in paragraph 48 of their judgment which is reported in Mar Poulose Athanasius v. Mar Basselios Catholicos, 1957 KLJ 83 at p. 147 (D). The learned Judges of the High Court held that the Catholicos, even if validly appointed, had been assigned no place in the Malankara Association or in the Managing Committee as its member or President and consequently could not be said to be competent to issue such a notice as Ex. 59. After pointing out that Ex. 60 had been issued by three Metropolitans as Vice-Presidents and Ex. 61 had been issued by the members of the Managing Committee, the High Court points out that in the absence of specific rules as to who can issue the notices, Exs. 60 and 61 have to be accepted as proper and valid notices issued by competent persons. Learned counsel for the respondents urges that the High Court overlooked the fact that Ex. 60 was not issued by all the Vice Presidents, because the Metropolitans on the plaintiffs' side who were also Vice Presidents did not join in issuing the notice Ex. 60. There is no substance in this contention. The judgment of the Travancore Royal Court of Final Appeal (Ex. DY) pronounced on July 12, 1889 quite clearly held that a Metropolitan of the Jacobite Syrian Church should be a native of Malabar consecrated by the Patriarch or his delegate and accepted by the people as their Metropolitan to entitle him to the spiritual and temporal government of the local church. Indeed in paragraphs 54 and 78 of his judgment in the present suit the District Judge has also definitely found that persons ordained by the Patriarch will have to be accepted by the whole Malankara Church as represented by the Malankara Association and that the Metropolitans on the plaintiff's side had not been so accepted and that, therefore, they could not possibly become Vice Presidents and their non-joinder in the notice (Ex. 60) could not vitiate it. The High Court was, therefore, quite correct in its finding that Exs. 60 and 61 were issued by proper persons. But on the question as to whether the notices had been issued and served on all the churches, the High Court has observed that there was no reliable and convincing evidence in proof of that fact. The High Court has referred to the evidence of D.Ws. 23 and 22 and has concluded that although the notices Exs. 60 and 61 were issued by competent persons the evidence on record fell short of the standard of proof necessary for establishing the fact of service of the notices on all the churches and particularly on those on the plaintiffs' side. Ordinarily we do not go behind the findings of fact by the final court of facts but in the present case it appears to us, with respect, that the learned judges of

the High Court have overlooked important materials on the record which, if taken into account, will certainly go to show that all the churches had ample notice of the meeting. It is clear from the judgment that in arriving at their conclusion the learned High Court Judges completely overlooked the evidence of D.W. 29 who was the Secretary of Mar Geevarghese Dionysius and who was personally concerned with the issue of the notices. We have been taken through the evidence of the defendants' witness who said that they did not think notices had been sent to the Metropolitans on the plaintiffs side. The High Court, however, completely overlooked the evidence of the plaintiff's witness Kuran Mathew (P.W. 2) who said that for meetings of the church representatives no notices are sent to the Metropolitans but are sent only to the churches. Further, as already observed, the Metropolitans on the plaintiffs' side were never accepted by the Malankara Association and, therefore, no notices need have been sent to them. It is true that notices convening the Ex. 98-B meeting in l106 were served on the Metropolitans on the plaintiffs' side, but that was a special occasion for bringing about a settlement. It is somewhat significant that we do not find in the record placed before us any statement of any witness examined by the plaintiffs that he (if he was a Metropolitan) or his church had not in fact been served. Besides, the notices by advertisement in newspapers (Exs. 62 and 63) will also be sufficient notice to the Metropolitans and churches on both sides. Learned counsel for the appellant has placed before us portions of evidence of some of the witnesses examined by the plaintiffs. Those witnesses say that even if they had been served they would not have taken any note of them and indeed would not have got them read in their church. As already observed this attitude of the partisans of the plaintiffs does not absolve the defendant's from the duty of serving notices on the churches on the plaintiffs' side but it undoubtedly shows that the defendants knowing of this attitude would have no incentive to suppress the notices from them. Further the learned Judges do not also appear to have adverted to the evidence of D.W. 25 who was a partisan of the plaintiffs as admitted by P. W. 5 and who did not complain of any want of notice to his church. Further, the learned Judges have not given any reason why the notices by advertisements in the newspapers could not be accepted as sufficient notice in the absence, as they found, of any specific rules as to the mode of service. Apart from Exs. 59, 60 and 61 the advertisements in the newspapers evidenced by Exs. 62 and 63 appear to us to be sufficient notice to all churches. There is no evidence at all that any particular church did not in fact know that a meeting was going to be held at the time and place hereinbefore mentioned. On the materials placed before us we feel satisfied that the notices were served on all the churches including those which sided with the plaintiffs and that there was no adequate ground for rejecting the finding of fact arrived at by the trial court on this question after a fair and full consideration of the evidence on record. The conclusion of the High Court appears to us, with respect, to be based partly on a mis-reading of evidence and partly on the non-advertence to important material evidence bearing on the question and to the probabilities of the case.

43. Learned counsel for the respondent has tried to find fault with the notices in minor details. For instance, it has been argued that in the notices other than Ex. 59 no agenda was mentioned. Apart from the fact that no such objection was taken in the plaint, it is clear that those notices by a clear reference to Ex. 59, specially because they had all been sent together, did incorporate the agenda set out in full in Ex. 59. In our opinion the M.D. Seminary meeting was properly held and the first defendant, who is now the sole appellant before us, was validly appointed as the Malankara Metropolitan and as such became the ex-officio trustee of the church properties. There is no question that the defendants 2 and 3 who are now dead had been previously elected by a meeting of the Malankara Association duly convened and held and were properly constituted trustees. In this view of the matter it must follow that the plaintiffs cannot, even in their individual or representative capacity, question the title of the defendants as validly appointed trustees.

44. The result, therefore, is that this appeal must be accepted, the judgment of the Kerala High Court set aside, the decree of the trial court dismissing the suit must be restored and we order according. The plaintiff-respondent as also the newly added respondents must pay to the defendant-appellant the costs of this appeal and the plaintiff-respondent must also pay the costs of all proceedings in all courts including the costs of the proceedings already awarded to him by this court, which will stand. The suit will, therefore, stand dismissed with costs throughout and all interim orders as to security for mesne profits etc., will be vacated.

45. The Art. 32 petition is not pressed and is dismissed. No order as to the costs of that petition.

Appeal allowed and petition dismissed.

</html