KERALA HIGH COURT

Mar Poulose Athanasius

Vs.

Moran Mar Bassaelios Catholicos

A.S. No. 1 of 1119 from O.S. No. 111 of 1113

(Sankaran, Kumara Pillai and M.S. Menon, JJ.)

31.12.1956

JUDGMENT

Sankaran, J.

1. The longstanding disputes between two sections of the Malankara Jacobite Syrian Christian community relating to the right to the possession and management of certain trust properties endowed for the benefit of the Malaukara Jacobite Syrian Church and community, led to the institution of the present suit which his given rise to this appeal.

2. Plaintiffs 1 to 3, claiming to be properly and legally elected trustees entitled to the possession and management of the trust properties, instituted the suit for recovery of possession of the properties from defendants 1 to 3, on the allegation that they have gone out of the Church and are in wrongful possession of the trust properties. Even apart from the position of the plaintiffs as trustees, they sought to sustain their claim for recovery of the properties as members of the community suing with the sanction of the court under rule 8 of Order I of the Code of Civil Procedure. The suit was instituted in the year 1938 and after an elaborate and protracted trial the first court dismissed the suit in the year 1.943. The present appeal is by the plaintiffs against that decision. A Full Bench of the Travencore High Court which heard the appeal allowed it by a majority of 2: 1, on the 8th August 1946. That decision is reported in 1916 Travencore Law Reports 683. The defendants-respondents filed a petition on 22nd August 1946 seeking a review of that judgment. A Full Bench of the Travencore-Cochin High Court heard that application and it was dismissed on 21st December 1951. The respondents' application for leave to the Supreme Court was also rejected. But special leave was granted by the Supreme Court .and accordingly the respondents preferred an appeal to the Supreme Court against the order dismissing the review petition. Ultimately the Supreme Court allowed that appeal and accepted the review petition and set aside the decree dated 8th August 1946 passed by the Travencore High Court allowing this appeal. The case was remitted to the High Court with the direction that the entire appeal should be re-heard on all the points unless both the parties accept any of the findings recorded in the earlier decision There has been no such agreement by the parties, but on the other hand they have chosen to argue afresh all the points involved in the appeal. The ground, raised in the appeal memorandum and those raid in the memorandum of objections filed on behalf of the

respondents, cover the entire field of controversy in the suit.

3. For a clear understanding of the important points that arise for decision in this appeal it is necessary to briefly advert to the contentions of the parties. According to the plaintiff is all the properties scheduled to the plaint are trust properties endowed to the Malankara Jacobite Syrian Church and they have to he managed by three trustees of whom one is to be Metropolitan, and the others, a clergyman and a respectable lay-member of the Church to he elected by the Church. The Patriarch of Antioch is the ecclesiastical head of the Malankara Jacobite Syrian Church, and only a person duly ordained by the Patriarch or his delegate and accepted by the Malankara Jacobite Syrian community could become the Malankara Metropolitan. This position has all along been accepted by the community awl affirmed by the decisions of courts, the earliest of such decisions being the decision of the Travencore Royal Court of Final Appeal in S A. No. 3 of 1061. Copy of the judgment in that ease has been produced and marked as Ext. DY. That decision wits in favor of Mtr Joseph Dionysius who had been ordained and appointed as Malankara Metropolitan by the Patriarch of Antioch and who had been accepted by the community. The trust properties involved in that suit were recovered by him from Mar Thomas Athanasius who had claimed himself to be the Malankara Metropolitan in defiance of the authority of the Patriarch of Antioch over the Malankara Church. Mar Joseph Dionysius along with two other joint trustees elected by the community continued management of the trust properties. On the demise of Mar Joseph Dionyysius, he was succeeded by Mar Geevarghese Dionysius as Malankara Metropolitan who got his ordination from Abdulla IT, the ruling Patriarch at the time. The two other joint trustees, who were associating themselves with Mar Geevarghese Dionysius in the management of the trust, were Kora Mathan Kathanar and C. J. Kurien. In the year 1085 Patriarch Abdulla II arrived at Malankara and stayed there for about two years. During this period dkputes and misunderstandings arose between himself and Mar Geevarghese Dionysius and matter reached a crisis when Abdulla II passed an order of ex-communication against Mar Geevarghese Dionysius on certain alleged improper acts and misconduct on his part and appointed Mar Kurilos as the Malankara Metropolitan. The validity of the excommunication order was challenged by Mar Geevarghese Dionysius and his supporters. Since Kora Mather Kathanar and C. J. Kurien were not prepared to support Mar Geevarghese Dionysius in defiance of the Patriarch's excommunication order, the party upporting Mar Geevarghese Dionysius elected Maui Poulose Kathanar and Kora Kochu Korulla as joint trustees. Thus there were two rival set, of trustees. An important item of trust property consisted of an investment of 3000 Star pagodas with the British Government, the interest on which could alone be received from time to time by the trustees. In view of the existence of two rival sets of trustees, the Secretary of State for India instituted an interpleader suit 0. S. No. 94 of 1038 in the Trivandrum District Court impleading both sets of trustees and seeking a verdict as to which of the rival sets of trustees was entitled to receive the accumulated amount of interest deposited in the suit. Mar Geevarghese Dionysius and his co-trustees Mani Poulose Kathanar and Kora Kochu Korulla, were defendants 1 to 3, and Mar Kurilos and his co-trustees, Kora Mathen Malpan and C. J. Kurien, were defendants 4 to 6 in that suit.

Pending decision of the suit, Mar Kurilos died and the present 1st plaintiff who was appointed as Malankara Metropolitan by the Patriarch, was impleaded as additional 42nd defendant. The main point of controversy in that suit was whether the order ex-communicating Mar Geevarghese Dionysius was valid and whether he had lost his status as the Malankara Metropolitan. The District Court answered the question in the negative and hold that Mar Geevarghese Dionysius and h is co-trustees were legally entitled to draw the interest on the trust fund. Defendants 5, 6

and 42 filed an appeal against that decision to the Travencore High Court. By the first decision in that appeal the trial court's decree was reversed. Copy of the judgment in that appeal has been marked as Ext. DZ in the present suit. That decision is also reported in 41 Travencore Law Reports 1. Defendants 1 to 3 of that suit applied for a review of that decision. The review was admitted subject to certain conditions and limitations. Finally the application for review was allowed by upholding the applicants' contention that the order ex-communicating Mar Geevarghese Dionysius was bad in law in so far as it did not satisfy the rules of natural justice. Accordingly, the earlier decision allowing the appeal was set aside and the trial court's decree upholding the status of defendants 1 to 3 as trustees continuing in office was confirmed. The final decision in that appeal is reported in 45 Travencore Law Reports 116. Copy of the judgment is marked as Ext. CCLVI in the present suit. While defendants 1 to 3 of the said interpleader suit were thus continuing in office as trustees, the third defendant, Kochu Korulla, died in the year 1106. The present third defendant is said to have been elected as the lay trustee in the place of Kochu Korulla. These trustees and their partisans continued to defy the authority of the Patriarch of Antioch as the ecclesiastical head of the Malankara Church. They also maintained that the Catholicate of the East had been re-established in Malankara and that the powers of the Patriarch could be validly exercised by the Catholicos. The creation of the Catholicate in Malankara or the existence of a Catholicos, was not recognized by the Patriarch. In the kalpana issued by the Patriarch to his followers it was declared that those who were supporting and following the Catholicos in defiance of the authority of the Patriarch, were aliens to the Malankara Jacobite Church. The members of the Church were also advised not to co-operate with such aliens in matters pertaining to the Church. The split between the two sections had thus become very acute. It was in such a situation that Mar Geevarghese Dionysius died in Khumbhom 1109 (early in 1934). At a meeting held by his partisans on 11-5-1110/26-12-1934, the present first defendant whom they had accepted as the Catholicos, was elected as the Malankara Metropolitan. The validity of this meeting has been challenged by the plaintiffs on several grounds, ,and it is contended that the resolutions passed at that meeting are not binding on the Malankara Jacobite Syrian Church. The first defendant's eligibility for the Metropolitan p4vice is also questioned by the plaintiffs on the main ground that ho has not been ordained as a Metropolitan by the Patriarch of Antioch. The position claimed by the first defendant as a Catholicos install in Malankara is also questioned by the plaintiffs who maintain that the Catholicate as an institution never existed in Malankara and that the first defendant has not been ordained as a Catholicos by the Patriach of Antioch. It is further contended that one and the same individual cannot he the Catholicos and also the Malankara Metropolitan at the same time. It is the faith of the Church that only the Morone or sanctified oil consecrated by the Patriarch can be used in the churches at Malankara for sacraments and other rites and the longstanding custom in that direction has been recognized by decisions of courts. The first defendant's act in consecrating Morone and causing it to be used in the churches under his influence, is alleged to be a flagrant denial of the authority of the Antiochian throne, just as his claim that he possesses the dignity and authority as Catholicos and Malankara Metropolitan even without any ordination by the Patriarch of Antioch. Ressisa, which is a contribution legitimately due from the Malankara Church to the Patriarch of Antioch, is stated to be unlawfully collected and appropriated by the first defendant. On account of such acts and pretensions against the tenets of the true faith, the first defendant is alleged to have ipso facto become a heretic and an alien to the Malankara Jacobite Syrian Church. By supporting the first defendant and co-operating with him in his heretical acts and pretensions, defendants 2 and 3 have also become heretics and aliens to the Church. Defendants 1 to 3 did not stop with the commission of such acts of heresy. They 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 and have accepted Ext. AM as the constitution of this new Church, at the meeting held on 11-5-1110/26-12-1934. Defendants 1 to 3 are stated to have thus become disqualified and unfit to he trustees of, or to held any other position in, or enjoy any benefit from the Jacobite Syrian Church. The plaintiffs claim to be the lawful trustees elected by the representatives of the Church at a meeting held on 6-1-1111/22-8-1935. At this meeting the first plaintiff was elected as the Malankara Metropolitan and plaintiffs 2 and' 3 were elected as the clergyman trustee and lay trustee respectively, in place of defendants 2 and 3 who were removed from trusteeship. Even though the plaintiffs are thus fully entitled to sue in their capacity as trustees, they have sought the permission of the court to file the suit in their personal capacity as members of the community. The plaintiffs have sought for a decree declaring that the first plaintiff is the lawful Malankara Metropolitan, that the second plaintiff is the lawful Kathanar trustee and that the third plaintiff is the lawful layman trustee, and that the defendants have no right to retain possession of and administer the properties belonging to the Malankara Jacobite Syrian Church and also for compelling these defendants to surrender possession of the plaint schedule properties to the plaintiffs. It is also prayed that the defendants may be compelled to pay mesne profits at the rate specified in the schedule and also the profits accruing from the movable items of properties and that they may he compelled to render accounts of all the profits realised by them from the immovable properties and other assets belonging to the Church and also to restore to the plaintiffs the assets in their possession along with all the documents and accounts, There is also the prayer for the issue of a perpetual injunction restraining the first defendant from doing any act in his professed capacity as Catholicos of the Malankara Jacobite Syrian Church or as the Malankara Metropolitan and defendants 1 to 3 from functioning in their professed capacity as trustees of the said Church.

4. In resisting the suit the first defendant has traversed all the allegations in the plaint. Though defendants 2 and 3 have filed separate written statements, their contentions are the same as those raised by the first defendant. According to defendants 1 to 3, the institution. of the Catholicos of the East which exited in the Syrian Church, remained vacant for a few centuries and it was re-established at Malankara in the year 1088 M. E. (1912-13) by Moran Mar Abdul Messiah who was Patriarch of Antioch, with the co-operation of the Metropolitan in Malankara. The institution of the Catholicate and the installation of the Catholicos have been lawfully and canonically performed with the co-operation of Mar Geevarghese Dionysius who was the Malankara Metropolitan at that time. It is further stated that the Malankara Church has submitted to the jurisdiction of the Catholicos from 1088 M. E. (1912-13). It is said that the first defendant's ordination as a Metropolitan was also performed by Abdul Messiah who was Patriarch of Antioch, with the co-operation of the Metropolitans who were at Malankara at that time and that therefore the first defendant's ordination cannot he said to be invalid. He also maintains that he has been installed as Catholicos by the Metropolitans in Malankara with the consent of the Malankara Church. After the death of Mar Geevarghese Dionysius, a meeting of the Malankara Association which is the,assembly of the representatives of the Churches in Malankara, was held on 11-5-1110/26-12-1934 at the M. D. Seminary, Kottayam, and at this meeting the first defendant was elected as the Malankara Metropolitan. The objections levelled against this meeting are all stated to be untrue and untenable. The first defendant, in his turn, has challenged the truth and the validity of the meeting at which the plaintiffs, claim to have been elected as trustees. It is contended that if any records evidencing the holding of such a meeting have been created, they could only be fabrications. If any meeting had been held, it was one held by a few

partisans of the plaintiffs, claiming to he a meeting of the representatives of the Malankara Church without inviting the representatives of all the churches and at the same time intentionally excluding the large majority of the churches and the people of the Malankara Church from that meeting. The validity of this meeting is attacked on other grounds also and it is stated that the proceedings of that meeting do not bind the Malankara Church or the defendants and that the plaintiffs cannot claim to have been lawfully elected as trustees. They are not entitled to claim recovery of possession of the properties from defendants 1 to 3 who are in possession of the same as lawful trustees. To maintain that the first defendant has in him the dignities of Catholicos and Malankara Metropolitan, does not constitute a defiance of the throne of Antioch. As Catholicos the first defendant is competent to consecrate Morone and to do so cannot amount to a negation of the authority of the Patriarch. There has been no faith or custom that Morone consecrated by the Patriarch alone can be used in the Malankara Church and even if there has been any such faith or custom, the same has ceased to have force after the establishment of the Catholicate. The Patriarch is not entitled to a levy called Ressisa as of right and it has not been customary to lay any such dues. Occasional payments, if any, have been only voluntary contributions. Non payment of such dues to the Patriarch will not amount to misappropriation. The first defendant is exercising only the powers pertaining to his status as Catholicos and Malankara Metropolitan, and is not doing anything opposed to the faith of the Church. The charge that the first defendant is guilty of having committed several unlawful acts amounting to heresy, is baseless and untrue. It cannot also be said that by virtue of such acts the first defendant has ipso facto become an heretic and alien to the Malankara Syrian Church. Defendant 1 and 3 cannot also be said to have become heretics and aliens to the Church by supported the first defendant and co-operating with him in his alleged acts of heresy. It is further contended that the court is not competent to go into the question of heresy. The allegation that the defendants and their partisans have voluntarily separated from the Malankara Jacobite Syrian Church by establishing a new Church called the Malankara Orthodox Syrian Church is also denied and it is contended that these are not different Churches. The defendants maintain that the new constitution embodied in Ext. AM does not amount to a negation of the authority of the Patriarch of Antioch and that it does not contain anything opposed to the faith and doctrines of the Malankara Jacobite Syrian Church. The defendants have a further contention that the members of the group represented by them have become the sole beneficiaries of the trust to the exclusion of the group supporting the plaintiffs. It is stated that the Malankara Association, the defendant, and the large majority of the people of the Malankara Church supporting them believe that the Patriarch of Antioch has no temporal power over the properties belonging to the Malankara Church, that the Patriarch, Catholicos and Metropolitan may according to the canons consecrate Morone, that the canon of the church is one written by Bar Hebreus and marked as Ext. A in O. S. No. 94/1088 of the Trivandrum District Court and that the canons embodied in it constitute the law and ordinances of the Malankara Church and that in accordance with the above belief they have decided to deal with and are dealing with the properties belonging to the Malankara Church. The Malankara Association, the defendants and the large majority in the Malankara Church supporting them, believing that the Catholicate re-established in the Malankara Church in 1088 has been properly and canonically instituted, owe allegiance and are subject to the Catholicos. It is alleged that the object of the foundation of the Malankara Church and the nature of the trust relating to its properties, have become subject to the laws and ordinances already referred to and to the Catholicate and that whatever may have been the object of the foundation and the nature of the trust, the defendants and others have believed from 1085 onwards that the object of the foundation and the nature of the trust are as contended for by them and the properties of the

Church are being administered accordingly. This contention is further amplified by stating that the properties of the Church have therefore become subject to a trust as mentioned above and even if the terms of the trust prior to 1085 were otherwise, the trust has sub- sequently become altered and the properties of the Church are not to be used for purposes contrary to such trust as altered. It is also asserted that the defendants have been administering and utilising the properties of the Church included in the schedule and conducting the worship in the churches, solely in accordance with such belief, treating the defendants and their supporters as the sole beneficiaries of the properties of the Church and treating the plaintiffs and their supporters as non-beneficiaries of the Church properties from the year 1088 onwards. It is accordingly contended that the plaintiffs and their partisans have lost, by limitation and adverse enjoyment, their rights, if they had any, over the properties of the Church. The plaintiffs are also accused of being guilty of heresy insofar as they have been contending from, they cur 1085 onwards that the Patriarch has temporal power over the properties of the Malankara Church, that only the Patriarch can consecrate Mnrone, that the canon of the Church is the book marked as Ext. XVIII in O. S. No. 94 of 1098 of the Trivandrum District Court and that the Catholicate had not been validly instituted in the Ma]ankara Church. The plaintiffs and their partisans have been non-co-operating with the Malankara Metropolitan and his supporters, and have been acting against the trust and contrary to the object of the foundation of the Malankara Church and have thus voluntarily separated themselves from the Church and have ceased to be members of the Malankara Church and to be beneficiaries of its properties. The Patriarchs who are supporting the plaintiffs and their partisans, are also alleged to have become aliens to the Church. The defendants have also contended that the plaintiffs' suit is out of time and that Section 92 of the Code of Civil Procedure is also a bar to the suit. The dismissal of the earlier suit, O. S. No. 2 of 1104, on the file of the Knttayam District Court instituted by some of the partisans of the plaintiffs, is also stated to be a bar to the present suit. The plaint averment that all the items scheduled to the plaint are trust properties, has also been denied by these defendants.

A separate statement has been appended to the first defendant's written statement and the particulars of the properties admitted to be trust properties are given in that statement. These trust properties are classified into two categories. It is stated that only the properties covered by the Cochin Arbitration Award of the year 1840 and those acquired with the income of such properties from the joint trust are to be administered by the three trustees as per the terms of the Cochin Award. It is contended that other items of properties belonging to the Church or the community are to he in the sole possession and control of the Malankara Metropolitan and to be administered by him as the sole trustee.

5. As already stated, the plaintiffs wanted to sustain the present suit in their individual capacity as members of the Malankara Church. By a separate application they moved the court for sanction under Rule 8 of Order I of the Code of Civil Procedure permitting the plaintiffs to maintain the suit on behalf of the Malankara Syrian Christian Community. The court caused the notice of the institution of such a suit to he published in the Government Gazette. As a consequence of such notification, defendants 4 to 7 got themselves impleaded as additional parties to this suit. Defendants 4 and 5 did not file any separate written statement. But on their behalf a statement was filed to the effect that they adopt the contentions of defendants 1 to 3 and that they have no additional contentions to be raised. The 7th defendant filed a written statement almost on the lines of the written statement of defendants 1 to 3. The sixth defendant also adopted the contentions of these defendants and raised certain special claims in respect of items 16 and 17 of the B schedule in the plaint and contended that these items do not form part of the common trust

properties belonging to the Malankara Jacobite Syrian Community as a whole.

6. The plaintiffs filed a replication controverting the several points raised in the defendant's written statements. It was also pleaded by the plaintiffs that the defendants are barred by reason of res judicata from raising contentions against the findings in the final decision in 0. S. No. 94 of 1088 and in the judgment of the Royal Court of Final Appeal, concerning the faith and practices of the Malankara Church, the powers of the Patriarch over it and the canons governing it.

7. Separate pleadings were also recorded specifying the points in controversy between the parties. On the basis of such pleadings, as many as 37 issues were raised in the case with sub-divisions for several of these issues. On these numerous issues a considerably large volume of evidence, both oral and documentary, has been adduced by both parties. In the nature of the question. involved in the suit, oral evidence cannot be of much help in the matter of arriving at a correct decision of those questions. In fact learned counsel on both side, did not place much reliance on the evidence6 of the witnesses examined on either side. Pws. 17 and 18 are the important witnesses for the plaintiffs, just as Dws. 27 and 23 are the important witnesses for the defendants, and naturally, therefore, the evidence of these witnesses plays an important part in resolving the controversy in the suit. The evidence given by most of the other witnesses is seen to he either irrelevant or unhelpful, and hence the bulk of the oral evidence has to be rejected as useless. Coming to the documents also exhibited on either side, it has to be stated that a good many of them have no real bearing on the questions arising for decision and inspite of the very elaborate arguments addressed by learned counsel on both sides, they have not made any reference at all to several of such documents. These aspects relating to the evidence on record will be apparent from the discussion to follow which have necessarily to be confined to the relevant and useful evidence pertaining to the important questions arising for decision.

8. All the properties scheduled to the plaint are not admitted to be trust properties. Along with the first defendant's written statement he has filed a statement specifying the items admitted to be trust properties and also those which are claimed to be not trust properties. The question as to which are the items of trust properties, will be considered later. The question raised by the first defendant that the trust properties fall under two categories to be managed differently will also he considered at a later stage. Subject to these reservations it may be stated here that it is common ground that the beneficiaries of the trust properties involved in this suit are the members of the Malankara Church, i.e., the members of the Jacobite Syrian community of Malankara. The controversy between the parties centres round the position of the Partriarch of Antioch in relation to the Malankara Church and the plaint trust. There is no deed of endowment defining this position or the exact terms and objects of the trust. But these matters can very well be gathered from certain important documents produced in this case. Exs. 223, DY, FN, FO and AO are the more prominent among such documents. It may also be mentioned here that both sides have placed great reliance on Exs. 221, DY and AO.

9. For some time during the early part of the 19th century the Malankara Church and the Church Missionary Society in Travencore were in joint management of the trust properties owned by them and worked in co-operation with each other for the advancement of their religious undertakings. But in view of the radical differences that existed in the tenets and faith which governed these two denominations, it became impossible for them to pursue their joint enterprises and it became necessary for them to part company and to have the trust properties

belonging to each sect separated. Their disputes were accordingly referred to arbitration and the arbitrators gave their award on 4th April 1840. Ex. 223 is copy of that award. The items of properties which were under the joint management of the two sects were classified and separately allotted to each of the sects. Provision was also made in the award as to how the future management of the trust properties of the Malankara Church should be carried on. That provision is to the effect that the properties should he under the joint management of the Metropolitan for the time being of the Syrian Church and two others, an ecclesiastic and a respectable layman of the same persuasion, to be elected by the Syrian Community itself. That the community of the particular persuasion contemplated by this award is the Jacobite Syrian Christian community of Malankara owing unwavering allegiance to the Patriarch of Antioch, has been clearly established by the proceedings embodied in Ex. FO and by the decisions recorded in Exs. DY, FT and AO. Mathews Athanasius who got his ordination from the Patriarch of Antioch, functioned as Malankara Metropolitan for a few years. His attempt to introduce certain charges in the liturgy and prayers of the Church provoked opposition by the members of the Malankara Church who complained of the same to the Patriarch and also deputed one Joseph Kathanar to Antioch to get his ordination as Metropolitan. Joseph Kathanar w9s duly ordained as Metropolitan under the title of Mar Joseph Dionysius. But on his return to Malankara in the year 1875, Mathews Athanasius. who had in the meantime been ex-communicated by the Patriarch, refused to surrender office. The dispute between Mathews Athanasius and Mar Joseph Dionysius dragged on for a number of years and in the year 1875 Patriarch Peter III himself came to Malankara for settling the disputes in the Malankara Church. He called together a meeting of the representatives including priests and laymen of the several churches in Malankara. This meeting was held at Mulanthuruthy and it was accepted as a synod presided over by the Patriarch. Ex. FO is a printed copy of the proceedings of that synod. Even though great reliance was placed by both sides on the resolutions passed by this synod, neither the original proceedings nor a copy of the same had been produced in the lower court. Both sides agreed at the hearing of the appeal that a copy of the proceedings would be very helpful for a pro- per decision of the main points in controversy in this suit. Accordingly the printed copy of the proceedings available with the appellants was produced in this Court and the same was admitted on behalf of the respondents. On the basis of such admissions, the printed copy of the proceedings has been marked as Ex. FO. From Ex. FO it is seen that the proceedings of this synod went on for a few days commencing from 15-11-1051 (1876 A.D.). At the opening address the Patriarch referred to the disastrous effects of the dissensions in the Church and exhorted the matters of the Synod to take due note of the same and to make a final decision on the course they preferred to follow. They were specially asked to decide whether they liked to keep the faith of their churches and to obey as in the past the kalpanas of the Patriarch. The resolutions passed have to be read and understood in the light of the preamble to the same. The translation of the preamble runs as follows:

> "We have been summoned to this synod by His Holiness the Patriarch Moran Mar Ignasius Peter III who is the Holy Father of curs - the Jacobite Syrians of Malankara-and the authority on the Apostolic throne of Antioch; and we have all heard His Holiness stating the reasons for the gathering. We all requested the Holy Father to preside over this synod. The Holy Father acceded to our request and read his missive before this assembly and it is befitting that the solution and guarantees be made as soon as possible in order that our Church in Malankara be firm and obedient for ever in the orthodox faith and discipline of the Apostolic throne of Antioch....."

10. It is not necessary at this stage to refer to all the resolutions passed by the synod. The first two resolutions are in themselves sufficient to show that the synod representing the several churches in Malankara had pledged unwavering allegiance to the Apostolic throne of Antioch. The first resolution was to the effect that in order to prevent for ever the rising of oppositions to the directions of the throne of Antioch and the orthodox Jacobite faith, deeds of agreement shall he executed and got registered by all the members of each parish and kept in the safe room of the church and a copy of the same shall be given to the Holy Father. It was next resolved that in order to guarantee that the members of the Church will be firm in the orthodox faith and will obey the directions of the Apostolic throne of Antioch, a list of the members of each parish together with an affirmation of their faith in the tenets of the orthodox Church shall be prepared and submitted to the Holy Father as early as possible so that the list may be helpful for the confirmation of the faith of the members of each parish and may also serve as a basis for the collection of ressisa due to the Patriarch. The responsibility for collecting and remitting the ressisa due to the Patriarch was cast on the committee formed by another resolution passed by the synod. The necessity to have a hook containing the canons binding on the church prepared and got printed with the approval of the Holy Father and for supplying a copy of the same with His seal to each church to serve as a guide for the future conduct of its members was also emphasized by another resolution. An association of the representatives of the Church was also formed with the Patriarch as its patron and the Malankara Metropolitan as its President. Mar Joseph Dionysius who thus became President of the association was authorized to conduct the litigations on behalf of the Church.

11. Since Mathews Athanasius persisted in his defiance of the authority of the Patriarch anti refused to surrender management of the trust properties to Mar Joseph Dionysius, the latter was forced to institute Ex. DY suit in the year 1878 A. D. Prior to the institution of that suit Mathews Athanasius died after consecrating his brother Thomas Athanasius as Metropolitan who was also appointed as successor to Mathews Athanasius as Malankara Metropolitan, under a will executed by Mathew; Athanasius. Ex. DY suit was therefore instituted against Thomas Athanasius and two others who were in joint management of the trust properties of the Malankara Church. 'I he position claimed for the Patriarch in relation to the trust and to the Malankara Church by Mar Joseph Dionysius was made clear in paragraphs 2 to 4 of the paint in that suit which are extracted at pages 2 and 3 of the minority judgment in Ex. DY. They are as follows:

> "2. The aforesaid movable and immovable properties were under the control and in the possession of the successive Metropolitans who held their place under the Holy Patriarch of Antioch, the supreme head of the Syrian Christians; and following this practice, the aforesaid properties were lastly under, the control and in the possession of the person known as Mar Athanasius Metropolitan, deceased, by right derived in virtue of his consecration as Metropolitan by the said Patriarch of Antioch.
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> "3. The aforesaid Max Athanasius departed this life on the second day of Karkadagam 1052, since which date, the first defendant and the second and third defendants who have joined him as persons favoring him, are unlawfully retaining possession of the properties described in the said schedules A to C.
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> "4. Being the Metropolitan who was vested with this sthanam by the Patriarch of Antioch

and has been appointed President of the Syrian Association Committee and who has also been accepted by the Syrian Community, we, in pursuance of past practice, have thus become fully entitled to the control and possession of the entire properties described in the aforesaid schedules."

The contentions raised by the first defendant in that suit are enumerated in paragraph 4 of the majority judgment at page 4 of Ex. DY. Among the several contentions raised by him he had taken up the position that "the See of Malankara and the Syrian Christian community under its jurisdiction, having been subject to the rule of their own successive Metropolitans, were altogether independent of the See of Antioch, that. the Patriarch of Antioch had no authority of any kind over the Syrian Church in Malabar and that the consecration by tho Patriarch of Antioch of the late Mar Athanasius, the last admitted Metropolitan was almost accidentally brought about". These questions were fully enquired into by the court which ultimately came to the conclusion that the case as put forward by the plaintiff is the true one and accordingly passed a decree in his favor for the recovery of the trust properties involved in that suit from Thomas Athanasius, 'that decree was confirmed by the High Court and also by the Royal Court of Final Appeal in Travencore. In the majority judgment of the Royal Court the final conclusions of the court are recorded in paragraph 347 at page 147 of Ext. DY and there the extent of the Patriarch's authority over the Malankara Church has been stated as follows:

"that the ecclesiastical supremacy of the See of Antioch over the Syrian Church in Travencore has been all along recognized 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 authorized 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 Travencore should be a native of Malabar consecrated by the Patriarch of Antioch or by his duly authorized delegates and accepted by the people as their Metropolitan to entitle him to the spiritual and temporal government of the local church."

On the strength of these findings the court held that Thomas Athanasius who had no ordination from the Patriarch and who had repudiated the authority of the Patriarch over the Malankara Church, was not entitled to retain possession of the trust properties and accordingly a decree was passed in favor of Mar Joseph Dionysius who had been ordained and appointed as Malankara Metropolitan by the Patriarch and whose appointment was accepted by the people, for recovery of the properties involved in the suit. It may he mentioned here that those properties from the bulk of the properties involved in the present suit also and that the rival claims put forward by the plaintiffs and the defendants are for possession and management of the properties which were thus secured for the Malankara Church by Mar Joseph Dionysius in the manner already stated. These parties are therefore not entitled to take up any stand inconsistent with the findings recorded in Ext. DY.

12. Ext. FN is copy of the judgment of the Royal Court of Final Appeal in a similar case which Mir Joseph Dionysius had to institute in the Coach in State to establish his authority as Malankara Metropolitan over certain churches and trust properties situated in Cochin. That suit originated as O. S. No. 56 of 1069 (1893 A.D.) of the Trivandrum District Court. The questions involved in that suit were almost similar to those involved in Ext. DY suit and naturally therefore Ext. FN judgment also went into an elaborate investigation to find out the extent of the authority and supremacy of the Patriarch of Antioch over the Malankara Church. The final conclusions reached by the court have been recorded in paragraph 56 of Ext. FN and they are the following:

> "1. that the Patriarch of Antioch is the spiritual head of the Malaokara See; 2. that the plaint churches are included in that see; 3. that the churches and the properties shown in the plaint schedule are "bound by a trust in favor 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 4. 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".

13. Ext. AO is copy of the judgment in another suit, O.S. No. 25 of 1075 (1900 A.D.) of the Trivandrum District Court where also there was a rival claim to receive the interest due under a trust fund. In the year 1808 Mar Thoma VI who was Metropolitan of Malankara, invested with Colonel Macaulay, the then British Resident of Travencore and Cochin, a sum of 3000 Star pagodas as a loan in perpetuity at 8% interest per annum. Such interest was being received by successive Metropolitans. But during the time of Mar Joseph Dionysius disputes arose about the right to receive the interest on the said loan. Such disputes led to the institution of O.S. No. 25 of 1075 by the Secretary of State for India, impleading the rival claimants for the accumulated amount of interest, as defendants. That suit was also decreed in favor of Mar Joseph Dionysius and others of his persuasion. In paragraph 35 of the judgment the findings are recorded as follows:

> "Thus the investor Bishop or the Bishop who was the immediate cause of the plaint fund, the Bishop in whose name the bond Ext. 34 and the receipt Ext. I stand. the Bishops that received the interests from the Residency (Thomas Athanasius. perhaps excepted) and the Bishop in whose favor the award of 1840 (Ext. 36) was made. were all Jacobites owing allegiance to foreign supremacy. viz., the Patriarch of Antioch. It is admitted that only the followers of The faith of the investor are entitled to the benefit of the fund invested. It therefore follows that 1 to 3 defendants, or rather 1, 2 and 8 defendants who are the Metropolitan and the trustees of the Jacobite Syrians, and not 4 to 7 defendants who claim themselves as of the autonomous or indepeade to Church are entitled to the plaint interest on the 3000 Star pagodas invested with the plaintiff".

14. In both Eats. DY and FN it has been definitely found that unwavering allegiance to the throne of Antioch had become part of the faith of the members of the Malankara Church at least from the beginning of the 17th century by which time they were able to free themselves completely

from the control of the Portughese. Such a conclusion was arrived at after a careful consideration of reliable historical publications and other documents which were proved in these cases. We do not think it necessary to refer to them in detail once again in this judgment. All the same, a few significant incidents prominently dealt with in those judgments may be adverted to. Paragraphs 79 and 80 of the majority judgment in Ext. DY refer to the arrival of Patriarch Mar Ignatius at Mylapore in Madras about the year 1653 or 1654 A. D. and about his arrest and detention there by the Pertughese who feared that if he came to Malankara the Syrians might revert to their faith. It is also stated that two Deacons of the Syrian Church were able to contact Mar Ignatius at Mylapore and to get his approval of the appointment of Arch-Deacon Thotna as Metropolitan. The Portughese, however, brought Mar Ignatius to Cochin and there he is believed to have been done to death. The Jacobite Syrians became highly enraged at this news and a huge gathering of them, numbering about 25,000, assembled and resolved that they should never again unite themselves with the Portughese who had without any scruple or fear of God murdered their Holy Patriarch. They also resolved that Arch-Deacon Theme. should he consecrated as Metran in accordance with the station given by Ignatius Patriarch and that their ancient and sportless doctrine should be followed. After drawing up these resolutions all of them with one voice swore to their determination to abide by these resolutions and to separate for ever from the followers of the Roman faith. They took this oath by holding on to a long rope attached to the Koonan Cross at Mattancheri. This was in the year 1654. Even though in such an emergency they chose to accept Arch-Deacon Thoma as their Metropolitan, they had no peace of mind on account of the feeling that the Metropolitan had not been ordained by the Patriarch. Mar Thoma himself was worrying about the irregularity and invalidity of his consecration. After various endeavours, he was able to perfect his consecration at the hands of Mar Gregorius, the 5th Patriarch of Jerusalem, who came to Malankara under the command of the Patriarch of Antioch. This was in the year 1665. These matters are referred to in paragraphs 81 to 85 of the majority judgment in Ex. DY. In 1809 Mar Thoma VIII became the Malankara Metropolitan. But he was not consecrated by the Patriarch or his delegate. The Syrian community questioned his competency to function as Malankara Metropolitan for the reason that he has had no consecration in accordance with the tenets of the Jacobite Syrian Church. In dealing with such a complaint, the Madras Government called upon Mar Thoma VIII to answer certain specific questions formulated and sent to him. A few of these questions and answers are extracted in paragraph 126 of the majority judgment in Ex. DY and also in paragraph 21 of Ext. FNT and they are reproduced here:

> Second question.
>
> As subject to the authority of what superior have the Syrians been obeying laws and rules?
>
> Answer.
>
> In Malayalam it is as subject to the authority of Mar Ignatius, Patriarch of Antioch; that the ordinances are recognized. Metrans come from Antioch and consecrate members of the family which have derived ordination from Apostle Mar Thorns, and these c induct all routine affairs; and important affairs are conducted informing the Patriarch of Antioch thereof.
>
> Fourth question.
>
> What is the rule as to the succession of Metropolitans in the Syrian Churches and what are all done on one's death?

Answer.

In 1653 Mar Ignatius Patriarch was arrested in Mylapore by the Portughese on his way to Malayalam from Antioch. At that time two Deacons had gone to Mylapore. Fearing that the Portughese might kill the Patriarch, he sent Patent of Consecration through the aforesaid Deacons to consecrate the Arch-Deacon as Metran. The Portughese then brought the Patriarch to Cochin and drowned him in the sea. Thereon the Arch-Deacon and people met at Mattanchery and swore, holding the cross (Koonan cross already noticed), that the Portughese shall rot to the end of their race be obeyed. And then all met in the Alleged 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 mode perfect the ordination of the then Metran and gave him the books, Morone, and Sythe that had been sent frcm Antioch. In those days the Anandaravan of Arch-Deacon Thoma was made Metran and empowered to exercise the functions thereto 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".

Fifth 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".

These answers given by Mar Thoma VIII against his own interest in the matter of retaining office as Malankara Metropolitan, show how deep rooted was the faith of himself and members of the community that consecration by the Patriarch or his delegate would alone confer the necessary dignity and authority on a Metropolitan.

15. Two other documents may also be referred to in this connection. The first of these documents is a letter sent by Punnathra Mar Dionysius to Lord Gambier, President of the Church Mission Society in England. This letter was sent in the year 1821 when Punnathra Mar Dionysius was the Malankara Metropolitan. This letter is published at page 375 of the book "The Malabar Syrians and the Church Missionary Society" by P. Cherian. The opening sentence of the letter is very significant. It runs as follows:

> "In the name of the Eternal and Necessary Existence, the Almighty. Mar Dionysius, Metropolitan of the Jacobite Syrians in Malabar, subject to the authority of our Father, Mar Ignatius, Patriarch, who presides in the Apostolic See of Antioch of Syria, beloved of the Messiah".

The letter refers to the faith of the community in the following terms:

> "We, who are called Syrian-Jacobites, and reside in the land of Malabar, even from the times of Mar Thomas, the Holy Apostle, until the wall of Cochin was taken in the reign of

> King Furgis, kept the true faith according to the manner of the Syrian Jacobites of real glory, without division or confusion".

Then the letter proceeds to refer to the persecution by the Portugbese and to the events that led up to the oath at Koonan Cross and states;

> "Again, in the year of our Lord, 1753, came to us some holy Jacobite Syrian Fathers from Antioch, who turned us to our true ancient faith, and set up a High Priest for its".

The next document is the declaration made by the Synod held at Mavelikkara in the year 11+36, in which the then Malankara Metropolitan and the other Priests other him participated. This declaration is known as the Mavelikkara Padiyola, a translation of which is published at page 390 of the aforesaid hook. This document gives a comprehensive idea of the faith of the Malankara Church and also of the nature of the plaint trust, and hence the whole of the document is reproduced here.

> In the name of the Father, Son and Holy Ghost, the one true God: Padyola (agreement) drawn up in the year of Our Lord 1836 corresponding to 5th Magarom 1011 at the church dedicated to the Virgin Mother of the Lord, at Mavelikarai, between Mar Dionysius Metropolitan of the Jacobite Syrian Church of Malankarai, subject to the supremacy of Mar Ignatius Patriarch, the Father of Fathers, and the Chief of Chiefs, ruling on the throne of St. Peter at Antioch, the Mother of all Churches; and his successor May Kurilos; and the vicars, priests and parishioners of Ankamali and other churches under the charge of the said Metropolitan.
>
> That whereas at an interview held at Kottayam between the Rt. Rev. Daniel Lord Bishop of Calcutta and the Metropolitan, in Vrischikam last, it was proposed by the former that certain changes should be introduced in the Liturgies and ordinances of our Syrian Church, and whereas it was stated in reply that a conference of all the churches would be held on the subject and its determination made known we, the Jacobite Syrians being subject to the supremacy of the Patriarch of Antioch and observing, as we do, the Liturgies and ordinances instituted by the prelates sent under his command, cannot deviate from such Liturgies and ordinances and maintain a discipline contrary thereto; and a man of one persuasion being not authorized to preach and admonish in the church of another following a different persuasion without the permission of the respective Patriarchs we cannot permit the same to be done amongst us; and our churches being built by the aid of the prelates sent under orders of the Patriarch and on the wishes of the people of each parish, and ornamented by their money, and as the accounts of the annual income accruing to our churches under the head of voluntary contributions, offerings, etc., are as required by the rules, furnished to our bishops, as is the custom in the churches of Antioch, as well as in the churches of this and other countries following different persuasions we are without the power, and feel disinclined, to follow, and cause to be followed, a different procedure from the above.

That the Honourable Colonel Macaulay having taken a loan of 3000 Star pagodas from Valia (great) Mar Dionysius who died in 983, gave him a bond for the same. The interest on the amount having fallen in arrears, Mar Dionysius Metropolitan who died in 992 made a representation to Colonel Munro and received the interest with which he Dionysius built the Seminary at Kottayam. Having also collected at the Seminary the money brought by the prelates that had come here from Antioch and the property left by the late bishops of the Pakalomattom family, Mar Dionysius laid out a portion of this together with the donation made by His Highness the Mahe Rajah on behalf of the Syrian Christian youths, on kanom and therewith met the expense of their education. The Reverenced the Missionaries who have come down to Kottayam, in their profuse benevolence taught the youths at the Seminary, English and other languages, protected our children like loving fathers, caused books to be printed for the benefit of all classes, rendered all necessary help in maintaining the prevailing discipline of the Syrian Church, caused the annual interest due, to be drawn on the receipt of the Metropolitan, had superintendence over the affairs of the Seminary, and caused ordinations to be made agreeable to the request of the people and the power of the prelates. While affairs were being thus conducted, the Missionaries took to managing the Seminary without consulting the Metropolitan, themselves expended the interest money drawn annually on the receipt of the Metropolitan, dispersed the deacons instructed in the Seminary, conducted affairs in opposition to the discipline of our Church and created dissensions amongst us, all of which have occasioned much sorrow and vexation. For this reason, we do (would) not follow any faith or teaching other than the orthodox faith of the Jacobite Syrian Christians, to the end, that we may obtain salvation through the prayers of the every happy, holy and ever-blessed Mother of God, the redresser of all complaints and through the prayers of all Saints."

It is this determination of the Malankara Church not to deviate from its faith, discipline, liturgies and doctrines that led to the Cochin award Ex. 223, under which the management of its trust properties was brought under the exclusive control of the Malankara Metropolitan and two other representatives of the Church. The aforesaid documents prove and establish beyond doubt that such an unwavering allegiance to the supremacy of the Patriarch of Antioch had become a settled fact during the early period of the 17th century.

16. The cardinal principles of faith to which the members of the Jacobite Syrian community of Malankara were steadfastly adhering are (1) that direct connection to the Apostolic throne of Antioch should be maintained by getting their Metropolitans ordained by the Patriarch himself or by his duly authorized delegate and (2) that only Morone consecrated by the Patriarch can he used in the Churches at Malankara for baptismal and other purposes. The power of the Patriarch as the ecclesiastical head of the Church to exercise general supervision over the spiritual government of the Church was also recognized and upheld in Ex. DY judgment. But it was pointed' out that the authority of the Patriarch did not extend to the government of the temporalities of the Church. To this extent alone the independence of the Malankara Church was upheld in Ex. DY. This could only mean that the Patriarch has no authority to interfere in the

internal management of the Church. All the same, it is obvious that his power of general supervision over the spiritual government of the Church may to some extent affect the Metropolitan's jurisdiction to carry on the temporal government of the Church. If, on a proper enquiry the Metropolitan is found guilty of ecclesiastical offences and if he is properly and validly excommunicated, his powers of temporal government would come to an end and such powers could only be exercised by his successor duly ordained and appointed to the place and accepted by the community. Metropolitans who asserted absolute independence for the Church and maintained that the Patriarch of Antioch had no manner of authority, spiritual or temporal, over this Church were found not to belong to the Syrian community of the particular persuasion contemplated by the award Ex. 223 and accordingly their claim: for possession and management of the trust properties in their capacity as Metropolitan were negatived in Exs. DY, FN and AO. The question of the l ligation of the members of the Church to pay ressisa to the Patriarch had also come up for consideration in Ex. DY, but in paragraph 218 of the majority judgment it was found that the evidence regarding the payment of ressisa was very meagre and inconclusive and therefore the court was unable, upon such evidence, to decide the question one way or the other. It was also stated that a decision on that question was not necessary in that suit.

17. The position of the Patriarch of Antioch as the supreme spiritual head of the Jacobite Syrian Church of Malankara is net disputed even by the defendants. According to the Jacobite faith. the true Church is that which has been presided over by St. Peter and his apostolic Successors as the vicars of Christ. This position is nude clear by the following passage in Ex. 265 D:

> "The Apostles received priesthood from out Saviour and they handed it on to us. When our. Lord sent them out two by two, and gave them power to heal the sick, to cast out devils, to cleanse the lepers and commanded them to do so, He made them deacons which means those who make clean. When he breathed over them and told them "receive ye the Holy Ghost", He whose sins are forgiven by you shall be forgiven", He made them Episcopas. When at the time of His ascension He raised His hands and blessed them, He made them Episcopas. When the Holy Ghost, who is the comforter, rP9t=d over them when they were in the upper floor of the house, He perfected them as Patriarchs".

It is in this manner that the Apostles are stated to have received priesthood from Jesus Christ who perfected them as Patriarchs when the Holy Ghost came on them. It is also the belief of the Jacobite Church that St. Peter. otherwise called Simeon, was the head of the Apostles and on him the Church was built. In Ex. 265 B (translation) the following pa.scavn cccurs:

> "The ministry which have been entrusted to Simeon, the head of the Apostles is entrusted to him. Like him, he becomes a worthy stone on which the Church may be built. Like him (Simeon) he confesses "Thou art the Christ, the son of the Living God".

Thus it is believed that the hierarchy, with St. Peter and his successors at its head, is a divine institution founded by Jesus Christ. It is the faith of the Jacobite Church that the Patriarch of Antioch is the true successor of St. Peter. It is because of this traditional belief in the Apostolic succession that the members of the Malankara Church have all along been insisting that the Malankara Metropolitan should be one who has had his ordination from the Patriarch of Antioch

and that the Morone to he used in the churches must be the morono consecrated by the Patriarch. There can be no doubt that these are fundamental matters of faith of this Church.
18. The origin of the plaint trust has to be examined in the background of what has been stated above. The trust originated with the investment of 3000 Star pagados a loan in perpetuity with the British Resident at Trivandrum in the year 1808, so that the interest at 8% accruing due on the said loan may be drawn and utilised for the welfare of the Malankara Church. This investment was made by Mar Thoma VI who was at that time the Malankara Metropolitan. Since he died soon after making this investment, the bond was issued in the name of his successor. These facts have been found in Exs. DY and AO. Paragraph 99 of Ex. DY shows that in the year 1751 the Patriarch of Antioch had issued a command to Mar Thoma V, impressing upon him the necessity of getting proper ordination by the Patriarch or his delegate. The following passage quoted in paragraph 99 from the said communication is very significant.

> "By that authority vested in US through the Holy Ghost, being the power of Jesus Messiah, the Lord who has empowered Our Weakness in the Supremacy of the Apostolic Throne of Peter at Antioch, I now command unto you. By that authority We command unto you that you should acknowledge the Supremacy of the Apostolic Throne of Antioch, that you should obey all commands and that you should root out from among you all alien and foreign customs and practices.....Behold, you must obey the Brothers, the Venerable Mar Basilius and Mar Gregorius who are in your midst and all that they command or counsel unto you, for we have placed the word given unto US into their mouth .....you should become obedient and go to the aforesaid Venerable Father and get your Episcopal title confirmed and that you should be on terms or reciprocal union and amity .....

In obedience to this command, Mar Thoma V submitted to the aforesaid delegates of the Patriarch and got his ordination perfected. The position of his successor Mar Thoma Vi is dealt with in paragraph 104 of the majority judgment in Ex. DY as follows:

> "Thoma VI soon made himself a friend of the Bavas and was consecrated by them on the 29th Mithunam 945/1770 A. D. at Niranam as the Metropolitan at Malankara With the title of Mar Dionysius. They gave him the Staff, Mitre, crosier, Station and Morone, that had been brought from Antioch".

He was commonly known as Valia Mar Dionysius or Dionysius the Great. The station issued to him on his appointment as Malankara Metropolitan was produced in Ex. AO case and its contents have been extracted in paragraph 20 (page 7) of that judgment. It runs as follows:

> "By the command of the Exalted Moran Mar Ignatius Patriarch ruling in the throne of Antioch, the feeble and meek Gregorius Metropolitan of Jerusalam and Ivanios Episcopa of India, delegate consecrated Joseph of name Mar Thoma as the Metropolitan of Our Jacobite Syrian people residing in the country of Malayalam".

Reference also is made in the same paragraph to the attitude adopted by Mar Thoma VI towards

the attempt mile by Doctor Buchanan to induce him to effect a union of the Malankara Church with the Church Missionary Society. Mar Thoma VI is stated to have disclosed his mind to Doctor Buchanan in the following words;

> "I would sacrifice much to such an union. Only lot me not be called to compromise anything of the dignity or the purity of our Church".

It was a Metropolitan of such an uncompromising faith that founded the trust by making the investment of 3000 Star pagodas as already mentioned. Besides making such an endowment, he is stated to have built a church at Puthenkavu, vide paragraph 109 of the majority judgment in Ex. DY. The Mavelikara Padyola reproduced at pages 390 and 391 of Cherian's book states that the interest on the investment of 3000 Star pagodas was utilised for building a seminary at Kottayam. Reference is also made in that document as to how the trust was being augmented from time to time.

19. Since the Metropolitan who made the endowment referred to above and his predecessors and successors were all members of the Orthodox Syrian Church of Malankara owing unwavering allegiance to the Antiochian throne, it has to he legitimately inferred that only those members of the Church who adhere to the faith of the 'investor Bishop were intended to he beneficiaries of the trust. The following passages from Halsbury's Laws of England, Third Edition (by Lord Simonds), Vol. IV, make this position clear:

> "One principle applicable to all charities without exception is that the intentions of the founder are to be carried into effect so far as they are capable of being so, and so far as they are not contrary to law or morality"
> (Paragraph 593 at p. 287).
> "In the case of a charity for the support of a religious establishment gene- rally for the purpose of religious instruction, two presumptions arise: first, that the founder intended to support an establishment belonging to some particular form of religion, and that he intended some particular doctrine of religion to be taught; and secondly, that this establishment and doctrine were those which he himself supported and professed; and the court will look carefully at his course of life and conduct and spell out expressions not merely in the instrument of foundation, but in his will and works, to ascertain what were the doctrines and opinions entertained and professed by him".
> (Paragraph 595 of the same Volume).
> "Where the origin of a charity is obscure, or where the instrument of endowment is lost or is ambiguous, usage constitutes presumptive evidence of charitable trusts. The court will presume whatever may be necessary, even an Act of Parliament, to give this usage a legal origin and render it valid.
> But when the deed of foundation is produced and is clear, nothing can be presumed to the contrary of that which is established by such evidence.
> The court will be guided by the earliest evidence of usage, and will, if possible, presume that what was then done and long afterwards continued was rightly done".

(Paragraph 631 at pp. 307 and 308)

The principles enunciated in these passages are also gatherable from the cases noted below:

(1) *Craigdallie v. Aikman*[1] In that case the dispute was about the use of a meeting-house built by contributions of materials, money and labour and collections on the Church door, of persons professing the principles of those who seceded at that time from the Church of Scotland. The meeting-house and the ground on which it was built, were vested in certain persons as trustees for they use of the Society and managers of the house of public worship for the associate congregation of Perth. Subsequently, a schism took place between the matters of this religious community and several members separated themselves from the authority of the associate synod. In dealing with the rival claims of these two groups it was held that

"in a case where it was difficult to ascertain who were the legal owners, as representatives of the contributors, the use of the meeting-house belongs to those who adhere to the religious principles of those by whom it was erected; and those who had separated themselves from the Associate Synod, and declined their jurisdiction. were held to have forfeited their right to the property; although it had been judicially declared that there was no intelligible difference of opinion between them and the adherents of the Synod".

(2) *Attorney General v. Pearson*[2] In that case it was held that

"when a gift is made or trust is created by certain persons, of certain funds, for the service and worship of Almighty God, the thing to be regarded is what were the religious tenets in general of those persons? Because it would not be a just application of those funds, if they were allowed to be employed for the sustentation of religious opinions which the donors themselves would have disavowed".

(3) *Broom v. Summers*[3] The facts of that case were the following: A lease of a meeting-house was granted in trust for a congregation of Protestant Dissenters who then net in a house belonging to J. A. in the town of S. The congregation was then in connection with the Secession Church of Scotland, and consequently professed the same doctrines and adopted the same form" of worship, government and discipline as that Church. Some years afterwards, the Minister and a large majority of the congregation separated from that connection and joined another religious body which professed the same doctrines and used the same form of worship, but not the same form of government and discipline as the Secession Church; they however retained possession of the meeting-house. The court held that on their separation they ceased to be objects of the trust; and, therefore, were not entitled to keep possession of the meeting-house.

The principles enunciated in the above cases were affirmed by the House of Lords in *Free Church of Scotland v. Overtoun*[4]

20. Applying the principles stated above to the facts of this case, it is clear that the

[1]4 English Reports (House of Lords) p.435 [3]59 English Reports (Vice-Chancellors) p.909

[2]58 English Reports (Vice-Chancellors) p. 848 [4](1904) A. C. 515
trust founded by 'Mar Thoma VI in 1808 and augmented by subsequent additions, was intended to benefit those members of the Malankara Church who were followers of his own faith, the fundamentals of that faith being that the Church is subject to the ecclesiastical supremacy of the Patriarch of Antioch, that the Malankara Metropolitan should he one duly ordained by the Patriarch or his delegate and accepted by the community, that the Morone to he used by the churches in Malankara should be the Morone consecrated by the Patriarch, that the Patriarch will have no power over the temporalities of the Church and in its internal management and that the Church has an obligation to pay Ressisa to the Patriarch as resolved by the Mulanthuruthy synod (vile Ex. FO). The Malankara Church had accepted these as fundamental principles governing their faith from very early times and definitely from the beginning of the 17th century and has been firmly adhering to these fundamental principles thereafter also. These principles have become impressed on the plaint trust which originated with the endowment made by Mar Thoma VI in the year 1808. In this view of the matter it is unnecessary for the purpose of this case to examine the early history of the Malankara Church for ascertaining how and under what circumstances the Malankara Church happened to accept the Patriarch of Antioch as its ecclesiastical or spiritual head. We do not therefore propose to enter into a discussion of the controversial historical records relating to the origin and growth of the Malankara Church, in spite of the fact that on this topic much learning and industry have been exhibited at the Bar.

21. According to the plaintiffs, the defendants and their partisans have, by their own conduct, gone out of the Malankara Church and have ceased to be members of the Malankara community of the particular persuasion, as already explained. Issues 14 to 17 refer to different aspects of this question. The main charges against the first defendant and his partisans are those contained in paragraphs 22 to 26 of the plaint. The charge of voluntary separation from the ancient Jacobite Syrian Church and of having established a new Church by adopting the constitution embodied in Ex. AM is itself a major issue and hence it may he separately considered. The other acts imputed against the defendants are that a Catholicate has been established in Malankara, that the first defendant is the Catholicos and also the Malankara Metropolitan even though he has not obtained any ordination from the Patriarch, that the first defendant is consecrating Morone for the use of the churches in Malankara and that the first defendant is collecting and appropriating to himself the ressisa due to tha Patriarch. On account of such acts and pretensions. in defiance of the authority of the Patriarch and against the fundamental tenets of the faith of the Church, the defendants are stated to have ipso facto become heretics and aliens to the Malankara Jacobite Church. The question whether the acts complained of constitute heresy, depends mainly on the validity or otherwise of the Catholicate stated to have been established at Malankara. This again depends to a large extent on the further question as to whether Abdul Messiah was the ruling Patriarch at the time of the establishment of the Catholicate relied on by the defendants.

22. Before proceeding to consider the validity of the Catholicate' the plea of res judicata raised on behalf of the respondents may be disposed of. Learned counsel for the respondents argues that the question must be deemed to be concluded by the decision in 45 Travencore Law Reports 116 and that the plaintiffs are therefore not entitled to agitate the matter once again. That was a representative suit and if the question as to whether a Catholicate has been validly established at Malankara was an issue in that case, that decision would undoubtedly operate as res judicata in the present suit. Ex. 255 is copy of the trial court's judgment in that case and paragraphs 1 to 7 of that judgment give a summary of the contentions urged by the several parties. These paragraphs

do not show that the question of the validity of the Catholicate said to have been established at Malankara, was raised by any of these parties. The first Catholicos had died some time prior to the institution of that suit and the second Catholieos was installed only twelve years later. Thus there was no Catholicos in existence at the time of the suit, and that might probably have been the reason why none of the parties thought it necessary to raise the question of the validity of the Catholicate. Naturally, therefore, there has also been no issue on that question. The only issue which learned counsel for the respondents was able to point out as having some connection with this question is issue 27 in Ex. 255 case. Even this issue did not make any reference to the Catholicate or to any Catholicos. Such being the nature of the issues and pleadings in that case, it cannot be said that the question of the validity of the Catholicate was directly and substantially in issue in that suit so as to attract the principle of res judicata. The final judgment in that case is reported in 45 Travencore Law Reports 116 and it contains no" definite finding as to whether any Catholicate had been validly established or not. In the absence of any such decision in that case about the validity of the Catholicate the plea of res judicata urged on behalf of the respondents cannot prevail. Certain observations contained in the final judgment are relied on by learned counsel for the respondents in his attempt to sustain the plea of res judicata. These observations happened to be made in disposing of an alternative contention raised on behalf of the appellants in that case for the first time when the appeal came on for final hearing at the second stage after the application for review had been allowed subject to certain reservations. The question of Mar Geevaghese Dionysius and his co-trustee, who were defendants 1 to 3 in that suit, having become ipso facto heretics and aliens on account of certain specified unlawful acts, and also the question of the status of Abdul Messiah as a lawful Patriarch, have also been dealt with in the observations referred to above. Since the findings on these two questions recorded in 45 T. L. R.. 116 are also relied on by the respondents as final and conclusive and as operating as res judicata in the present suit, it will he convenient to consider all these questions also at this stage. The contentions relating to these questions have been dealt with by Chatfield, C. J., at pages 185 to 192 of 45 T. L. R. 116. In paragraph 34 at page 185 the Chief Justice has referred to the contentions urged by the appellants against Mar Geevarghese Dionysian. It was stated that himself and his party had repudiated Abdullah, the lawful Patriarch, and had accepted Abdul Messiah as the lawful Patriarch after he had been deposed and had co-operated with him when he ordained certain persons as Metropolitans and when he ordained one Mar Ivanios as Catholicos. The argument advanced on behalf of the appellants was that on account of such acts Mar Geevarghese Dionysius and his followers had seceded from the Jacobite Syrian Church in the year 1087 (1911 A. D.) and had set up a different Church. After refer' ring to this argument, the learned Chief Justice observed that:

> "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".

This observation in itself is sufficient to show that the court need not have given a decision on the question of the validity the Catholicate which was not raised in the pleadings. However, the learned Chief Justice went further and stated as follows:

> "In any case it is not contended that the appointment of a Catholicos is i 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 in both Exs. A and XVII 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 bi urged against the first defendant, therefore, is that he cooperated with one which was not a valid Patriarch when the latter was doing acts which could only he 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 then would have been no objection. Therefore the whole matter resolves itself into personal dispute between two claimants to the patriarchate in which it is said, this first defendant deserted the Patriarch who had created him Metropolitan and sup ported 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 at offence for which the civil courts could try him or express any opinion as to his guilt".

From this passage it is clear that the learned Chief Justice was considering the conduct of Mar Geevarghese Dionysius even or the assumption that Abdul Messiah had ceased to be a lawful Patriarch. From the subsequent portions of the judgment also it is cleat that the learned Chief Justice did not think it necessary to record t finding as to whether Abdul Messiah had been validly deposed or not. It is also significant to note that the judgment did not make any reference at all to the establishment of a Catholicate in Malankara, but merely referred to the appointment of a Catholicos. The only definite finding recorded was that the acts attributed to Mar Geevarghese Dionysius and his supporters would not result in their becoming ipso facto heretics or aliens even though they may become heretics and aliens on their being tried and found guilty by their ecclesiastical superior.

23. Still another aspect stressed on behalf of the respondents is that the concessions said to have been made on behalf of the appellants in 45 T. L. R. 116 amounted to an admission that a Catholicate had been established in Malankara. This argument is based on one particular sentence contained in the passage extracted above which is this:

> "It is conceded by the defendants that if Abdulla had done these acts, these would have been no objection".
>
> "The exact form and scope of the concession made by learned counsel for the appellants is not clear from the sentence. In the immediately preceding sentence all that is stated is that Mar Geevarghese Dionysius had co-operated with one who was not a valid Patriarch when the latter was doing acts which could only he done by a Patriarch. Going back still further, it may be seen that the unlawful acts attributed to Abdul Messiah were that he ordained certain persons as Metropolitans and in particular ordained one Mar Ivanios as Catholicos. This inference itself is the result of a speculation in view of the vagueness and ambiguity of the statement regarding the concession said to have been made on behalf of the defendants. A party cannot be concluded or hound by any such vague and ambiguous statement made by his counsel. The counsel's authority to make admissions or concessions on behalf of his client is strictly limited to matters directly arising out of the pleadings in the suit. Any opinion expressed by a counsel in the course of his argument on hypothetical questions or extraneous matters cannot be raised to the level of admissions or con- cessions binding on his client. The so-called concession already referred to falls

under this category. The counsel's engagement in a particular case will not empower him to make admissions or concessions on behalf of his client in respect of matters falling outside the scope of that particular case. Even apart from these aspects, it is seen that the concession referred to above was only in respect of the powers of Patriarch Abdulla. The utmost limit to which that concession could be pushed up is that it was admitted that there would have been no objection if the ordaining of certain persons as Metropolitans and the ordaining of Mar Ivanios as Catholicos had been done by Ahdulla, the ruling Patriarch at the time. This can only mean that the followers of Abdulla would not have questioned his act in conferring such personal dignities on individuals and not that it was within the competence of a ruling Patriarch by himself to establish a Catholicate or that Abdul Messiah was a lawful Patriarch. Chatfield, C. J., and the two other learned Judges who participated in the decision in 45 Travencore Law Reports 116 did not construe the matter in any other light.

24. All the three Judges who decided the case in 45 Travencore Law Reports 116 expressed the opinion that the acts and conduct of Mar Geevarghese Dionysius and his followers did not ipso facto make them heretics and aliens to the Church but would only amount to ecclesiastical offences, the consequences of which had to be duly determined by ecclesiastical authorities. They also took the view that the court could not inquire into the question of heresy or schism. In referring to this matter, Chatfield, C. J., stated that

> "it could not be an offence for which the civil courts could try him or express any opinion as to his guilt".

Thaliath, J., expressed his opinion as follows:

> "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 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 an ecclesiastical offence in the absence of any declaration made by proper ecclesiastical tribunals".

In referring to the conduct of Mar Ceevarghese Dionysius Para-meswaran Pillai, J., expressed himself thus:

> "At test 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".

On the strength of these observations it is argued on behalf of the respondents that it was decided

in 45 Travencore Law Reports 116 that the court has no jurisdiction to go into the question of heresy and apostacy and that the said finding operates as res judicata in the present suit. All that has been stated in 45 Travencore Law Reports 116 is that the civil court has nothing to do with spiritual offences as such. This view is not open to objection in its broader aspect. But where the commission of spiritual offence has a direct bearing on the question of the offender's right to property, the civil court will have the undoubted jurisdiction to go into the question of the consequence of the commission of the spiritual offences to the extent they affect the offender's right to the property. This aspect appears to have been noticed by Thaliath, J., when he stated that

> "ordinarily it is for the ecclesiastical tribunals to pronounce on the con- sequences following from the commission of ecclesiastical offences".

The learned Judge appears to have thought that it will be in- convenient for the civil court to inquire into such matters and that the decision of secular courts regarding the same may not he very satisfactory. These observations will indicate that the civil court has jurisdiction to go into such matters in appropriate cases. It cannot therefore be said that a definite decision was recorded that the civil court has no jurisdiction under any circumstance to go into that question. The extent of the civil court's jurisdiction is specified in Section 9 of the Code of Civil Procedure where it is stated that "the courts shall, (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred". In the Explanation to that section it is stated that "a suit in which the rights 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". In view of this Explanation, it cannot be said that the court has no jurisdiction to go into the question of heresy or schism where such heresy or schism has a direct bearing on the right of the party concerned to property or to an office. The decision in 45 Travencore Law Reports 116 does not expressly state that such a jurisdiction does not exist. Even if that decision is capable of sustaining such a construction, that decision cannot be a bar to a different court exercising the jurisdiction vested in it under law when the question of heresy and schism is again raised. All that appears to have been done in that case is that the court declined to exercise its jurisdiction to go into the question of heresy and schism, the reasons stated being that it was for the spiritual superiors to deal with such ecclesiastical offences and that an inquiry into that matter by the civil court may be inconvenient and unsatisfactory. The decision not to exercise the court's jurisdiction for such reasons cannot operate as res judicata because it was only a case of refusal to exercise jurisdiction. Reference may he made in this connection to *Upendra Nath v.*

Lall[5] where the following dictum was laid down:

> "A court which declines jurisdiction cannot bind the patties by its reasons for declining jurisdiction: such reasons are not decisions, and are certainly not decisions by a court of competent jurisdiction. It would indeed be strange if on a dispute as to the jurisdiction of a court to try an issue, that court by its reasons fox holding that it had no jurisdiction could, upon the principle of lea judicata, decide and bind the parties upon the very issue which it was incompetent to try".

Viewed in all these aspects, it is clear that there is nothing in the decision in 45 Travencore Law Reports 116 which would stand as a bar of res judicata against the plaintiffs in the present suit from agitating the question of heresy and schism as against the defendants. All the same, it has to be pointed out that the plaintiffs have not invoked the jurisdiction of the court to go into that matter. There is no prayer in the plaint that the court should inquire into the matter and declare the defendants to be guilty of heresy and schism and thus disentitled to any benefits out of the plaint trust. On the other hand, the definite stand taken in the plaint is that on account of the acts and conduct of the defendants, they have ipso facto become heretics and aliens of the Malankara Church. On this question there is a definite decision in 45 Travencore Law Reports 116 and it is in favor of the defendants. The plaintiffs are barred by the rule of res judicata from raising the same question in the present suit.

25. One other point raised on behalf of the appellants may also be disposed of at this stage and that is about the applicability of the principles laid down in *Free Church of Scotland v. Overtoun*[6] to the facts of the present suit. According to the respondents, the plaintiffs are barred from invoking those principles on account of the decision in 45 Travencore Law Reports 116. We see no force or substance in this argument. Consistent with the finding in 45 Travencore Law Reports 116 that Mar Geevarghese Dionysius and his followers had not ipso facto become heretics and aliens to the Malankara Church, it was found that they continued to be members of the Church and cannot be said to have voluntarily separated from it and to have established a new Church of their own. It was because of these findings in that case that the court held that the principles enunciated in the Free Church case had no application to the facts of that case. That finding cannot have the force of res judicata in the present suit, where the case of voluntary separation is sought to be made out on a different set of facts and circumstances and mainly on the strength of the new constitution embodied in Ex. AM. The question of the applicability of the Free Church case will therefore depend on the question as to how far the voluntary separation and the formation of a new Church is made out in this case.

26. On a consideration of the several aspects dealt with above, we have come to the conclusion that the plea of res judicata urged on behalf of the respondents on the strength of the decision in 45 Travencore Law Reports 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 he said to have ipso facto become heretics and aliens to the

[5](A.I.R. 1940 P. C. 222 at 225)

[6](1904 A. C. 515)

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 ne.v Church of their own.

27. Two other questions which have an important bearing on the question of the validity of the Catholicate relied on by the defendants are: (1) which was the canon that was recognized and followed by the members of the Malaiikara Church at the time of the formation of the plaint trust? aid (2) whether Abdul Messiah had been effectively removed from his office as Patriarch before Abdulla was appointed as his successor. The validity of the Catholicate may be examined after dealing with these two questions also.

28. The 13th issue in the case is the issue pertaining to the canon. The question has been formulated thus: "Which is the correct and genuine version of the Hoodaya Canons compiled by Bar Hebreaus? Whether it is the book marked as Ext. A or the book marked as Ext. XVIII in 0. S. 94 of 1088?" Ex. 255 is the trial court's judgment in the case referred to in the issue, and the final judgment in that case is reported in 45 Travencore Law Reports-116. The book of canons produced in that case and marked as Ex. A, is the same as Ex. XXVI produced in the present suit and relied on by the defendants. This is a book printed and published in Paris in the year 1898. Ex. BP produced in this case and relied only the plaintiffs, corresponds to the book of canons that had been produced in O. S. No. 94 of 1088 and marked as Ex. XVIII. Neither Ex. BP nor Ex. XXVI is an authorized publication of the canons and there is no conclusive evidence in this case to prove the genuineness or the authenticity of either of them. Excepting Ex. XXVI which was printed and published in the year 1898, all the other books of canons produced in this case on either side are only manuscript hooks. The book of canons compiled and codified by Bar Hebreaus is not available and neither side can confidently assert that the books relied on by it is a true and correct copy of the canons collected and codified by Bar Hebreaus. Thus the attempt to find out which is the true version of the canons cannot lead to any satisfactory result. It may also he mentioned hero that a definite answer to this question is not necessary for the purposes of this case. In fact, neither side has taken the trouble of getting the whole of Ex. BP and XXVI translated and placed before the court for its consideration. Both sides have placed reliance only on certain portions of these books which have some sort of relevancy to the points that arise for consideration in this case. It is also seen that at the time of arguing the case in the lower court the advocates on both sides conceded that the question as to which of the two rival versions of the canons is the true and correct one, need not be decided as a comprehensive question. This is so stated to paragraph 183 of the lower court's judgment. What is really relevant for the purposes of this case is to find out which is the version of the canons that had been accepted and followed by the Malankara Church at the time when the plaint trust originated and thereafter up to the time when dissensions arose among the members of the Church. The suits which ended with the decisions in Exts. DY and FN were two of the earliest suits which arose out of the dissensions among the members of the Church. The first of these suits was instituted in the year 1061 M. E. (1885 A. D.) and the next suit was instituted in the year 1069 M. E. (1894). In both these suits there were disputes about the position and authority of the Patriarch of Antioch in relation to the Malankara Church and I for the purpose of resolving such disputes, the canons that were accepted. and followed by the Malankara Church had to be considered. Ex. XXVI happened to be printed and published only some years later and hence could not he produced and considered in those cases. But the position taken up by the respondents is that manuscript copies which correspond to Ex. XXVI were available to the members of the Malankara Church and were being used by them even during the earlier period. Exs. 68, 104, 153, 156, 157, 216, 217 and 218 are put forward as manuscript copies of canons that were thus available to the members of the Malankara Church. There is no reliable evidence to prove the authenticity of these documents or that they were accepted as genuine by the Malankara Church. Exs. 153, 156 and 157 were produced by D. W. 24 who is the son of deceased Kora Mathen Malpan who figured very prominently in 41 Travencore Law Reports case. These books are stated to have been found in the library of this Malpan and D. W. 24 claims to have come into possession of the library after the death of his father and to have produced this hook from that library. Certain notes are seen to have been made in Ex. 15.5 and these notes have been separately marked as Exs. 153 (a), 153 (b), 153 (c), and 153 (d). The respondents' version that these notes were made by Kora Mathen

Malpan was sought to be proved through D. W. 24. 'phis witness has not seen his father making these notes in Ex. 153. He was not also in a position to assert that these notes are in the handwriting of his father. All that he was able to state is that the handwriting in these notes looks like the handwriting of his father. Thus it cannot be said that the aforesaid entries have been proved to be made by Kora Mathen Malpan or that the statements contained in those entries are true. The evidence of D. W. 25 who is stated to have been a disciple and an assistant of Kora Mathen Malpan, cannot also be accepted as satisfactory and convincing so far as the genuineness of these entries is concerned. The fact that Exs. 153, 156 and 157 contain the seal of Kora Mathen Malpan is also not of great significance so long as there is no direct proof as to when and by whom the seals were affixed on these books. It could have been done either during the life time of the Malpan or after his death by somebody who had the custody and control of the seal. Even assuming that these books were among the volumes collected in Malpans library, no inference will follow that they are true copies of the canons or that they were accepted and followed by the Malankara Church. Ex. 153 (a) entry is to the effect that the hook was given to Malpan by Kadavil Mar Athanasius. No particular inference can he drawn from such an entry. The best that can be inferred is that Kora Mathen Malpan was interested in collecting as many of the manuscripts purporting to he copies of the Hoodaya Canons for the purpose of his own research and study. All these manuscripts are in Syria and D. W. 30 has compared them and has prepared Ex. 263 statement showing the points of similarity and difference noticed in these books.

It is stated that on most of the material points these different volumes agree with one another. This also cannot be a circumstance leading to the inference that the books are genuine or that they were being followed by the Malankara Church. As for points of similarity, Exs. BP and 26 also stand on the same footing and it is only in respect of a few of the canons incorporated in them that they are seen to be divergent. Ex. 68 is another manuscript copy relied on by the defendants and stated to have been prepared by Mar Gregorius of Marumala, and the note to that effect at the end of the book is marked as Ext. 68 (a). Dw. 27 has stated at pp. 46 and 63 of his deposition that the book is in the handwriting of Mar Gregorius. At p. 24 of the deposition of Dw. 28 he too has stated so. These witnesses are not expert witnesses and hence their assertion that Ext.68 is in the handwriting of Mar Gregorius is not entitled to much weight. Assuming that the book was written by Mar Gregorius, it is not known from what original document he prepared Ext. 68. All that can be said is that several manuscripts appear to have come into existence purporting to be copies of the Hoodaya Canons compiled by Bar Hebreaus. One significant fact about these manuscripts is that no two of them agree in all particulars. The variations found in these manuscripts would indicate that the faith and the inclinations of those who prepared the manuscripts have undoubtedly played a great part in shaping some of the canons, at least to fit in with their own faith and inclinations. The basis of Ex. 26 is one such manuscript that was available in the Paris library. The introduction to the book Ex. 26 has been marked as Ex. FM and therein Paul Bedjan, the publisher of the book, has given an account of the difficulties he had to face in his attempt to get at the correct version of the canons compiled by Bar Hebreaus. He has stated that the copy that was available in the National Library at Paris was compared with the manuscript kept in the Vatican Library. It is also stated that the manuscript kept in the British Museum does not contain the same text as found in the copy secured from the Paris National Library. In another portion of Ex. FM there is a statement as follows:

> "We profess the greatest regard for Bar Hebreaus and recognise very high importance of his Nomo Canon as a scientific work. However we ought to admit that his works contain

some errors. We have undertaken the task of correcting them to some extent by short notes placed at the bottom of the pages. But it was not possible for us to multiply them in such a manner as to remove all difficulties. We shall content ourselves by making certain observations in the interest of our readers and we recommend them to make its study with the greatest discernment and use the greatest discretion in teaching this work to the students".

These remarks at any rate indicate that it will not he safe to hold that Ex. 26 contains a true and correct version of the canons as compiled by Bar Hebreaus. All the same, it is seen that when printed copies like Ex. 26 became available, they were freely used for reference. There is nothing surprising in this because Ex. 26 is the only printed publication of the canons available for general use and excepting for certain canons the correctness of which is disputed, the rest of the book agree with other manuscripts also. But it has to be remembered that the printed publication became available only in the year 1898. Necessarily, therefore, manuscript copies alone must have been in use prior to 1898. Merely because the manuscript copies like Ex. 153, 156, 157 and-68 agree with Ex. 26 to a larger extent than Ex.BP, it cannot he presumed that the manuscript copies produced by the defendants were those which were accepted and followed by the Malankara Church.

29. As already stated, the earlier litigations evidenced by Exs.DY and FN in relation to the Malankara Church and its properties had commenced some years prior to the printing and publication of Ex. 26. There was great controversy in those cases about the position and power of the Patriarch of Antioch, and for the purpose of determining that controversy the canons that were accepted by the Malankara Church had necessarily to be considered. Mar Joseph Dionysius figured as the plaintiff in both those suits in his capacity as the Malankara Metropolitan. His claim in those suits was opposed by Mar Thomas Athanasius. To substantiate the contentions put forward by Mar Joseph Dionysius in Ex. DY case that the ordination of the Metropolitan had to he done by the Patriarch of Antioch or his delegate and that the Patriarch alone had the power to consecrate Morone, the book of canons accepted by the Malankara Church was produced on his side and was marked as Ex. EEE. On a consideration of the overwhelming evidence in that case, these contentions were upheld in the majority judgment and it was also found that the faith of the Church in respect of these two matters was quite in conformity with the provisions contained in Ex. EEE of that case.

Similar provisions are contained in Ex.BP also produced in the present suit. According to the defendants, great difficulties were being felt by the Malankara Church in getting down Morone from Antioch for use in the Church and it was for solving this difficulty that the Church was making repeated demands for the installation of a Catholicate at Malankara. If really the Churcli had accepted Ext. 26 or any other manuscript corresponding to it as the book containing the true canons of the Church, there would have been no occasion for the Church to feel any difficulty in the matter of Morone so as to compel them to ask for a Catholicate. As per the provisions in Ext. 26, Morone could be consecrated by the Patriarch or by the Catholicos or even by the Metropolitan. Since Metropolitans were always available at Malankara, they could consecrate the Morone and supply the sat no to the churches.

The fact that the attention of the Church had at no time turned in that direction, leads to the irresistible inference that the people in Malankara never thought that Morone could be consecrated by the Metropolitan. In other words, Ext. 26 or any corresponding hook containing a

provision authorising the Metropolitan to consecrate Morone, had not been accepted by the Malankara Church as the genuine canon binding on the Church. The same is the effect of the decision in Ex. FN where also the contentions put forward by Mar Joseph Dionysius were upheld. Ex. EEE produced in Ex. DY case was not produced in 41 T. L. R. case, nor has it been produced in the present suit. The explanation offered in 41 T. L. R. case for the disappearance of that book has been considered in paragraph 35 at pp. 26 and 27. Kora Mathen Malpan, the fifth defendant in that case, appears to have explained as to how Ex EEE of that case and another manuscript copy of the canons had been brought to Malankara by Simon Athanasius, a delegate of the Patriarch, and some other Bavas who had come from Turkey. It was the manuscript copy which was available with those Bavas and which had been given to his ancestors that was produced in Ex. DY case according to him. That book again cane into the hands of Mar Joseph Dionysius for the purpose of production in another case. Kora Mathen Malpan wanted a return of that book for his own use as a teacher. Since the book was not then available with Mar Joseph Dionysius he obtained the other manuscript copy that was in the possession of Simon Athanasius aryl handed it over to Kora Mathen Malpan. This is the book which was produced and marked as Ex. XVIII in the 41 T. L. R. case and subsequently produced in the present case and marked as Ex. BP. The source from which the manuscript copy Ex. BP was obtained was thus explained and that explanation was accepted by the High Court in 41 T. L. R. case. The suggestion put forward by the other side that it is a book written in the handwriting of Mar Eustathius, a delegate of the Patriarch, was also discarded as baseless. The reasoning's adopted in paragraph 35 of 41 T. L. R. 1 appear to us to be convincing and hence we also accept the aforesaid conclusions as correct. The canon book produced as Ex. 18 in that case had been produced in a few other cases on prior occasions, i. e., in O. S. 1402 of 1063 of the Quilon District Munsiff's Court, Sessions Case No. 9 of 1069 of the Quilon Sessions Court, Summary Case No. 1 of 1087 of the Muvattupuzha Magistrate's Court and O. S. No. 66 of 1088 of the Trichur District Court. Ex. 6S, the manuscript copy prepared in the handwriting of Mar Gregorius, Metropolitan of Niranam, was also produced in 41 T. L. R. case to make out that lung prior to the publication of Ex. 26 a similar version of the canons was in use at Malankara. In dealing with this document it was pointed out in paragraph 37 of 41 T. L. R. 1 that the document saw the light of day only after the controversies in that case arose and that no satisfactory explanation was forthcoming for its non-production in Ex. DY case. It was also pointed out that if Ex. 68 was the canon accepted by the Malankara Church Mar Joseph Dionysius would not have suppressed it and would not have been instrumental in fabricating a book of spurious canons and producing the same as genuine and getting the same marked as Ex. EEE in Ex. DY case. One point urged against the reliability of Ex. BP is that it contains erasures and over-writings. This matter was also fully considered in 41 T. L. R. 1 and ultimately the High Court came to the conclusion that the erasures and over-writings were only in respect of certain headings and marginal notes and not in respect of the text of the canons incorporated in the bock. Whenever was responsible for such erasures and over-writings, it is clear that the same were done to fit in with his own ideas as to the source of the canons. At the same time it is significant to note that he did not dare to interfere with the text of the canons. If the idea was to put forward a spurious document as a genuine one, a book like Ext. BP could have been brought into existence without any erasures and over-writings in it and put forward as the manuscript copy of the canons. But that was not done in the case of Ext. BP. Even though the erasures and over-writings were there even before its first production in court, the document was produced in that condition. This is a circumstance in favor of the truth of the version given by Kora Mathen Malpan that the book was brought from Turkey by Simon Athanasius, the delegate of the then Patriarch, and handed over to Mar Joseph Dionysius. Great

reliance was placed by the respondents' learned counsel on Ext. 2S, the Kal pana issued by Patriarch Abdulla ex-communicating Metropolitan Julios Alwaris. It is pointed out that the provision relied on by the Patriarch in Ext. 28 for sustaining his order of ex-communication is that contained in Ext. 26, but not in Ext. BP. From this it is argued that Ext. 26 was accepted as containing the true canons. Ext. 28 Kalpana was issued at a time when Abdulla was about to leave Malankara. A printed copy like Ext. 26 must have been readily available and that was made use of for the purpose of framing the charge against Julies Alwaris. From this fact alone it cannot be assumed that the canons incorporated in Ext. 26 are the canons which were accepted by the Malankara Church all through the ages. It has to he remembered that Ext. 28 Kalpana was issued as late as in the year 1911. The mere fact that Ext. 26 happened to be relied on for the purpose of issuing the Kalpana Ext. 28, cannot he given so great a significance as to outweigh the legitimate inference arising from the other outstanding facts and circumstances clearly indicating that the canons incorporated in the manuscript copy Ext. BP had all along been accepted by the Malankara Church as the true canons binding on the Church. It may also be stated here that even at the time of the Mulanthuruthy synod held in the year 1876 A. D., it was felt that it would be desirable that for the proper guidance of the churches, a hook containing the canons to be followed by these churches is prepared by the Patriarch himself and authenticated copies of the same issued to each church. But it appears that no steps in that direction were taken during the several years that followed. But at the request of P. W. 17 a manuscript copy of the canons was sent to him by the Patriach in the year 1929. He has deposed to that fact and has produced Ex. BO as the authenticated copy of the canons received from the Patriarch. The lower court in paragraph 186 of its judgment has practically discarded Ex. BO and has gone to the extent of doubting whether it was sent by Mar Elias, the Patriarch, and whether the seal found on the hook was really affixed by the Patriarch. The learned Judge has also observed that Ex. BO might have been prepared by Pw. 17 himself without the Patriarch having had anything to do with it. We cannot agree that these remarks. are justified. Apart from the question whether Ex. BO was received along with the Patriarch's letter Ex. CC or some time later, there is no reason to doubt the fact that the book was sent to Pw. 17 by the Patriarch. All the same, the issue of such an authenticated copy of the canons at such a late stage cannot be ignored. Ex. BO by itself cannot therefore he of any great importance in making out that the canons accepted by the Malankara Church from very early times are those contained in Ex. BP. The fact that the authenticated copy of Ex. BO issued by the Patriarch agrees with Ex. BP will go to show that the canons contained in these books have the approval of the Patriarch. The several circumstances leading to the inference that the canons accepted by the Malankara Church are those contained in Ex. BP have been already dealt with. The conclusions reached in all the prior litigations pertaining to the Malankara Church, particularly those evidenced by, Exs. DY, FN and 41 T. L. R. 1 are also in support of, the same position. There is a full and exhaustive discussion in 41 T. L. R. 1 about all the aspects relating to Exs. BP and 26 and ultimately the High Court held that the canons accepted and followed by the Malankara Church are those contained in Ex. BP. We have carefully gone through such discussions and we see no reason to differ from the conclusions reached in that case. Accordingly we accept the conclusion recorded therein as also the reasons in support of the same.

30. Apart from the great evidentiary value given to the finding in 41 T. L. R. 1 on the question of the canons accepted and followed by the Malankara Church during the relevant period, the legal effect of that finding may also be considered. The main question that was agitated in that appeal was whether the order of excommunication passed by Patriarch Abdullah against Mar

Geevarghese Dionysius was valid and effective. The Metropolitan contended that the Patriarch by himself had no authority under the Canon law governing the Jacobite Church to issue such an excommunication order and that the order was also bad in so far as it had violated the rules of natural justice. In dealing with these contention, it became necessary for the court to consider the question of the Canon law binding on the Church and that was how the question whether Ex. A or Ex. 18 of that case contained the canons accepted by the Church loomed so large in that case. The Full Bench answered the question in favor of Ex. 18 and in the light of that finding proceeded to examine the further question whether the rules of natural justice had been complied with while passing the excommunication order. That question was also answered in the affirmative and accordingly the appeal was allowed by holding that Mar Geevarghese Dionysius and his co-trustees had become in-competent to continue as trustees. The court did not therefore think it necessary to express any opinion upon the question whether Mar Geevarghese Dionysius had become schismatic or alien to the Jacobite faith by the repudiation of Patriarch Abdullah and the recognition of Abdul Messiah as Patriarch. Metropolitan Mar Geevarghese Dionysius applied for a review of the decision in 41 T. T. R. 1. The order admitting the review petition is extracted at page 136 of 45 T. L. R. and it shows that the review was admitted subject to certain conditions. Chatfield, C. J., who admitted the review, has stated those conditions in the following terms.

> "..... 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 Ex. A and Ex.18, as to the power of the Patriarch to excommunicate without the intervention of the synod and as to the absence of an indirect motive on the part of the Patriarch which' induced him to exercise his powers of excommunication, must be taken as binding. Subject to these conditions, the review is admitted, and the case will be posted before a Full Bench".

When the appeal thus came for re-hearing before the Full Bench, the respondents filed another application praying that the restrictions and limitations imposed by the order admitting the review may be removed and the whole case treated as reopened. By the order passed by the Full Bench on that application, the conditions already imposed were re- affirmed and Chatfield, C. J., observed as follows:

> "On the considerations above mentioned, I would refuse to allow the petitioner to re-open 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".

The other two learned Judges, Thaliath, J., and Parameswaran Pillai, J., also concurred in that order. The final judgment passed as a result of the re-hearing of the appeal subject to the restrictions mentioned above and reported in 45 T. L. R. 116, shows that in considering the question of natural justice, it did not become necessary for the court to re-open the findings on the three points, which were treated as final and conclusive, as per the order admitting the review.

The appellants, however, were allowed to argue the question whether defendants 1 to 3 had become aliens to the faith of the Jacobite Church. This was a matter which, was left open by the earlier judgment reported in 41 T. L. R. 1. Regarding the findings expressly excluded from the scope of the review. Chatfield, C. J., has made the following observation in his final judgment (45 T. L. R. 116 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 the consideration at the re-hearing are inseparably connected with those questions and thereupon in disposing of this appeal the excluded questions will not be referred to".

These reservations have to he kept in mind in understanding the observations made by all the three Judges at the concluding portions of their judgment in 45 T. L. R. 116. In view of their decision that rule; of natural justice were not observed in passing the order of excommunication against Mar Geevarghese it was stated that it is unnecessary to consider the other questions in the case. It is obvious that this observation was made in respect of the questions which the court was competent to consider at the final hearing and not to any of the three questions expressly excluded from such consideration as per the conditional order admitting the review. The findings on those three questions cannot therefore be deemed to have been reopened. It cannot also he taken that those questions were left open. In view of the observation at page 139 of 45 T. L. R. that "in disposing of the appeal, the excluded questions will not he referred to" it has to he taken that the findings on the three excluded questions were left in tact even by the final judgment in 45 T. L. R. 1.16.

31. One of the three findings referred to above was in respect of the authenticity of the hooks of canons which had been marked as Exs. A and 18 in that case. The finding was to the effect that Ex. 18 contained the version of the Canon law that had been recognized and accepted by the Malankara Jacobite Syrian Christian Church as binding on it. It was also found that under the Canon law the Patriarch had the power of ordaining and ex-communicating Metropolitans by himself and without the intervention of a synod. The question is whether these findings recorded in a representative suit, to which both the rival section of the Syrian Christian community of Malankaran were made parties, do not operate as res judicata in the present suit where the question of the canons of the Church is again raised. The position in respect of the decision in 45 T. L. R. 116 is not that of an ordinary case where the first decision was reviewed and set aside by the second decision. In such a case it may not be possible that any of the findings in the first decision survives so as to attract the rule of res judicata in a subsequent suit. The rulings governing cases of that type cannot have any application to the peculiar situation disclosed by 45 T. L. R. 116 where the finding recorded in the earlier decision on the question of the canons was accepted as final and as remaining in force even after the final judgment was passed after review of the earlier decision. In fact, the question of natural justice was argued at the final hearing of the appeal on the basis that the earlier decision on the authenticity of the canons embodied in Ex. 18 is maintained. The contention of Mar Geevarghese Dionysius was that a Patriarch by himself has no power to excommunicate a Metropolitan and that such an order of excommunication could be passed only with the concurrence of the synod. This question had to be decided in the light of the canon law governing the Church, The court found that the canon law is that embodied in Ex. 18. If that finding was not maintained and if the court were to uphold that the

canon law was different and that the Patriarch by himself had no power to excommunicate the Metropolitan, the order of excommunication passed by Patriarch Abdulla could have been declared invalid for that very reason and there would have been no necessity or occasion for the court to go into the question whether Abdulla had observed the rule of natural justice in passing the excommunication order. 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 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*[7] and in *Mota Holiappa v. Vithal Gopal*[8] are in support of this position.

32. In another view of the matter also, the finding recorded in 41 T. L. R. I 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 the correctness of those orders, the fact is there that they have become final as between the parties to that suit which was a representative suit. Those orders by themselves have the force of res judicala in respect of the findings on the question of canons attempted to be re-agitated in the present suit. Thus in any view of the matter it has to be held that the canons accepted by the Malankara Church as binding on it are those embodied in Ex. BP and not those embodied in Ex. 26.

33. The question as to whether Patriarch Abdul Messiah lid been validly and effectively removed from his office before Abdulla 11 was elected and installed as the successor Patriarch, may now be considered. It is common ground that Abdul Messiah became Patriarch in the year 1895. In July 1905 the Edavagapatrika, a magazine that was edited and published by E. M. Philip, the Secretary of the Malankara Association, published a report about the news of the deposition of Abdul Messiah. That report has been marked as Ex. III (a). This was followed by another report Ex. III (b) that news had been received that Dionysius Behenam, Metropolitan of Mosul, had been elected as Kaimakharn to attend to the administrative duties pertaining to the office of the Patriarch pending the election of a new Patriarch. In the Edavagapatrika of Chingom 1081 (August 1905) another report Ex. IV (a) was published to the effect that Abdul Messiah had been deposed under the orders of the Sultan of Turkey and that the Metropolitan of Mosul has since been discharging the administrative functions of the Patriarch. It was also mentioned in that report that on being required to install a Patriarch with full powers, an assembly for the election of a Patriarch had been decided to be convened and notices regarding the same had been received at Malankara also. The purport of the notice was mentioned to be that the Malankara Metropolitan should either attend the meeting or communicate his views. In the next report Ex. V (a) which appeared in the 1,06 July issue of the magazine, it was mentioned that Ahdullah had been unanimously elected as the Patriarch by the synod and his election was approved by Government and that his installation as Patriarch would take place soon. The letters Exs. 75 to 17

received by Mar Joseph Dionysius at about the same time also contain references about the arrangements for

[7](I.L.R. 26 Mad 104)

[8](I.L.R. 40 Bom 662)

the election of a new Patriarch and also about the actual election of Ahdullah. Ex. BZ, report published in the year 1906 August issue of the Edavagapatrika, stated that Abdullah's election was.unanimous and all people were happy at it. Ex. DW is a letter dated 2-9-190G by Mar Geevarghese Dionysius and therein he has expressed great joy and satisfaction at the election of Abdullah as Patriarch. Exs. F and 13U are other reports published in the Edavagapatrika of September 190(i and December 1907 and therein also specific mention is made about the installation of Abdullah as Patriarch and of the intimation of that matter given to the various Churches. These documents make it abundantly clear that the Malankara Church had timely information about the deposition of Abdul Messiah and of the subsequent election and installation of Abdullah and that at that stage nobody had any complaint about the removal of Abdul Messiah from office or about the installation of Ahdullah as successor Patriarch. In fact the report in Ex. F was intended to dispel the feeling in some quarters that it was the Turkish Sultan's displeasure that resulted in the deposition of Abdul Messiah. The following extract from Ex. F is significant in that connection.

> "Information has reached us from other quarters that it is not on account of the resentment of the Government, but that the interference of the Government was in response to complaints from the people and the Metrans expressing the discontentment of the community. Whatever might have been the reason, that he had to abdicate his position is certain. Thereafter it was May. Dionysius Behenam, Metropolitan of Mosul who, by virtue of election by Yogam (assembly) was exercising the temporal (administrative) functions of the Patriarch. It is about two years since there had been any one to exercise the spiritual powers pertaining to the Patriarch, such as the ordination of Melpattakkars and the consecration of Morone. Therefore it was decided to convene an assembly for the election of a permanent Patriarch and invitations were issued to all the Idavagas. Among them our Valia Tirumeni (Mar Joseph Dionysius) too has had two or three letters in succession requesting him to invite the Melpattakkars in Malankara. But His Grace replied expressing concurrence (of Malankara) in the decision of the General Assembly to be held at the Thronal Diara.
>
> "On meeting being held, it was His Holiness Mar Gregorius Abdullah who was chosen with one accord. This choice having been approved by the Turkish Government, he has been installed as Moran Mar Ignatius Patriarch, on the Day of Ascension of the Virgin, corresponding to 15th Chingom according to the Syrian calendar. We know this, from the telegram received by His Graces, from the Administrator Mar Behenam Metropolitan".

Ex. F (1) Kalpana issued by the Malankara Mertopolitan on receiving the news of the installation of Ahdullah as Patriarch gives an idea as to how such an installation was accepted by the Malankara Church. The Kalpana runs as follows;

> "From Max Dionysius, Metropolitan of Malankara

> To The Vicars of all the Churches, clergy of the land, trustees of the Churches, and all people in Malankara; blessings to you all.
> Beloved,
> We rejoice to inform you that a telegram from Diabucker reached US, yesterday, from Metropolitan Mar Dionysius Behenam, to the effect, that on the 15th instant, the Most Reverend Mar Gregorius, Metropolitan, has been installed as Patriarch, on the throne of Antioch. We exhort you to pray that God may vouchsafe to this our Blessed Father, long life and enable him to administer our Churches, in all righteousness. Rest in due course.
> May the plenitude of Grace and blessings of God Almighty be wits you for ever".

This Kalpana was issued on the 24th day of Chingom 906. The mention of the Malayalam month along with the year according to the Gregorian calendar may appear to be curious. But from the numerous documents produced in this case it is clear that such a curious system was being followed at Malankara. These documents give no room for doubting the validity and the propriety of the election of Addullah as Patriarch. It was not a ease of his being imposed on the Syrian Church by the Turkish Sultan. On the other hand, the Turkish Government had only approved of Abdullah's election by the unanimous vote of the assembly of Metropolitans and had issued the Firman entitling him to exercise full powers, both temporal and spiritual, in his capacity as the Patriarch of Antioch. It has to be taken that the Metropolitans who assembled to elect a new Patriarch were fully alive to their responsibility and to the seriousness of the task they were undertaking. If there had not been a vacancy in the Patriarchal throne, caused by a proper synodical removal of Abdul Messiah from office, these Metropolitan would not have assembled together to elect a successor to the throne. The fact that the election was unanimous gives added strength to the inference that Abdul Messiah had been validly and effectively deposed and that the synod which met to elect a successor was convinced of that fact. It is therefore no surprise to find that the Malankara Church also accepted Abdullah's election as proper and valid and put his name in Ex. DU the Church Calendar for the year 1908, as the Patriarch ruling from the throne of Antioch from August 1906. It may also be stated that the name of Abdul Messiah does not find a place in this calendar. P. W. 17 who is now functioning as the delegate of the Patriarch at Malankara, has spoken to the practice that prevailed in the matter of electing and installing a Patriarch. He has stated that when the synod resolves to remove a Patriarch from office, that fact will be intimated to the Turkish Government who, on being satisfied about the validity of the resolution, will recall the firman granted to that Patriarch. Similarly on getting information that a new Patriarch has been properly elected, such election will be approved and a firman issued in favor of the new Patriarch. Dw. 27 has also admitted at page 18 of his deposition that such was the normal practice during the Sultan's regime in Turkey. This witness is one who was originally on the Patriarch's side, but subsequently went over to the side of the first defendant and hence he cannot be expected to give evidence in favor of the plaintiffs.

34. The unhesitating acceptance by the Malankara Church of Abdulla II as duly installed Patriarch is also evidenced by the conduct of the members of the Church which will be referred to presently. In obedience to a Kalpana received from Mar Abdulla that candidates for ordination as Melppattakkars should he sent to Jerusalem, a meeting of the Malankara Association was held and the necessary resolutions were passed. Those resolutions are contained in Ex. DC. By the second resolution the previous election of Poulose Ramban and Geevarghese Ramban for

ordination as Melppattakkars was confirmed. It was next resolved that the allotment of Idavaga is to the Melppattakkars about to be ordained be left to the decision of His Holiness the Patriarch when he arrives and that His Holiness be requested to ordain them as Thebal Metrans until then. It was also resolved that in view of the old age and illness of Metropolitan Mar Dionysius, His Holiness the Patriarch be requested to authorise Geevarghese Ramban (who later on became Mar Geevarghese Dionysius), after his ordination, to attend to the common affairs of the Malankara Diocese under his orders, as assistant and successor to Metropolitan Mar Dionysius. The two persons selected for ordination as Metropolitans went to Syria and got ordination at the hands of Patriarch Ahdullah and Geevarghese Ramban was authorized to function as an assistant to Mar Joseph Dionysius. After the death of Mar Joseph Dionysius, Mar Geevarghese Dionysius's election as Malankara Metropolitan was confirmed by Mar Ahdullah. Ex.EA is the deposition given by Mar Geevarghese Dionysius in Ex. 255 ease and there he has stated in unambiguous terms at page 1396 that he had accepted Abdullah as the lawful Patriarch till his death and that he had never repudiated Ahdullah. The present first defendant has put forward a theory in his deposition that Ahdullah was functioning as an assistant to Abdul Messiah. But he had to admit in the course of his examination that the Malankara Church had accepted Ahdullah's authority as Patriarch. Page 67 of his deposition contains a specific question as follows: "After Abdulla II was installed, were not the spiritual and temporal powers belonging to the Patriarch exercised by him?" The answer was: "It must have been he who exercised his functions". The attitude of Mar Geevarghese Dionysius and his followers towards Abdulla II underwent a change only when Abdullah excoumnanictited Mar Geevarghese Dionysius. Thereafter an attempt appears to have been made by these persons to get at this service of Abdul Messiah in their attempt to discredit Ahdullah. The first step in that direction was to get Ext. 79 telegram from Abdul Messiah in the following terms: "Abdullah's excommunication vain, you your followers Blessed". If really Abdul Messiah had not been properly and validly deposed and if he was continuing as the lawful Patriarch, this telegram would have been sufficient to cancel the order of excommunication passed by Abdullah and to nullify its effect. Geevarghese Dionysius got an opportunity to assert this position and to maintain his status as Malankara Metropolitan in Ext. 255 suit (O. S. No. 94 of 1088), the interpleader suit filed by the Secretary of State for India. The trial court's judgment Ext. 255 and the appellate judgment in 41 Travencore Law Reports 1 and 45 Travencore Law Reports 116 show that in-toad of concentrating on the effect of Ext. 79 telegram, Mar Geevarghese Dionysius was attacking the validity of the ex-communication order passed by Abdullah on the grounds that under the canon law Ahdullah by himself was not competent to pass such an order without the concurrence of the syond and that the order was passed without complying with the rules of natural justice. These contentions were repelled in 41 Travencore Law Reports 1. Mar Geevarghese Dionysius sought for a review of that decision. In that attempt he succeeded and the final decision is reported in 45 Travencore Law Re- ports 116. The excommunication order was held to be invalid on the ground that it was passed in violation of natural justice. The persistence of Mar Geevarghese Dionysius in impeaching the validity of the excommunication order on such a ground, is a sure indication that if the order had been improperly passed by Abdullah it would have been effective. This betrays the consciousness of Mar Geevarghese Dionysius that Abdul Messiah had ceased to be a Patriarch and that Abdullah was the lawful Patriarch from the time of his installation. On 7-9-1911 a meeting of the Malankara Association was held and certain resolutions were passed questioning the validity of Abdullah's order ex-communicating Mar Geevarghese Dionysius. These resolutions are contained in Ex. 86. One resolution stated that the order of excommunication was not acceptable to the community. By another resolution the Association decided to depute three persons to

Jerusalem and other places in Syria to make the necessary inquiries for finding out the respective positions of Abdul Messiah and Abdullah and to report the result of the inquiry to the Association. It was also resolved that the amount collected by way of Ressisa due to the Patriarch should be sent over to him only after the report of the above-said inquiry was received. These resolutions appear to have been intended as mere threats to Abdullah, and that appears to lie the reason why nothing came out of these resolutions. If the contemplated inquiry had been held, the result must have been in favor of Abdullah and against Abdul Messiah, and that must be the reason for not disclosing the result of the inquiry. Naturally, therefore, Mar Geevarghese Dionysius and his supporters could not disown the status of Abdullah as the lawful Patriarch even though the telegram Ext. 79 received from Abdul Messiah was followed by his own arrival at Malankara. After coming over to Malankara he ordained the present first defendant, Mar Phelixinos and Mar Ivanios as Thebel Metropolitans with no Idavagas under them. In the deposition Ext. EA given by Mar Gee- varghese Dionysius in Ext. 255 case, he has stated that the ordination of these Metropolitans cannot be said to be entirely canonical. This means that the ordination made by Abdul Messiah was uncanonical, obviously for the reason that he had ceased to be a Patriarch. The first defendant and the two others also appear to have realised the defective nature of their ordination and they made an attempt to get the same regularised by Mar Elias who succeeded Mar Abdullah as Patriarch. When the decision in 41 Travencore Law Reports 1 went against Mar Geevarghese Dionysius he too wanted to get the order of excommunication against him cancelled by Mar Elias, and for that purpose he went over to Syria. That occasion was made use of by the first defendant and two others, who were ordained as Metropolitans by Abdullah Messiah, to convey their requests to Mar Elias. These requests were embodied in the letter Ext. BC addressed to Mar Elias and which was entrusted to Mar Geevarghese Dionysius. In that letter they have stated their own reasons which led up to the misunderstandings between Ardullah and his supporters on the one hand, and Mar Geevarghese Dionysius and his supporters on the other hand. Reference also was made to the circumstances under which the first defendant and the others happened to take ordination from Abdul Messiah when he visited Malankara. This is stated to have been done "owing to the insistence and pressure of a large number of people and in order that they might be prevented from leaving our Church and embracing other religions". Towards the closing portion of the letter Ext. BC, the appeal to Mar Elias was made in the following terms:

> "We acknowledge Your Holiness alone as the pride of our race and our Supreme Head and the High Priest in occupation of the exalted throne of Antioch. We accept you and render obedience to Your Holy Commands; we entreat the mercy of your authority and pray that you might accept us as Your Holiness' children; that Commands of Blessings and acceptance may be issued to us; that the orders of excommunication promulgated by the High Priest, your Predecessor, be cancelled; and that all other things may be done to restore peace to our Malankara Church. We further pray that Your Holiness may extend your right hand in the plenitude of grace and blessings and bless us; that our trespasses and transgressions, voluntary, involuntary, conscious and unconscious, may be expiated; that our sins and foolishnesses may be pardoned; that our departed may be comforted-all these through Your remembrance of us in Your effective prayers and acceptable Kurbanas. Bless us for the remission of our sins."

It has to be remembered that this letter was written by the first defendant and his associates nearly twelve years after the alleged establishment of the Catholicate in Malankara by Abdul Messiah. The letter unequivocally admits that Ahdullah was the lawful Patriarch at that time and that Elias was the successor of Abdullah. The request that the order of excommunication promulgated may be cancelled, implies an admission that Ahdullah had the authority to pass such an order. The letter further concedes that Abdul Messiah was not competent to ordain the first defendant and others as Metropolitans and that they accepted such ordination only on account of pressure from a large number of people and also to see that they do not leave the Malankara Church. By requesting Mar Elias to cancel the order of excommunication, the first defendant and others had admitted that the telegram Ext.79 sent by Abdul Messiah was ineffective in that direction. While Geevarghese Dionysius was on his way to Syria, he sent the letter Ext. BB to Mar Elias and therein he has acknowledged Elias as the Patriarch occupying the apostolic throne of Antioch. The letter closes with the following prayer:

> "Moreover, we pray to Your Holiness that you might stretch forth Your right hand of mercy and benediction and bless us and forgive us our trespasses and sins, voluntary as well as involuntary and committed knowingly and unknowingly".

The letter Ext. CD sent by Mar Elias to P. W. 17 the delegate at Malankara gives an idea as to what transpired at the interview which Mar Geevarghese Dionysius had with Mar Elias. That letter states as follows:

> "For the peace of the people of Malankara in India, We have set you apart to accompany this Geevarghese, "ho has come to US and expressed repentance. In Our stead. you should hear both parties carefully and attentively. As Geevarghese is anxious to go back on account of the approaching winter, it has not been possible for Us to hear their views in person, as We desired. In case he and his associates redeem their promises to Us, namely, that they execute registered udampadies and confess that Abdul Messiah was deposed and that he had no spiritual capacity to confer Nalvaram you will inform Us, so that We may offer the necessary prayers and give them the necessary blessings. Thereafter, you should, as he has requested Us, choose for him a church or a diara where he can spend his time quietly".

The promises referred to in this letter were not fulfilled after the return of Mar Geevarghese Dionysius to Malankara and hence the idea embodied in Ext. CD did not fructify. All the same, Mar Geevarghese Dionysius was able to achieve his object when the decision in 45 Travencore Law Reports 116 was announced and which declared his excommunication invalid. Thereafter, himself, the first defendant and others began to adopt an attitude of hostility and defiance towards the Holy Patriarch. Saon after the decision in 45 Travencore Law Reports 116, some members of the Patriarch's party instituted another suit, O. S. No. 2 of 1104, in the Kottayam District Court to get an order of in- junction restraining Mar Geevarghese Dionysiuc and his co-trustees from drawing the interest on the trust fund. Ex 41 is copy of the written statement filed by Mar Geevarghese Dionysius in that suit and therein for the first time he openly supported the Catholicate alleged to have been established in Malankara. Nothing came out of that suit which happened to he dismissed for default. The dissensions in the Church continued. Lord Irwin, who

was Governor General of India at that time, desired to bring about unity in the Church. On 7-12-1930 he sent the letter Ex. CH at the instance of the first defendant and others to Patriarch Mar Elias requesting hint to make an effort to achieve such unity. Ex. CJ is the reply sent by the Patriarch agreeing to do all that is possible in the natter. On 21-3-1931 Mar Elias arrived at Malankara and stayed for some days at the Alwaye Seminary. Mar Geevarghese Dionysius met him at this Seminary on 23-3-1931. According to the plaintiffs, the disputes between these two religious dignitaries were settled at that interview and Mar Elias removed the ban of excommunication on Mar Geevarghese Dionysins. The defendants do not agree to this version. But the versions given by Dw. 6 and 29 on the one hand and that given by Pw. 17 on the other, agree in one respect, namely, that Mar Elias accepted Mar Geevarghese Dionysius as the Metropolitan and commanded the other Bishops to embrace him as their brother. Pw. 17 has, at pages 13 and 14 of his deposition, described the manner in which Mar Elias removed the ban of excommunication and accepted Mar Geevarghese Dionysius as Malankara Metropolitan. Dw. 6 was for some time the Secretary of the Malankara Association and later on he entered Government service and retired as a District Judge. He was also present at the always Seminary when Mar Geevarghese Dionysius met Mar Elias. This witness has also stated at pages 11 and 12 of his deposition that Mar Elias and Mar Geevarghese Dionysius spent some time in the Seminary in private discussion and thereafter both of them came out in a happy mood and then Mar Elias asked the people assembled there that they should accept Mar Geevarghese Dionysius as Metropolitan. There is no reason to doubt the truth of the version given by a respectable witness like Dw. 6. His version substantially agrees with the version given by Pw. 17 and these versions make it clear that Mar Elias cancelled the ex-communication of Mar Geevarghese Dionysius and accepted him as Malankara Metropolitan. In the Kalpana Ext. AA dated 27-3-1931 issued by Mar Elias to the Metropolitans, Priests and people of Malankara, the Patriarch himself has stated that on being convinced of the true repentance of Mar Geevarghese Dionysius his excommunication was cancelled and he was accepted as Malankara Metropolitan. Accordingly, the Command was issued that his position must be accepted by all people. But that was not sufficient to fully satisfy Mar Geevarghese Dionysius who was anxious to get recognition of the position of the first defendant and also of all that Abdul Messiah had done at Malankara. Mar Elias was not prepared to go to that extent. On 27-6-11,31 he issued the notice Ext. BG for calling together a meeting of representatives of all the Churches at Malankara. As a counter-move, Mar Geevarghese Dionysius issued notice for holding a meeting of the Association on 10-7-1931. Suspecting that this was a mischievous move on the part of Mar Geevarghese Dionysius, the Metropolitans who were all along faithful to the Patriarch, issued the notice Ext. I on 1-7-1931 warning the members of the Church not to participate in the rival meeting called by Mar Geevarghese Dionysius, because the Metropolitans who had not been accepted by the Patriarch would also be participating in that meeting. Ext. 98 (b) contains the proceedings of that meeting which was attended by the supporters of Mar Geevarghese Dionysius. Thus the possibility of bringing about peace and concord at Malankara again became difficult. Mar Elias could not achieve the object of his visit to Malankara and on 12-2-1932 he died at a place known as Omalloor.

35. Pending the election of a successor to Mar Elias, Mar Ephraim was appointed as Kaimakham to attend to the administrative functions of the Patriarch. Invitations for the synod to elect the new Patriarch were duly issued to the several Metropolitans. Regarding the intimations sent to Malankara, the communication Ext. CF was sent to Pw. 17, and therein it was stated that Mar Geevarghese Dionysius and the Metropolitans of Ankamali and Cochin had been invited for the

synod. Copies of the formal invitations sent to these Metropolitans were also sent to Pw. 17 along with Ext. CF. In the English rendering of this letter the reference to such enclosures was incorrectly translated. The dispute regarding the correctness of the translation was resolved at the time of the arguments by placing the original in the hands of a Priest on the respondent's side who was well-versed in Syriac. His reading of the original was that the reference to the enclosures was to the copies of the invitations sent to the Metropolitan, and not to the original invitations themselves. Both sides agreed that this is the correct reading of Ext. CF. This letter would indicate that invitations had. been sent to Mar Geevarghese Dionysius and others. The telegram Ext. 66, 66 (a) and 66 (b) sent by Mar Geevarghese Dionysius to three Metropolitans of Syria and the subsequent letter Ext. 65 sent by him, would also go to show that Mar Geevarghese Dionysius had received the invitation for the synod. The telegraphic communication was to the following effect:

> "Malabar Church will not accept Patriarchal election without participation of Catholicos, Malabar Mijilis. Letter follows. Please inform other Bishops".

The letter Ext. 65 confirmed the telegraphic communication and it proceeded to explain why insistence was made that the Catholicos should also be invited for the synod. It is clear that Mar Geevarghese Dionysius was trying to compel recognition of the Catholicos at Malankara in spite of the fact that successive Patriarchs have been stoutly refusing to recognise any Catholicate or Catholicos at Malankara. Apart from these aspects, it is clear from Exts. 66, 66 (1) and 66 (h) and 65 that the complaint of Mar Geevarghese Dionysius was that the Catholicos was not invited for the synod. It is significant to note that no complaint was put forward that Mar Geevarghese Dionysius as Malankara Metropolitan was not invited. It can therefore be safely presumed that he had received the invitation sent to him as mentioned in Ext. CF. The synod which met in pursuance of such invitations elected Mar Ephraim as the Patriarch to succeed Mar Elias. After he was installed as Patriarch, defendants 1 and 4 went to Syria and made one more attempt to get recognition of the first defendant's position as Catholicos. Exts. CB and Z give an idea of the discussions which the first defendant had with Mar Ephraim. Ext. CB is a book published by the fourth defendant who has been examined as Dw. 26 giving an account of the trip that himself and the first defendant had undertaken to Jerusalem. The plaintiffs do not admit the truth or the correctness of all that is contained in this book. At the same time it is clear from Ext. CB that defendants 1 and 4 have approached Mar Ephraim and had made an attempt to persuade the Patriarch to accept the Catholicos. This shows that the position of Mar Ephraim as lawful Patriarch was conceded by them. Ext. Z the Kalpana issued by Mar Ephraim on the 27th Kanni 1934 states that the first defendant was not amenable even to the most favorable terms offered by the Patriarch. In one portion of this letter, the Patriarch has made the following remarks about the first defendant and his followers:

> "They are wise in their own eyes. They do not desire to know the truth. Their thoughts are crooked and distorted. They vainly attempt to reconcile lawful subjection to the throne of St. Peter. with open revolt against it. They do not wish to realise that the cause of their fall and weakness is separation from the power pertaining to Priesthood. They do not desire to accept the imposition of hands, according to the rules of the Holy Church. On the other hand, in a spirit of revolt they follow Abdul Messiah. As for him, though he was once

> Patriarch, he had been canonically deposed from the throne for proper reasons particularly on account of mental derangement. Even p . rightful Patriarch is not competent to establish a Maphrianate or Catholicate without an oecumenical synod of the Church. When he (Abdul Messiah) was lawfully on the throne, he did not ordain even an Episcopa for Malankara. It is notorious that this pitiable man, when he had fallran from the Estate, was prevailed upon by Metropolitan Geevaighese to write and act, as a tool in his selfish hands, contrary to rules, without deliberation and in a meaningless fashion. It is known to all that these actions are absolutely illegal".

Finally the following directions were issued to the Faithful at the closing portion of the Kalpana, Ex. Z:

> "They have out themselves adrift from the Mother of Life, the Holy Church of Antioch. Therefore they are aliens to us. Henceforward, they, shall be, to you, as outside the fold of the Holy Church, None of you have permission from God or from Us to co-operate with them or join them in any worship pertaining to the Church. Deem them as disentitled to anything pertaining to the Church until they repent and obtain absolution from Us and Our Throne".

From the facts so far stated, it is clear that Patriarchs Abdullah, Elias and Ephraim were all properly and validly elected and ordained and that they were accepted as such by the Malankara Church. All these Patriarchs have been consistently maintaining the position that Abdul Messiah had been canonically deposed. The repeated attempts made by Mar Geevarghese Dionysius and the first defendant to induce these Patriarchs to regularise the ordinations made by Abdul Messiah at Malankara and to accept as valid everything done by him, betray a conscious feeling on their part that when these acts were done by Abdul Messiah, he was not a lawful Patriarch but had been synodically removed from office. If there was no such synodical removal, it would have been possible for the defendants to produce reliable evidence of specific acts done by Abdul Messiah in his capacity as Patriarch anywhere in his jurisdiction in Syria after 1905 when his firman was withdrawn by the Turkish Government. But no such evidence has been adduced in this case and the reason for the same cannot be that they have no burden of proof in this case. The obvious reason is that no such evidence is available. It has also to be remembered that Mar Geevarghese Dionysius himself had gone to Syria to take his ordination at the hands of Abdullah and during that trip he could have had ample opportunities of making inquiries as to how Abdul Messiah had been deposed and Abdullah was installed in his place. A man of the position and ability of Mar Geevarghese Dionysius would not have accepted ordination at the hands of Abdullah before satisfying himself on proper inquiry that it was after a proper synodical removal of Abdul Messiah that Abdullah was elected to succeed him.

36. There are certain documents from which it can be gathered that Abdul Messiah himself had conceded that the synod was instrumental in deposing him and electing Abdullah as his successor. Ext. 81 (b) is the translation of Ext. 81 letter dated the 17th Karkatagam 1914, sent to Mar Geevarghese Dionysius after his return to Syria from Malankara. In this letter Abdul Messiah has narrated all the hardships he had to undergo during that return journey. He has also stated that the Metropolitans and Priests at Syria conducted him with great jubilation to the Holy

Kurukuma Diara and placed him on the Holy Throne of Diara. The manner in which this treatment accorded to him is described indicates that he felt that a special consideration was shown to him. If he was the ruling Patriarch even at that time, he was entitled as a matter of right to he received back to the Holy Throne and the Metropolitans and Priests would have been bound to render him all honours. He would not have felt anything special about it. But his statement in Ext. 81 that there was something special and unusual about the treatment accorded to him, necessarily implies that consistent with his position as a deposed Patriarch, he could not normally expect such a treatment. In another portion of the same letter there is a reference to Abdullah as having been the Patriarch. But that admission is qualified by adding that Abdullah 'was Patriarch only for a time and that he is absolutely blind and he is in the Diara at Jerusalem. Excepting the statement contained in this letter there is no evidence to substantiate the version that at the time of this letter, Abdullah had become blind and was at Jerusalem. There is not even a suggestion in this letter that Abdul Messiah had not been deposed before Abdullah was installed as Patriarch. Ext. 244 is put forward as the printed copy of the Malayalam rendering of a Kalpana dated 15th Vrischigom 1911 said to have been received from Abdul Messiah and circulated among the Churches by Mar Geevarghese Dionysius. Since the non-production of the original of Ex. 244 is not properly explained, the plaintiffs have not admitted the genuineness of Ex. 244. All the same, they are entitled to make use of the admissions contained in this document produced by the defendants and relied on by them. There is a clear admission by Abdul Messiah in Ex. 244 that the synod had elected Ahdullah as a Patriarch. But at the same time it is stated that Abdullah had received the Episcopas with bribes and fraud and thus got himself installed. All the same, Abdul Messiah's position was that he could not say that Ahdullah did not possess the dignity pertaining to the office of a Patriarch. The election was said to be uncanonical because Abdul Messiah was alive at that time, the suggestion being that during the lifetime of one who had been a Patriarch another could not be installed in his place. Which canon supports this position, is not stated or proved. What is significant to note is that in this Kalpana, Abdul Messiah had no complaint that he had not been synodically removed. If there was no such removal, he would have put forward that as the reason for characterising Abdulla as an uncanonical Patriarch, rather than put forward the theory that only after the death of one Patriarch a successor can be installed. Abdul Messiah had also not put forward any complaint that Abdulla happened to be installed as a Patriarch as a consequence of the wrongful withdrawal of his firman by the Turkish Sultan as suggested by the defendants. Eats. 74 and 75 are two other documents relied on by the respondents. The appellants questioned the genuineness of these documents. Ext. 74 is a letter purporting to have been sent by Sleeba Semmasan from Kottayam Seminary to Mar Geevarghese Dionysius who was at that time on tour. Ext. 75 is an enclosure to Ext. 74 and the contents of Ext. 75 are said to he the substance of an Arabic letter received by the Semmasan from one Authoon of Mosul. In the absence of the original letter said to be received from Anthoon and also of proof of the same, much weight cannot be attached to the contents of Ex. 75. Dw. 27 is the witness put forward to prove these letters and he has stated that the letter was written by him to the dictation of Sleeba Semmasan. There 1; no proper explanation why his services were sought for that purpose and hence the version given by Dw. 27 cannot be believed. Apart from this aspect of the matter, the contents of E. 75 are more in favor of the plaintiffs than in favor of the defendants. The version said to have been given by Anthoon is that the people of Mardin had resented the election of a new Patriarch in place of Abdul Messiah and that later on the rival parties came to some understanding. The opposition appears to have been mainly directed against the candidature of Metropolitan Behenam. Whatever might have been the reason for the opposition, the letter makes it clear that the Patriarch's place had become vacant and that a

new Patriarch was going to he elected. The vacancy could have arisen only if Abdul Messiah had been deposed. The opening paragraph of the letter shows that he had been deposed and that the objection to such deposition was that a Patriarch could not he removed except on grounds of heresy. Apart from the question of the sustainability of the grounds on which Abdul Messiah had been removed, the fact of synodical removal gains support from Ext. 75. Ext. 76 is a letter said to be sent by Mar Osthathios to Mar Joseph Dionysius stating that Klioja Anthoon had informed Abdul Messiah of the success in the Arthattu case (Ext. FN) and had also expressed a wish that all temporal powers would be restored to the Patriarch. Regarding the proof of the genuineness of this letter, it stands on no better footing than Ext. 15. The additional feature to be mentioned about Ext. 76 is that it has no real bearing on the question of the deposition of Abdul Messiah.

37. A few other letters are relied on by the respondents to show that the plaintiff's case that the synodical removal of Abdul Messiah was in the year 1903 cannot be true. Certain facts have to be kept in mind while examining these documents. Assuming that there was a synodical removal in the year 1903, it would not have taken effect immediately. The matter had to he reported to the Turkish Government and only on the Government's approval of the synodical deposition of the Patriarch and the consequential withdrawal of the Firman granted to him, he will cease to be a Patriarch. The evidence in the present case is to the effect that the withdrawal of the Firman was in the year 1905. The official deposition could have been published only then. Eats. 111 (a), III (b) and IV show that the deposition of Abdul Messiah was widely known only in the year 1905. Naturally, therefore, there is the possibility of an impression being formed that Abdul Messiah was deposed in the year 1905, and unless one is careful about maintaining the different stages of the deposition i.e., the resolution of the synod and the subsequent withdrawal of the Firman by the Sultan of Turkey, there is every chance of confusing the date of the deposition. Since some of the documents give the dates according to the Syrian calendar, there is great scope for committing mistakes in giving the corresponding dates as per the Gregorian calendar and also as per the Malabar calendar. Viewed in the light of this background, we think that no great significance can be attached to the dates mentioned in the documents to be referred to hereafter. Ext. 73 letter, enclosed in Ext. 73 (a) envelope, is stated to have been sent by Kora Mathen Matpan to Abdul Messiah. The letter is of the year 1908. The letter together with the envelope, is stated to have been brought by Abdul Messiah when he came to Malankara and is stated to have handed it over to Mar Geevarghese Dionysius who got it published in the Malayala Manorama. Here again, the letter is sought to be proved by Dw.25 who swears that he wrote it to the dictation of the Malpan. Dw. 4 states that the seal on Ext. 73 resembles the seal of Mathen Malpan. The evidence of these two witnesses will not afford sufficient proof that Mathen Malpan was the author of the letter. Nothing can turn upon the failure on the part of Mathen Malpan to deny the letter' when it was published in the Malayala Manorama, so long as there is no positive proof that his attention was drawn to that publication. Even if Ext. 73 is taken to be the letter sent by Mathen Malpan, it can only go to show the great attachment which he had towards Abdul Messiah. That apparently is the reason for the advice contained in that letter that Abdul Messiah should litigate for the expulsion of Patriarch Abdullah and for establishing that Abdul Messiah is the lawful Patriarch according to the canons of the Syrians. The letter also contains a warning that if Abdul Messiah were to come to Malankara without securing the orders of the King and without ascending the Throne of Antioch, many might suspect him and might not accept him as a Patriarch. The legitimate inference from these suggestions is that Abdul Messiah had been effectively removed from his office as Patriarch even before he proceeded to Malankara. Exts. 71 and 72 are two other letters stated to have been sent by Kora Mathen Malpan to Mar Joseph

Dionysius. The services of D. Ws. 24 and 25 have again been utilised to attribute the authorship of these letters to Malpan. Their evidence cannot be accepted as sufficient proof of the genuineness of these letters. Assuming that the letters were written by Mathen Malpan, all that is gather-able from them is that Mathen Malpan was carry ing on correspondence with Khoja Anthoon and Abdul Messiah with the idea of making Mar Joseph Dionysius a Maphrian. Malankara knew of the deposition of Abdul Messiah only in the year 1905 and hence letters like Exts. 71 and 72 could have been written in the year 1904 under the impression that Abdul Messiah was the Patriarch even then. Then there is Ext. 170 which is a letter written by Pw' 17 by way of reply to a pamphlet published by Dw. 27 urging the necessity of the acceptance of the Catholicate at Malankara. Relying on a letter purporting to have been sent by Abdul Messiah to Khoja Anthoon and which the letters sons had handed over to Pw. 17, he made out a case in Ext. 170 that Abdul Messiah had expressed himself against the establishment of a Catholicate in Malankara. The letter said to have been sent by Abdul Messiah has been produced and marked as Ext. CE. The version in Ext. 170 was that this letter was sent by the Patriarch one year prior to his deposition. Pw. 17 also stated in Ext. 170 that the Patriarch's letter was sent in the year 1904. From the sequence of these dates, it is argued that according to the version given by Pw. 17 in Ext. 170, the deposition of Abdul Massiah could only have been in the year 1905 and not in the year 1903, as alleged by the plaintiffs. Pw. l7 became confused when confronted with these letters and dates and he admitted that he has made a mistake in mentioning the dates. His explanation as to how he happened to commit the mistake, does not appear to be convincing. But the respondents' suggestion that Pw. 17 had tampered with Ext. CE letter by correcting its date so as to fib in, with his explanation has to be discarded as unwarranted. There is no knowing as to who was respoc iblo for the alleged tampering. The letter Eat. CE was in the possession of Anthoon and later on in the possession of his sons until it passed on to P. W. 17. It is not possible to say when and by whom the letter was tampered with. The respondents are not prepared to admit the genuineness of Ext. CE for the obvious reason that the letter contains a statement that the request for the appointment of a Maphrian for Malankara cannot be complied with because it is against the rules of the Church. Since the genuineness of the letter is not admitted, no argument can be allowed to be built up on the basis of the date contained in it. If Pw. 17 had not become confused in his ideas as to the dates according to the Gregorian calendar and Hijra Era his version in Ext. 170 could have been easily explained. Even if Ext. CE is taken to have been written in the year 1904, the statement that it was one year prior to the deposition of Abdul Messiah would be correct if the reference is to the effective deposition by the withdrawal of the Firman in the year 1905. In this view of the matter Ext. 170 will not go against the version that the synodical removal was in the year 1903. Then there is Ext. CR salmoosa or pledge, executed by Dw. 27 in favor of Elias III in the year 1927. In that document there is the following undertaking by Dw. 27:

> "I repudiate Abdul Messiah who was discharged in the year 1905, by the decision of the synod, from the office of the Patriarchate, whom the excommunicated Geevarghese and companions had called to Malabar in the year 1086 M. E. I also reject all the spiritual orders given by him in Malabar as to Catholicos, Metropolitans and others as well as all the persons who were ordained by the latter or those who will be ordained by them for the reason that such ordination is not canonical",

The argument on behalf of the respondents is that the reference that Abdul Messiah was

discharged in the year 1905 by the decision of the synod, would go to show that there could not have been a synodical removal in the year 1903. Here again it has to be noted that the year 1905 need not necessarily refer to the year of the decision by the synod and also of the discharge of the Patriarch from office. The discharge from office might have been the result of the synodical decision, but the decision could have been in the year 1903 while the discharge from office by the withdrawal of the Firman could have been in the year 1905. It is not also shown that the attention of the parties to the document was particularly drawn to the significance of the date of the synodical decision or the date of the withdrawal of the Firman. But the above extract is clear that according to Dw. 27 Abdul Messiah was removed from office as the result of a synodical decision. Then there is Ext. 246 which purports to be a kalpana dated 1-11-1903 issued by Mar Abdul Messiah to Mar Joseph Dionysius and two other Metropolitans of Malankara. The genuineness of this document has also been disputed. This document was marked in the course of the examination of the 1st defendant as Dw. 28. At page 150 of the printed deposition he has admitted that he has no direct knowledge about this document and that it was his Secretary Who took it from the records in the Kottayam Seminary and entrusted the same to him. The cover in which the document must have been enclosed at the time of its despatch, is not forthcoming. The document states that the Metropolitans had sent a sum of Rs. 1,000/- to Abdul Messiah through one Sassoon at Bombay. Dw. 28 has no knowledge about this fact also. Under these circumstances it cannot be said that Ext. 246 has been proved to he genuine. The seal found on the document by itself is not sufficient to establish the genuineness of the document. It is relied on to show that Abdul Messiah had expressed his readiness to ordain a Maphrian and depute him to Malankara for the purpose of ordaining Metropolitans. Such a change of attitude on his part is seen to have developed near about the time of his synodical removal in the year 1903, as alleged by the plaintiffs. His actual removal from office by the withdrawal of the Firman took place only in 1y05 and it would appear that the intervening period was utilised by him to his best advantage. The receipt of Rs. 1,000 from the Metropolitans as admitted in Ext. 246, must have served as an inducement to him for rendering reciprocal help to the Metropolitans by acceding to their request. This document cannot therefore show that he had not been synodically removed in the year 1903. Ext. 82 is put forward as the copy of the photograph of the dead body of Abdul Messiah taken some time prior to the burial ceremony. This is attempted to he proved through the evidence of Dw. 26. He was not in Syria at the time of the said burial. It is also admitted by him that he has not seen Abdul Messiah. He has only got some second-hand information about the photograph Ext. 82. According to him some people in Seema told him that it is the dead body of Abdul Messiah that is shown seated on the Throne at the centre of Ext.82. Such being the nature of the evidence regarding Eat. 82, it is difficult to hold that it is the dead body of Abdul Messiah that is seen photographed in Ext. 82. Even if such identity is taken to have been established, it cannot lead to any inference that Abdul Messiah had not been deposed. An Ex-Patriarch on his death could also be given a ceremonial burial. Thus the series of documents relied on by the respondents do not in any way outweigh the other items of evidence and outstanding circumstances already dealt with and which lead to the irresistible inference that Abdul Messiah was deposed as a result of a synodical resolution followed by the withdrawal of the Firman issued to him.

38. The documentary evidence adduced by the plaintiffs in proof of the synodical removal of Abdul Messiah may now be considered. Some time after the deposition of Abdul Messiah from the Patriarchal throne, a communication was sent by the Turkish Ambassador, Tewfik Pasha, to the Foreign Secretary of the British Government, giving intimation of the deposition of Abdul

Messiah and of his unlawful activities after such deposition. The communication to that effect was transmitted in due course to the British Resident in Travencore and Cochin who, in his turn, conveyed the information to the Travencore Government. The 1st appellant in this case applied to the Travencore Government for an attested copy of the communication sent by the Turkish Ambassador intimating the fact of the deposition of Abdul Messiah to the British Government. Accordingly the Chief Secretary to the Travencore Government sent a true copy of the translation of the letter dated 10th May 1912 sent by the Turkish Ambassador to the British Foreign Secretary. This copy along with the covering letter from the Chief Secretary, was enclosed in a cover addressed to the 1st appellant. The covering letter has been marked as Ext. EK and the cover in which it was enclosed has been marked as Ext. EK (1). But the copy attached to the Chief Secretary's letter was not admitted in evidence and marked as an Exhibit because of the objection of the defendants that such copy was inadmissible in evidence. It is argued on behalf of the appellants that the objection as to the admissibility of the document is untenable and that the lower court went wrong in upholding the objection. The document in question is the certified copy of an official communication received by the Travencore Government from another Government. The communication is a record of the acts of a public officer of a foreign country viz., Turkey. The Turkish Ambassador in his official capacity had sent the communication about the official act of deposition of Abdul Messiah from the Patriarchal throne. Such deposition finally effected by the withdrawal of the Firman issued to the Patriarch, was an act of the sovereign authority in Turkey and the communication sent by the Turkish Ambassador is a record of the act taken by a public officer of that country in his official capacity. such a record falls under the category of public documents enumerated in Section 74 of the Evidence Act. This section in the Travencore Evidence Act is the same in the Indian Evidence Act with this difference that instead of the words "British India or India" in the Indian Act, the word "Travencore" occurs in the Travencore Act. The communication under consideration comes under clause 3 of sub-section 1 of Section 74. Under that clause records of the acts of public officers of a foreign country are also treated as public documents. So far as the Travencore Government is concerned the communication received by it from the British Government is an original document end hence a certified copy of the same issued by that Government cannot be characterised as the copy of the document in question. The communication being an original document in the custody of the Chief Secretary to Government, he was entitled under 'Section 76 of the Evidence Act to issue a certified copy of that document. The copy appended to Ext. EK letter of the Chief Secretary is such a certified copy of a public document. Under Section 77 of the Evidence Act such certified copies can be admitted in evidence as proof of such public documents and the certified copy of the communication sent along with the Chief Secretary's letter Ext. EK, is, therefore, held to he admissible in evidence. Accordingly, the certified copy is admitted in evidence and is marked as Ext. EK (2). The following statements in Exts. EK (2) go to show that Abdul Messiah had been synodically removed:

> "The Imperial Majesty of Justice and Public Works has recently received information from the Vicar of the Syrian Patriarch at Constantinople that the Ex.Patriarch Abdul Messiah Effendi has lately left Duar Bekiren route for India. Abdul Messiah Effendi who has been deprived of his office and has no religious authority whatever in the Syrian Community, must have undertaken this journey with the object of sowing discord among the Syrians residing in India ..... Now, His Holiness Abdullah Effendi, who is the

only Patriarch recognized by the Syrian Church, has alone the power of exercising prerogatives inherent in that office".

The communication closes with the request as follows:

"Tewfik Pasha would, therefore, be grateful to his Britannic Majesty's Government if it would communicate the above information to the authorities in Travencore and Cochin (Malabar) in order that steps may be taken to prevent the Ex. Patriarch when he arrives in India from engaging in intrigues by trading on the public confidence".

39. Exts. BD and BQ are the next documents having a direct bearing on the syondical removal of Abdul Messiah from Patriarchate. These documents have been produced and proved by Pw. 17 the local delegate of the Patriarch at present. He swears that the proceedings of the synod which resolved to depose Abdul Messiah are entered in the register kept in the Zaafaran Diara at Mardin. Since it is not possible to get the original register itself from the Diara for the purpose of production in this case, Pw. 17 wrote to Patriarch Elias to get a certified copy of the relevant proceedings as entered in the register and to forward the same to him. He has also stated that he wanted to get such a copy to satisfy people who were feeling doubts as to the circumstances under which Abdul Messiah happened to be deposed. Ext. BD is the certified copy sent to this witness by the Patriarch. Pw. 17 has stated that he received this copy some time prior to the institution of Ext. 43 suit (O. S. 2/1104) in the Kottayam District Court. Ext. CC is a letter sent.by Elias to Pw. 17 while forwarding Ext. BD to him. Therein it is stated that since the Patriarch was away, there was some delay in complying with the request of PW. 17. The difficulties which had to be confronted in getting the copy prepared and certified have been stated in Ext. CC thus:

"We had also to obtain copies and translations of the Firman and the resolutions of the synod and to get them certified. It is very difficult to get these things done in a town like Mosul, where there are no proper facilities. Anyhow, by the Grace of God, we were able to get it done. Nothing more is possible".

The certificates and attestations in the copy Ext. BD have been separately marked. Ext. BD (1) is the signature of one Kandoor described as Bishop and Acting Patriarch, Mardin, and he has attested Ext. BD after certifying that he copied it minutely from the Register of the Apostolic See of Antioch in the Patriarchal Chamber in the City of Mardin on the 6th of April 1929. Ext. BD (2) is his seal. Ext. BD) (3) is the translation of Ext. BD. Ext. BD (4) is his signature attesting this translation and Ext. BD (5) is his seal containing letters in the Turkish language. Ext. BD (6) is the attestation by two laymen whose signatures have been marked as Eats. BD (7) and BD (8). Ext. BD (9) is the attestation by an officer of the Turkish Government at Mardin. His signature is marked as Ext. BD (10) and his seal is marked as Ext. BD (11). Ext. BD (12) is an English translation from the text and this translation is attested by the Administrative Inspector at Mosul, Liwa. The seal of the First Class Magistrate, Mosul is also affixed. Ext.BD was first produced in Ext. 43 case which ended in a dismissal for default. Subsequently, the document has been incorporated in the present suit on the application of the plaintiffs. The defendants contended that Ext. BD is inadmissible in evidence and this objection was upheld by the lower court for the

reasons stated in paragraph 12 of its judgment. Those reasons do not appeal to us and hence we have to differ from the conclusion of the trial court. The attestation and the certificates and the seals found on Ext. BD do not leave any room for doubting the correctness of the document as a certified copy of the original. We see no justification for accepting the respondents' suggestion that this document has been fabricated for the purpose of this case. Pw. 17 has stated that he himself has seen the proceedings of the synod at which Abdul Messiah was removed, entered in the register kept at the Zaafaran Diara at Mardin. He is no doubt a partisan witness interested in the case as put forward by the plaintiffs. At the same time it has to be remembered that he is a person occupying a position of responsibility and dignity. On going through his deposition as a whole we have been impressed with his ability and integrity. Hence the version given by him as to the manner and the circumstances under which the certified copy Ext. BD had been obtained by him, has to be believed. The original register from which the copy was taken is kept in the Zaafaran Diara at Mardin, a place beyond the jurisdiction of this court. The person in possession of the original document is out of reach of the process of this court and also not subject to process of this court. That person is not bound to produce the original for the purposes of this case and he cannot be compelled to produce the same. Merely because the plaintiffs in this case are persons owing unwavering allegiance to the Patriarch, it cannot be said that the Patriarch is the plaintiff in this case and is therefore bound to produce the original. The conditions under which secondary evidence may be permited to be given under clause (a) of Section 65 and under clause 6 of the Proviso to Section 66 of the Evidence Act, have all been satisfied in respect of Ext. BD. Since the document is a copy made from and compared with the original, it falls under the category of secondary evidence mentioned in clause 3 of Section 63 of the Evidence Act. Ext. BD is therefore admissible in evidence as per these provisions of law. This document by itself will not amount to 1 roof of the actual holding of the synod and of the passing of the resolutions as entered in the document. At the same time it has the evidentiary value as to the existence of a contemporaneous record maintained in the high office as the Zaafaran Diara at Mardin and in which it is recorded that the Synod was held in the year 1903 and resolutions were passed for the removal of Ab iul Messiah from the Patriarchal throne. The existence of such a contemporaneous record gives added strength to the inference to which the other items of evidence and circumstances already adverted to also lead. The other document Ext. BQ is only a copy prepared by Pw. 17 himself from the register maintained at the Zaafaran Diara. He states that he prepared this copy in the year 1934 when he had been to Mardin. He has definitely stated that this copy was taken for his personal use only. In fact, he did not at all want to produce it in court. The existence of such a copy with him was brought out in the course of his cross-examination and it was only by way of complying with the question put to him whether he could produce the copy with him, that he produced it in court. After thus making the witness produce the document in court, it was unfair to suggest that this document was intended to supplement Ex. BD. It was also elicited from him that before producing Ex. BQ in court he had out off a portion of the paper. According to him, he found that edge of the paper in an irregular condition and so he scissored off a small portion at that edge so as to give a clean and neat appearance to the document. On the basis of this admission a wild suggestion was put forward on behalf of the defendants that Ext. BQ was a copy prepared from Ex. BD and that the portion cut off must have contained the attestations and certificates as seen in Ext. BD. There is no basis for this suggestion. In view of the size of Ext. BQ it does not appear that the entire contents of Ext. BD could possibly has been reproduced in that paper even as it stood prior to the cutting off of a small portion. On a careful reading of the evidence of Pw. 17 as to how he happened to prepare the copy Ext. BQ from the original, we are inclined to believe his version as true. That was only

a copy intended for his personal use and he says that the copy taken by him was compared with the original and was found to be correct. Ext BQ also is therefore admissible in evidence for the reasons already stated in respect of Ext. BD. There is also the direct evidence of Pw. 17 that lie has himself seen the original register containing the entries corresponding to Eats. BD and BQ.
40. The overwhelming evidence on record in support of the synodical removal of Abdul Messiah in the year 1903 is attempted to he counteracted by the defendants by suggesting that Abdul Messiah must have lost his position as Patriarch, only on account of the withdrawal of the firman by the Turkish Sultan Abdul Hameed. In support of this theory passages from several historic books were cited on behalf of the respondents to show that during the early part of the Sultan's regime there was great persecution of Christians within his territory. We do not think it necessary for the purr(yes of this case to deal with such historical aspects. From the fact that at one time Christians in Turkey had been persecuted by the Sultan, it would be unsafe to rush to the conclusion that the deposition of Abdul Messiah must also have been the outcome of the Sultan's displeasure to the Patriarch. It remains merely as a suggestion without any reliable item of evidence even to probabilism the suggestion. The communication Ext. EK (2) which proceeded from the Turkish Ambassador is clear indication that at the relevant period everything in Turkey was going on in a peaceful and constitutional manner. The communication under that document was sent as the result of the representation made by the Vicar of the Syrian Patriarch at Constantinople. There is also convincing evidence to show that during the relevant period the Metropolitans in Syria had no difficulty in meeting in synod for the purpose of electing and ordaining Patriarchs and as such it is difficult to imagine that there could have been no synodical resolution for the removal of Abdul Messiah. As already pointed out the successor Patriarch, Abdullah, was accepted by all concerned as a Patriarch lawfully elected and ordained. In view of all these facts and circumstances the suggestion that so far as Abdul Messiah was concerned there was only the withdrawal of the Firman by the Turkish Sultan, has only to be discarded as baseless. We therefore hold that prior to the synodical election and installation of Mar Abdullah II as Patriarch in the year 1906, Mar Abdul Messiah 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.

41. On behalf of the respondents the synodical removal of Abdul Messiah as evidenced by Ext. BD was attacked on several grounds viz., that the Patriarch could not he deposed for the grounds stated in the resolutions passed by the synod, that the synod was held without notice to all the Metropolitans, that proper facilities were not given to Abdul Messiah to answer the charges made against him and to defend his position and that the resolution for his removal was passed in violation of the rules of natural justice. At the outset it has to be pointed out that no such specific grounds had been raised in the pleadings in this case. At the final stage of the hearing of the case no party can be allowed to develop new and alternative cases. 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 now 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 accepted Ahdullah as the lawful Patriarch. Such acceptance necessarily implies an admission that Abdul Messiah had been validly removed from the Patriarchal Throne. It is therefore not open to the defendants at this stage 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.

42. The provision in the canon (page 4 of the printed translation of Fxt. BP there is a similar provision in Ext. 26 also) that when two Patriarchs happen to be installed to the same throne the first shall function, has no application to the situation created by the synodical removal of one Patriarch and the synodical election and installation of a successor Patriarch. In such a situation the deposed Patriarch and the newly installed Patriarch cannot he deemed to be two Patriarchs installed to the same throne and there can be no rival claims between them so as to invoke the provision in the canon to enable the senior to function until the rival claims are settled. When a Patriarch is deposed by the synod, the deposed Patriarch will not be entitled to exercise any of the powers pertaining to the office of the Patriarchate and anything done by him in that direction will he invalid, All such powers, spiritual as well as temporal, pertaining to the office of the Patriarchate, will vest in the new Patriarch and he alone will be entitled to exercise those powers. Hence the acceptance of Abdullah as the lawful Patriarch was quite in order and during the period he was ruling as Patriarch the Malankara Church could not accept anybody else as a Patriarch.

43. The next important question for consideration is whether the Catholicate of the East has been re-established in Malankara in the year 108ts (1912 A. D.) as contended for by the defendants. In considering this question the definite case put forward by the 1st defendant in paragraph 13 of his written statement has to he kept in mind. There he claims that he is the properly ordained Catholicos of the Eastern Church to which the Malankara, Church belongs. It is stated that the institution of Catholicos was in existence in the Eastern Church which includes Malankara, from ancient times and that owing to some canes the Catholicate (Throne) remained vacant for some time and that it was re-established in Malankara in 10$8 (1912 A. D.) by Patriarch Mar Abdul Messiah who was Patriarch of Antioch with the co-operation of the Metropolitans in Malankara. This position was further emphasised in the 1st defendant's special pleadings Nos. 65 to 68. There it is specified that the Catholicate referred to by the 1st defendant is the Catholicate for the Eastern portion of the entire Jacobite Syrian Church with headquarters. first at Salukia and laier on at Tigris, and that the jurisdiction of the Catholicos in the East extended from some where near Tigris river eastwards and included Malankara. It was this Catholicate for the East that is stated to have been revived and re-established in Malankara. The period from which the Catholicate of the East remained vacant has been specified by the 1st defendant in the evidence given by him as Dw. 28 (page 10) as the period between 1840 and 1912. Thus, according to him, Malankara was under the Catholicos of the East up to the year 1840 and the Malankara Church had nothing to do with the Patriarch of Antioch. The theory that the Catholicate of the East was re-established in Malankara in the year 1912, can hold good only if it is proved and established that at least up to 1840 Malankara was directly under the Catholicos of the East. The question of the faith and allegiance of the Malankara Church has been elaborately considered at the earlier part of this judgment and there it has been found that there is unmistakable evidence on record to show that at least from the beginning of the 17th century the Malankara Church had come directly under the supremacy of the Patriarch of Antioch. The position of the Patriarch in relation to Malankara Church had come up for consideration in the prior suits disposed of by the judgments Exts. DY and FN. In both those suits there was an elaborate inquiry into the different stages through which the Malankara Church had to pass from its very inception. Eats. DY and FN show that in the course of such inquiry no evidence was forthcoming to indicate that Malankara Church was directly under the Catholicos of the East at any time and that the evidence

was overwhelmingly in favor of its connection with the Antiochian Throne. Accordingly it was held in both those cases that the Malankara Church was from very early times under the control and supremacy of the Patriarch of Antioch. In the present suit also the defendants have not been able to adduce any convincing evidence to make out that this Church was directly under the Catholicos of the East at any time, not to speak of the continuous adherence to the Catholicos of the East up to the year 1840. All that they have been able to point out is that two dignitaries of the Church bearing the name of Mar Basselios, had come to Malakara, the first in the year 1685 and the second in the year 1751. The name Mar Basselios normally denotes a Catholicos. But the name by itself cannot be conclusive, and as such the arrival of a person under the title of Mar Basselios need not necessarily mean that the dignitary is a Catholicate of the East. It is usual for Patriarchs to confer the title Catholicos or Maphrian on a Metropolitan and to depute him as his delegate, and in those cases also such delegates use the title of Mar Basselios. The question therefore is whether each of the two dignitaries who arrived at Malankara in 1685 and 17:1 was a Catholicos of the East, or whether they were mere delegates of the Patriarch. Paragraphs 93 of the judgment of Ext. DY refers to the arrival of Mar Basselios Catholicos at Malankara in the year 16,95 and of his having died at Kothamangalam within a fortnight of his arrival. He could therefore have done nothing at Malankara either as a Catholicos or as a delegate of the Patriarch. However, the conclusion reached in paragraph 93 of Ext. DY case is that he came as a Patriarchal delegate or under directions from the Patriarch. Dw. 25 at page 24 of his evidence has stated that he has learnt that Mar Basselios Catholicos when he came to Malankara had brought Morone with him. If he was the Catholicos of the East, he need not have brought Morone with him, because he could himself have consecrated Morone at Malankara. The fact that he had brought Morone with him, would indicate that he came only as a deputy of the Patriarch. The position of the other Mar Basselios who arrived in the year 1751 was considered in paragraphs 97 and 99 of the judgment Ext. DY and there it has been held that he too had come under orders of the Patriarch and had brought Morone with him. That the Malankara Church also accepted these two persons as delegates of the Patriarch, is evident from the Church Calendar Ext. DU. Page 2 of Ext. DU contains a list of the delegates of the Patriarch who had come to Malankara. Mar Basselios Catholica who came to Malankara in the year 1685 and Mar Basselios Catholica who came in the year 1751, are mentioned as 2 and 5 in this list. Thus their arrival with the title of Mar Basselios does not in any way advance the defendants' case that Malankara Church was directly under the control of the Catholicos of the East. If that was the real situation, there would have been instances of the Catholicos of the East having ordained Metropolitans at Malankara and also of having sent Morone to Malankara. But the defendants have not been able to point out any such instances. It has therefore to he held that the theory that up to the year 1840 the Malankara Church was directly under the control of the Catholicos of the East, is baseless and untrue. The case that what was done in the year 1912 was a revival and re-establishment of the Catholicos of the East, must also consequently fail.

44. The Catholicos of the East has a very high place in the hierarchy of the Jacobite Syrian Church, the position assigned to him under the canons of Nicea being above all Metropolitans and just below the Patriarch. He has also been assigned a wide jurisdiction in the East. If such a Catholicate of the East is to be revived or re-established, all the Metropolitans within the territorial limit assigned to the Catholicos of the East must have a voice in that matter, and for that purpose notice should he given to all of them about the idea of such revival or re-establishment. The 1st defendant as Dw. 28 admits that notices about the re-establishment of the Catholicate of the East at Malankara, were not sent to all the Metropolitans within the territorial

jurisdiction of the Catholicos. At page 3 of his deposition he has stated that it is the synod composed of all the Metropolitans under the Catholicos that should instal a Catholicos. At page 39 of the deposition he has stated that an Episcopal synod was convened at Parumala for the purpose of considering whether there should be a Catholicate and also for fixing up the person to be installed as Catholicos and that it was convened by Abdul Messiah. The 1st defendant had his ordination as Metropolitan at the hands of Abdul Messiah just a few days prior to the meeting of the synod and he says that he also attended the synod even though he did not get any invitation for the same. He has further stated that at the instance of Abdul Messiah invitations had been sent by Mar Geevarghese Dionysius to Metropolitans Mar Tvanios and Mar Alwarez. Of these two Metropolitans, Mar Alwarez was away at Brantawar in South Canara, while Mar Tvanios was at Kozhenchery. No record is produced to show that notices were issued to these two Metropolitans or to any other Metropolitans. Dw. 28 admits that he does not know whether there is any record to show that a synod was convened for deciding the question of the re-establishment of the Catholicate. But he states (page 42) that the synod met and passed two resolutions, one that the Throne of the Catholicate of the East should be established at Malankara, and the other that Mar Ivanios should he installed as the first Catholicos. He has also stated that these resolutions were sent to all churches and were also published in the newspapers. Later on, he has stated that it was after the installation of the Catholicos that Abdul Messiah communicated these resolutions to the several churches. If the synod had really met and had taken such important decisions of far-reaching effect, a record of the proceedings of the synod would have been written up and maintained at the Parumala Seminary where the synod is stated to have met, and there would have been no difficulty for the 1st defendant to produce the same in court. Similarly, if the decisions of the synod had been communicated to the several churches and published in the newspapers, a communication received by any of the churches or some paper publication regarding the same could have been produced. But strangely enough, no such record is forthcoming and the legitimate inference is that no meeting of the synod was held and no resolutions were passed for the reestablishment of the Catholicate at Malankara. He was asked why the Metropolitans at Malankara on the Patriarch's side and the Metropolitans in Syria under the jurisdiction of the Catholicate of the East were not invited for the Episcopal Synod mentioned by him. The answer was that the Idavaga in Syria under the Catholicate had become weak and the people there had gone over to this side of the Patriarch. and thus got themselves separated from the Diocese of the Catholicos of the East and hence no invitations were sent to the Metropolitans there. As for the Metropolitans at Malankara, who were on the Patriarch's side, the position taken up by the 1st defendant is that they were schismatic and hence they were not invited. It is strange that the Metropolitans who were ordained by the lawful Patriarch Abdullah and who owed allegiance to him were treated as schismatic by those who got ordination at the hands of the deposed Patriarch Abdul Messiah. Pages 44 to 46 of the deposition of D.w. 28 show that the matter was pursued in his examination. He was asked whether the Catholicate said to have been established at Malankara was an act of the Malankara Jacobite Syrian Church as a whole, or whether it was only an act of the Metropolitans who were opposing the Patriarch's party. His answer was that it was an act of the Eastern Church and that the synod convened at Parumala represented the entire Eastern Church. To the further question put to him whether there were any Metropolitans either in Malankara or in Syria belonging to the Jacobite Syrian Church and who were not schismatic, other than the Metropolitans who are alleged to have participated in the synod at Parunala, the answer was in the affirmative in respect of Syria. But he said that he was not in a position to state the exact number of the Metropolitans who fell under that category. At the same time he was able to mention two such Metropolitans, one of Syria and the other of

Turabdin. No invitations for the synod were sent to these Metropolitans. Thus, it is clear that even if the synod was held at Parumala for the purpose of the re-establishment of the Catholicate of the East in Malankara, it was only a meeting of the few persons who were ordained by Abdul Messiah after he had ceased to be a Patriarch. To the question whether the co-operation of the Patriarch is necessary for the re-establishment of the Catholicate of the East, the answer given by Dw. 28 is that would be well and good if there was such a co-operation, but that there would be no defect in the establishment of the Catholicate even if the Patriarch did not co-operate. The stand taken by Dw. 28 is that the Metroplitans of the Diocese of the Catholicos have the power to reestablish the Catholicate. When he was confronted with the question whether such re-establishment can be for a Provincial Diocese alone or for the Great Diocese including the Provincial Dioceses, the reply was that it may be re-established for the Great Diocese. He added that the re-establishment mentioned by him was not for the Provincial Diocese alone (page 47). He was again asked if the Metropolitans in the Diocese of the Catholicos could re-establish theme Catholicate of Tigris in Malankara, what was the necessity of approaching Abdul Messiah for that purpose? The answer was that it was so done for the purpose of maintaining the relationship between the Throne of Antioch and the Throne of the Catholicos (page 48). He has also stated (page 49) that for the purpose of adjustment of the territories included in the Great Diocese of the Patriarch and the Diocese of the Catholicos of the East, there must he concurrence of the Patriarch and the Catholicos and of the synod under both of them.
The case developed by the 1st defendant in his evidence that it was the synod which met at Parumala that re-established the Catholicate of the East, is not in conformity with the contention put forward by him in special pleading No. 68 where it is stated that the revival or the re-establishment of the Catholicate in the East was effected by Patriarch Abdul Messiah with the co-operation of Metropolitan Geevarghese Dionysius and the other Metropolitans of Malankara and also of the Malankara Church. Even such co-operation is pot proved in this case and there is the clear admission by the 1st defendant himself that the Metropolitans who had accepted Abdullah as the lawful Patriarch were not invited to take part in the installation of the Catholicate and they did not in any way co-operate with the same. According to him they had not been accepted by the Malankara Association as Metropolitans. At the same time he has admitted (page 45) that there was one Mar Kurilos who was accepted as Metropolitan and that he too was not invited for the synod. The omission to invite hint is sought to be justified by stating that he was removed from office by the very same synod. Even if there was any such removal that could not he a reason for not inviting him to the synod for which notices were issued earlier. Thus it is clear that no notice had been given to all the Metropolitans within the territorial jurisdiction of the Catholicate of the East or even to all the Metropolitans in Malankara about the alleged revival and re-establishment of the Catholicate of the East at Malankara. It cannot also be said that the few persons viz., the three Metropolitans ordained by Abdul Messiah and Mar Geevarghese Dionysius who are stated to have co-operated with Abdul Messiah in that function, could by themselves represent the entire Eastern Church or even the Malankara Church. Such a small group of persons assembled at Parumala could not revive or re-establish the Catholicate of the East so as to hind the entire Eastern Church.

45. Ext. EA is the deposition given by Mar Geevarghese Dionysius in Ext. 255 case. His statement at page 1410 of that deposition, i the extract from which is separately translated and printed, make it clear that those people at Malankara who were agitating for a Catholicate were only asking for a Catholicate for Malankara and not for revival or re-establishment of the Catholicate of the East at Malankara. He has also stated that during the time of Mar Joseph

Dionysius some responsible people had written to Abdul Messiah requesting for the establishment of a Catholicate for Malankara. It is seen from page 43 of the extract from Ex. EA that Mar Geevarghese Dionysius had himself entered into some correspondence with Abdul' Messiah for the establishment of such a Catholicate, but that the request in that direction was not granted by Abdul Messiah. Thus, if at all, what Abdul Messiah purported to do when he came to Malankara in the year 1912 could only have been the grant of a Catholicate for Malankara. But the defendants have no such case and the reason is obvious and that is that if a Catholicate for Malankara alone is created, the Catholicos could only function as a delegate or deputy of the Patriarch and will not have the larger powers and dignities of the Catholicos of the East. Even the conferment of the dignity of Catholicos on a Metropolitan of Malankara could be done only by a ruling Patriarch. Since Abdul Messiah had already been deposed, he could not have validly created a Catholicate for Malankara. The opinion entertained by Mar Geevarghese Dionysius about the status of Mar Ivanios who was made the first Catholicos by Mar Abdul Messiah, is very significant. Pages 43 and 44 of tho extract of Ext. EA contain the following questions put to Mar Geevarghese Dionysius and the answers given by him:

> Question:
> "Was not Mar Ivanios made Catholicos with the intention of facilitating the ordination here of Metropolitans without reference to Antioch?"
> Answer.
> "I am not aware of any one intending or having intended to sever the bond with Antioch".
> Question:
> "Have you not accepted Max Ivanios, after he was made the Catholicos, as the head of the Malankara Church"?
> Answer.
> "I have not".
> Question
> "Was it not intended that Malankara Metropolitan and other Metropolitans should be appointed for the Malankara Church by that Catholicos"?
> Answer.
> "I had not intended nor was it likely that I should so intend".
> Question:
> "Are you aware of anyone having so intended"?
> Answer..
> "My conviction and my information is that beyond conferring on him the glory of a name, Catholicos, the Malankara community, that is, the Association,did not accept him as one having the privileges or powers pertaining to the Catholicate, not did they imagine that he possessed those powers. I cannot understand how anybody could have thought of getting the things, mentioned in the question, done by such a person".

These statements which were made by a person of the position of Mar Geevarghese Dionysius must be given their full weight. It has to be remembered that it was the situation brought about by the suspension of Mar Geevarghese Dionysius by Patriarch Abdullah that prompted the

supporters of Mar Geevarghese Dionysius to bring the deposed Patriarch Abdul Messiah to Malankara and to have Mar Ivanios installed as Catholicos. Even after such an installation of a Catholicos, Mar Geevarghese Dionysius continued his allegiance to the lawful Patriarch and made every endeavour possible to see that the uncanonical acts done by Mar Abdul Messiah were regularised by the lawful Patriarch Mar Abdullah and those who succeeded him. Thus it is no surprise to find Mar Geevarghese Dionysius echoing the feelings of the Malankara Church that there was nothing like the establishment of a Catholicate at Malankara. Learned counsel for the respondents argued that no significance need be attached to the opinion expressed by Mar Geevarghese Dionysius that nothing more than the conferment of a personal dignity on Mar Ivanios had been done by Abdul Messiah, in view of the admission made before the lower court by learned counsel for the plaintiffs which is recorded in paragraph 63 of that court's judgment. Towards the closing portion of that paragraph there is the following statement:

> "The plaintiff's Advocate finally admitted that the fact that the Catholicate was established by the real Abdul Messiah, that Mar Ivanios was the first Catholicos that was installed by him in 1088 and that Mar Geevarghese Dionysius took part in the ceremony and that Ext. 80 Kalpana was issued by Mar Abdul Messiah may be taken as admitted or conceded by the plaintiffs".

These admissions have to be understood in the light of the discussions that preceded and those which were to follow. The earlier part of that paragraph shows that the plaintiffs were maintaining that the person who had come to Malankara was not Abdul Messiah himself, but was somebody who had personated him and that Ext. 80 Kalpana. could not have proceeded from Abdul Messiah. Finally these contentions were given up and that is why it was admitted that it may be taken that the real Abdul Messiah had come to Malankara and had done the acts attributed to him. Such admissions cannot be raised to any higher level. The admission that Abdul Messiah had established the Catholicate does not mean that the plaintiffs conceded that the Catholicate of the East had been validly established at Malankara. That the learned District Judge also did not understand the admission in that light is clear from the other portions of the judgment where he has elaborately considered the question whether the Catholicate had been validly established. The different aspects of that question are covered by the several sub-divisions under issue 10.

46. The document on which great reliance is placed by the defendants in support of their case of revival and re-establishment of the Catholicate of the East, in Malankara, is the Kalpana Ext. 80 issued by Abdul Messiah some days after he had ordained Mar Ivanios as Catholicos and just on the eve of his departure from Malankara. The expressions "Catholicos of the East", "revival" and "re-establishment" are significantly absent in this Kalpana. What he had already done has been described in these words:

> "We, by the Grace of God, in response to your request, ordained a Maphrian i.e., Catholicos, by name Poulose Basselio9, and three new Metropolitans, the first being Geevarghese Gregorius, the second Jochim Evanios and the third Geevarghese Philixinos".

It is not stated that he has done anything more. Thus it is clear that he had only ordained a Catholicos and had not created a Catholicate. Since a Catholicos was appointed in response to the request of some people at Malankara, the obvious inference is that what was given was a Catholicate for Malankara. There is nothing to indicate that at that stage Abdul Messiah had created a Catholicate even for Malankara, not to speak of the establishment or revival or re-establishment of the Catholicate of the East. Thus the Kalpana Ext. 80 knocks the bottom of the case of the 1st defendant that Abdul Messiah had re-established the Catholicate of the East and had thereafter ordained Mar Ivanios as the first Catholicos. There is also nothing in Ext. 80 to indicate or to suggest that Malankara was at any time under the Catholicate of the East. The object with which Abdul Messiah appointed a Catholicos for Malankara is also apparent from Ext. 80 where he has stated that

> "Unless We do install a Catholicos, our Church, owing to various causes, is not likely to stand firm in purity and Holiness; and now We do realise that by the Might of Our Lord, it will endure unto eternity, in purity and holiness, and more than in times past, be confirmed in the loving bond of Communion with the Throne of Antioch".

In another portion of Ext. 80 it is stated that

> "The Catholicos, aided by the Metropolitans, will ordain Melpattakkars in accordance with the canons of Our Holy Fathers and consecrate Holy Morone".

The idea that the Catholicos can consecrate Morone only with the aid of the Metropolitans, shows that the Catholicos appointed was not the Catholicos of the East who can by himself consecrate Morone as per the provision in the canon book Ext. BP. There is one passage in Ext. 80 which is in support of the defendants' contention that installation of Catholicos one after another, was permitted by this Kalpana of Abdul Messiah. That passage runs as follows:

> "In your Metropolitans, is vested, the sanction and authority to instal a Catholicos, on the demise of the incumbent. No oneraan resist you in the exercise of this right. And do all things properly and in conformity with precedents, with the advice of the Committee, presided over by Dionysius, Metropolitan of Malankara".

The authority thus conferred by Ext. 80 did not empower the Malan- kara Church to instal a Catholicos in any manner, because there is the express direction that all things should he done properly and in conformity with precedents. No authority or precedent is shown in support of the contention that a deposed Patriarch can by himself establish a Catholicate by the issue of a Kalpana like Ext. 80. The best that can be said of Ext. 80 is that Abdul Messiah thought that he could confer such an authority on the Malankara Church to have a Catholicos for that Church. But Ex. 80 does not lend any support to the case that it was intended as a document re-establishing a Catholicate of the East at Malankara. Mar Goevarghese Dionysius and his supporters appear to have been conscious that Catholicate as an institution was not established even for Malankara and that appears to be the reason why the vacancy caused by the death of the first Catholicos in the year 1913 was not filled up during the next 12 years. According to precedents the installation of the Catholicos has to be done by the Patriarch in conjunction with

the Episcopal synod. Dw. 28 says that the installation of the first Catholicos was done in this manner. Since Abdullah and his successors were not prepared to instal anybody as Catholicos at Malankara, the installation of the second Catholicos appears to have been delayed. It does not appear that the Malankara Association had agreed to the establishment of a Catholicate at Malankara. Dw. 28 has stated (page 38) that either before the excommunication of Mar Geevarghese Dionysius or at any time thereafter, no meeting of the Association was convened for considering that question. The third Catholicos who is the present 1st defendant, alone appears to have attended the meeting of the Association. But there has been no resolution by the Association formally accepting the Catholicate or even the position of the 1st defendant as the third Catholicos, until he was accepted. as the Malankara Metropolitan at the meeting which passed the new constitution Ext. AM. It has also to be remembered that the Patriarch had no part in the installation of the 1st defendant as Catholicos. The question is not whether the Patriarch is entitled as a matter of right to take part in the installation of the Catholicos. The extent of the powers possessed by the Patriarch need not he considered in this case and it is stated in paragraph 60 of the lower court judgment that the Advocates on both sides had agreed that it was unnecessary for the purpose of this case to determine or decide in a general or comprehensive manner or define exhaustively all the powers that the Patriarch may have. All the same, the effect of the non-participation of the Patriarch in the installation of the 1st defendant as Catholicos, is a relevant factor to be considered in the nature of the contentions set up in pleading No. 68. The conditions mentioned in pleading No. 68 have not been satisfied in respect of the installation of the 1st defendant as Catholicos.

47. The respondents cannot develop a new and alternative case that the Patriarch had absolute powers to create a Catholicate by issuing a Kalpana like Ext. 80 and that he can thereafter completely fade out of the picture. No such alternative case was specifically set up in the pleadings. In fact, the contentions rut forward in the written statement will rot lend support to the new theory that the Patriarch has absolute power in this matter. The plea was that the Catholicate of the East was re-established by Abdul Messiah with the co-operation of the Malankara Metropolitan and the other Metropolitans of Malankara and also of the Malankara Church. It was nowhere stated in the pleadings that the Catholicate was established or re-established by issuing the Kalpana Ext. 80. The persistence with which Mar Geevarghese Dionysius and the 1st defendant continued their efforts to have the position of the Catholicos recognized by Mar Abdullah, Mar Elias and Mar Ephraim, betrays a consciousness on their part that the Catholicate had not been validly established at Malankara and that the ordination of the 1st defendant was defective. Eats. BB and BC letters by theme persons also contain unequivocal admissions about the mistakes and sins committed by them in respect of these matters. On a consideration of all these aspects our conclusions on this part of the case are the following:- The Catholicos of the East had not exercised any jurisdiction over the Malankara Church at any time and, as such, no question of that Catholicate having been in abeyance from the year 1840 to 1912 can arise for consideration. There could also have been no possibility of the Catholicate of the East having been revived and re-established in Malankara in the year 1912. No such revival or re-establishment was effected by Abdul Messiah either by himself or with the co-operation of Mar Geevarghese Dionysius and the other Metropolitans in Malankara and also with the co-operation of the Malankara Church. Abdul Messiah had ceased to be Patriarch by that time and as such he was incompetent to take any such action. What he purported to do in Malankara in the year 1912 was to give a Catholicate for Malankara after himself ordaining three Metropolitans and installing one of them as a Catholicos. All these acts were invalid and unlawful because he had

ceased to be a Patri- arch before that time. Thus no Catholicos even for Malankara had been validly created. The 1st defendant has not been validly installed as Catholicos, but his followers in the Malankara Church have accepted him as Catholicos. His two predecessors were also not validly installed as Catholicos. Everything done by Abdul Messiah in relation to the Malankara Church after he had been deposed from the Patriarchal throne, was invalid and unlawful.

48. We have now to consider whether defendants 1 to 3 and the other members of the Churches supporting them have voluntarily separated them- selves from the other members of the Malankara Church by accepting the new constitution embodied in Ex. AM. This constitution was passed at a meeting of the Malankara Association hold at the M. D. Seminary, Kottayam on 11-5-1110/26-12-1934. The proceedings of that meeting are contained in Ext. 64. Since the validity of this meeting has been questioned on several grounds that question may be disposed of at the outset before proceeding to consider the constitution embodied in Ex. AM and its effect on those who have accepted it and who stand by it. The aforesaid meeting was called together some time after the death of Mar Geevarghese Dionysius which event took place in February 1934. Three separate notices were issued in respect of this meeting. Exts. 59, 69 and 61 are copies of these notices and all of them are dated 3-12-1934. These notices were published in two newspapers also, as is evident from Exts. 62 and 63. One objection to these notices is that they were not issued by competent persons. It was provided in Ex. FO that the Managing Committee of the Malankara Association could call together a meeting of the representatives of the several churches in Malankara. But no rules were framed specifying the manner in which notices were to be issued to the several churches, about the holding of such a meeting or about the manner in which invitations are to be sent or as to the procedure to he followed in electing representatives of each church. There was also no approved list of all the churches, even though there are in all several hundreds of churches. The numerical strength of the Malankara Syrian community is about a few lakhs. The issue of the notices for the meeting at the M. D. Seminary has to be considered in this background. At an earlier meeting of the Association held in the year 1106 (1930 A. D.) the old Managing Committee was dissolved and a new Managing Committee was elected. The proceedings of this meeting are contained in Ext. 97. The Committee members who were in existence at the time of the meeting evidenced by Ext. 64 were the supporters of the 1st defendant and they were responsible for calling together that meeting. Ext. 59 notice is seen to have been issued by the 1st defendant in his capacity as Catholicos. Even though the Malankara Association had accepted him as its Patron, he was assigned no place in the Association or in the Managing Committee as its member or President. It cannot therefore he said that he was competent to issue the notice Ext. 59. The notice Ext. 60 was issued by the Metropolitans of Kottayam, Niranam and Thumpaman Dioceses. They issued the notice in their capacity as Vice-Presidents of the Malankara Association. In Ext. EA deposition Mar Geevarghese Dionysius had admitted that the Metropolitans in Malankara were deemed to be Ex-offico Vice-Presidents of the Association. The other notice Ext. 61 was issued by the members of the Managing Committee who were the supporters of the 1st defendant. In the absence of specific rules as to who should issue the notice, the notices Exts. 60 and 61 have to be accepted as proper and valid notices issued by competent persons. Then as to the question whether notices had been issued to and served on all the churches, it has to be stated that there is no reliable and convincing evidence in proof of that fact. The admissions made by the 1st defendant as Dw. 28 (pages 98 and 99) would show that no effort was made to serve notices on all the churches on the plaintiffs' side. He has stated that he does not know if any list of the Vicars of the Churches had been prepared or if any invitations had been sent to them. He has also stated that invitations were sent mainly to the

churches on his side. Dw. 22 says that it was he who issued the notices under the direction of the 1st defendant. He says that invitations were sent on the basis of an old list and a new list which were available at the Seminary. At the same time, he says that he cannot say whether such lists are available at present, nor can he specify the exact number of the churches invited. Ext. 257 is not a full and complete list of the churches. He has also admitted that invitations were not sent to the Metropolitans on the plaintiffs' side. In such a state of the evidence, it cannot be said that notices were issued to all the churches on the plaintiffs' side. The paper publications evidenced by Eats. 62 and 63 cannot be accepted as sufficient notice to every one of the churches. Under these circumstances, it cannot be said that the meeting evidenced by Ext. 64 was a meeting of the representatives of the churches on the defendants' side as also of the churches on the plaintiffs' side. As per the Kalpana Eats. 9 and Z there was the warning that those who stand by the faith of the Malankara Church and continue their allegiance to the Patriarch, should not co-operate with the steps taken in defiance of the authority of the Patriarch by Mar Geevarghese Dionysius and the 1st defendant and their followers. In such a situation it is not also likely that notices of the meeting called by the 1st defendant and his party would have been sent to all the churches on the plaintiffs' side. The representatives of these churches would not also have thought of participating in such a meeting. Exts. 259, 260, 261 and 262 are the books containing the sammathapathrams or consent deeds sent by the churches on the defendants' side. A series of such sammathapathrams have also been produced in this case. These documents and the evidence given by the 1st defendant and his witnesses would go to show that the meeting evidenced by Ext. 64 was essentially a meeting of the representatives of the churches on the defendants' side. To that extent the meeting can be held to be valid and the resolutions passed at that meeting can be taken to be binding on those churches and we hold accordingly.

49. Out of the several resolutions at the M. D. Seminary meeting held on 11-5-1110/26-12-1934 and entered in Ext. 64, we are now concerned only with two of them. By one of these resolutions the 1st defendant was elected as the Metropolitan and the resolution was in the following terms:

> "As this meeting is desirous that the Catholicos should also be the Malankara Metropolitan, His Holiness Moran Mar Basselios, Catholicos, is elected as Malankara Metropolitan. In this capacity, the Catholicos will have all the powers of the Malankaxa Metropolitan in the Malankara Church".

By the other resolution the Bharanakhatana or the constitution of the Church as drafted by the Managing Committee of the Association was accepted and passed with the modifications suggested by the Subjects Committee. Ext. AM contains the constitution in its final form. The resolution by which the Catholicos was elected as Malankara Metropolitan competent to exercise all the powers pertaining to that office, is in itself a direct violation of one of the fundamental principles of the faith of the Malankara Church. According to the defendants, the position of the Catholicos is akin to that of the Patriarch of Antioch so far as the Malankara Church is concerned. Since the Patriarch has all along been accepted as the supreme spiritual head of the Church, a validly installed Catholicos could also exercise the spiritual authority of the Patriarch. But the Patriarch has no temporal authority over this. Church and cannot therefore interfere in the internal :management of the temporal affairs of the Church. It was so declared in Ext. DY and to that extent the independence of the Malankara Church was recognized. The strongest complaint of the defendants against the plaintiffs is that they are guilty of heresy in having supported the

Patriarch's claim for temporal powers also. Consistent with this position the defendants cannot maintain that the Catholicos can have such temporal powers over the Church. It is the Malankara Metropolitan who is entitled to exercise such powers. The effect of electing the Catholicos as Malankara Metropolitan is undoubtedly to confer on him full temporal powers over the Church in addition to his spiritual supremacy. As already stated, this is fundamentally opposed to the faith of the Church. To accept as the head of the Church one in whom is vested both the spiritual and temporal authority over the Church, is in effect to create a new Church having a new faith of its own different from the Malankara Church which has all along been firmly adhering to an entirely different faith. Without violating this faith and deviating from it, the offices of the Catholicos and the Malankara Metropolitan cannot be combined in one and the same individual.

50. Now, coming to the constitution embodied in Ex. AM, it has to be pointed out at the very outset that the central figure in the Church to be governed by this constitution is the Catholicos. In view of the finding already recorded that no Catholicate had been established in or for Malankara, it is clear that the Malankara Church continues to he under the spiritual and ecclesiastical supremacy of the Patriarch of Antioch as it was before the unlawful creation of a dignitary called the Catholicos for this Church. The 1st defendant who has not been validly ordained and installed as a CatholicoF, cannot have the position or dignity assigned to a Catholicos recognized by the canons of the Church-Thug the position given to the 1st defendant and others who are to succeed hint as Catholicos under Ext. AM is a vital departure from the fundamental faith of the Church. We have already found that the more important fundamental principles of that faith are: (1) that the Metropolitans acceptable to the Malankara Church can only be those who are ordained by the Patriarch of Antioch or by his duly authorized delegate, and (2) that only the Morone consecrated by the Patriarch of Antioch can be used in the churches at Malankara. There are other fundamental principles which are not so vital as the first two and these principles of comparatively lesser importance are: (1) that it is an abiding obligation on the part of the Church to pay Ressisa to the Patriarch, of the allotment of Idavagas to the various Metropolitans is a power vested in the Patriarch, and (3) the Metropolitans ordained as mentioned above and accepted by the community have to receive a station from the Patriarch. All these fundamental principles have been completely done away with as will be shown presently. Article 107 of Ext. AM provides that the Episcopal and Metropolitans for Malankara will he installed by the Catholicos with the co-operation of the Episcopal synod. The persons so installed have to execute a salmoosa in favor of the Catholicos and the latter will issue the necessary station to them. Under Article 108 it is the Catholicos who is to ordain the persons selected by the Association and approved by the Episcopal synod, as Metropolitans or Episcopas. By these two articles the necessity of ordination by the Patriarch or his delegate has been completely eschewed. Another fundamental departure made by these articles is in respect of the overriding power conferred on the Episcopal synod at Malankara. Prior to this constitution a Metropolitan ordained by the Patriarch or his delegate, had only to be accepted by the Association or community to enable him to function as a Metropolitan in Malankara; while under Article 108 of Ex. AM only a person elected by the Association and approved by the Episcopal synod can get ordination. Even at the election he should secure the majority of the votes of the lay members and also of the priestly members separately. By article 5 of Ext. A.M. Ext. 26 is accepted as containing the canons binding on the Malankara Church. This means that Morone could be consecrated by the Catholicos or by the Metropolitans. It has already been found that the canons accepted as binding on the Malankara Church are those contained in Ext. BP. The provision in it is that the Patriarch alone can consecrate Morone. This is also the firm faith of the

Church. Thus under Ext. AM the first two fundamental principles mentioned above have been departed from.

51. Regarding payment of Ressisa also the provision in Ext. AM is fundamentally opposed to the provision in the canons of the Church and also to the faith of its members. Ext. FO contains the resolutions passed by the Synod which met at Mulanthuruthu in the year 1876. The representatives of the several churches in Malankara had participated in it and it was presided over by the Patriarch. One of the resolutions passed by that synod expressly stated that the Managing Committee of the Malankara Association shall be responsible to collect and send the Ressisa due to the Patriarch. Unless the Church believed that Ressisa was legitimately due to the Patriarch, the synod would not have passed such a resolution. The 1st defendant as Dw. 28 has admitted at page 122 of his evidence, that the Church used to pay Ressisa to the Patriarch even though he maintained that the obligation to pay the same is not a fundamental doctrine of the Church. About the collection and payment of Ressisa the evidence given by the plaintiffs' witnesses is not conclusive. At the same time they speak to such collection and say that non-payment of the same will not entail any penal consequence. The question is really whether the members of the Church believed that they were bound to pay Ressisa to the Patriarch. The resolution in Ext. FO goes a long way in proof of such a belief. The consciousness of the community in respect of this matter is further strengthened by the resolution passed by the Malankara Association on 7-9-1911. It has to be remembered that this was a meeting held soon afkftr the excommunication of Mar Geevarghese Dionysius by Patriarch Abdullah. The meeting had adopted a hostile attitude towards Abdullah and even then the 7th resolution went only to the extent of deciding that Ressisa should be sent over to Seema only after the committee appointed by the meeting had sulnnitted its report about the real position of Abdullah. This shows that Ressisa was really payable to the lawful Patriarch. It is referred to as "the Ressisa that we have been usually paying to that Throne". The question of the payment of Ressisa was considered in paragraph 218 of Ex. DY and there it was only stated that there was no satisfactory evidence in that case regarding the payment of the same. But that observation does not mean that there was no, obligation to pay the same. In the canons contained in Ex. BP and which the Malankara Church had accepted and followed, there is a definite provision governing this matter. That provision is contained in page 2 of the printed translation of Ex. BP and is as follows

> "Of Nicea All Ressisa shall be under the control of the Patriarch. Those under him shall remit the same to him every year.
> "Hudaya The Patriarch should distribute it also among those under him and who are entitled to be maintained by him. If any one other than the Patriarch appropriates Ressisa, he shall be separated until he restores the same fourfold".

In Ext. AM there is no provision for payment of Ressisa to the Patriarch. On the other hand, Article 115 provides that the Vicar of each church should collect Ressisa from every adult male in his Parish at the rate of two chukrams and send it to the Catholicos. To the matter of allotment of Idavagas and of issuing station to Metropolitans, the Patriarch's powers are not retained under Ex. AM. In fact, a reading of the several articles in Ex. AM will show that under the new constitution the Patriarch of Antioch has no position or authority in the Malankara Church. In Article 1, there is a reference to the Patriarch. But Article 1, read along with Article 2, will make it clear that the Patriarch is not accepted as the supreme head of the Malankara Church. There is

only a simple statement in the First Article that Malankara Church is part of the Orthodox Syrian Church and that the Patriarch is the supreme head of the Syrian Church. Article 2 specifically states that the Malankara Church is included in the Eastern Orthodox Syrian Church, the supreme head of which is the Catholicos. Article 90 states that the Catholicos of the East was revived in the year 1088 (1912 A. D.) This provision is consistent with the unsubstantiated plea put forward by the defendants that the Malankara Church was directly under the Catholicos of the East. That the Patriarch mentioned in Article 1 has very little to do in respect of the Malankara Church under the new constitution, is made clear by Articles 9,1 to 94. Article 92 shows that only a Patriarch installed with the co-operation of the Episcopal synod, presided over by the Catholicos, will be accepted by the Malankara Church. Article 93 says that if there is such a Patriarch acceptable by the Malankara Church, that Patriarch may be invited to take pert in the installation. of the Catholicos, and if he comes, ho may instal the Catholicos with the co-operation of the Episcopal Synod. If he does not come, the Episcopal Synod itself will instal the Catholicos. The next Article also contains a similar enabling provision by which a Patriarch accepted by the Malankara Church may, if he comes on invitation, preside over the Episcopal Synod, which is to hear complaints against the Catholicos. If he does not come, the Episcopal Synod can form its own decision about the complaint. The effect of these Articles is that only a Patriarch acceptable to the Metropolitans in Malankara will he able to attend even to the formal functions contemplated under these three Articles.

This is not in fitting with the high position in which the Patriarch of Antioch is held by the entire Jacobite Church whose supreme head he is. When he is duly elected and installed as Patriarch by the entire Jacobite Church his position and dignity cannot be questioned by the Malankara Church on the ground that he is not acceptable to the Metropolitans of Malankara. It is obvious that the purpose under-lying Articles 92 to 94 is to compel the Patriarch to recognise and accept the Catholicos unlawfully and uncanonical created in Malankara.Articles 107 to 109 also have been drafted in such a way as to deprive the Patriarch of his authority and privilege to ordain Metropolitans. Under these Articles Metropolitans could be ordained without reference to the Patriarch and without his help. The effect of these Articles by which the Patriarch is sought to be kept out of the Malankara Church in matters relating to ordination of Metropolitans, consecration of Morone, payment of Ressisa, allotment of Idavagasv issue of station to Metropolitans etc., is a conscious repudiation of the Patriarch's spiritual supremacy and authority which formed the foundation of the faith of the Church. By Article 101 of Ext. AM, a great departure is made in the faith, order and discipline in the Church. One of the resolutions passed in the Mulanthuruthu Synod (vide Ext. FO) was that the Church would be firm in the Orthodox faith and would be obedient to the Apostolic Throne of Antioch. In matters of faith, order and discipline, the Patriarch had been accepted as the ultimate authority. But under Article 100 of Ext. AM, this authority was conferred on the local Episcopal synod without any reference at all to the Patriarch. Even though it is stated in this Article that nobody can alter the faith of the Church, the very same Article gives authority to the Episcopal synod to give an ultimate decision as to what is true faith when any controversy arises about the same. This means that in the guise of an interpretation the local synod will be able to bring about fundamental changes even in matters of faith. In Article 89 it is provided that the Catholicos should also be the Malankara Metropolitan so as to become the Metropolitan trustee and the President of the Malankara Association. By this provision the independence of the Malankara Church in respect of temporal and administrative matters as declared in Ext. DY has been destroyed and such temporal powers which are to be exercised by the Malankara Metropolitan, have also been conferred on the supremo head of the Church from whom the Metropolitan has to take his ordination. By the new constitution every

power has been concentrated on the local synod presided over by the Catholicos. It was to safeguard against such a contingency also that the Mulanthuruthu synod met and the resolutions in Ex. FO were passed, by which large powers were conferred on the Malankara Association subject.,to the supremacy of the Patriarch, so that the autocracy of the clergy could be effectively checked. Under Ex. FO and Ex. 223, the trust properties of the Church had to be in the joint management of three trustees. Articles 86 and 87 of Ex. AM have given the go-by to this provision also and the entire properties were made over to the new Church envisaged by the new constitution, and in effect two new trusts were created, one to be managed by the Malankara Metropolitan and the other by two joint trustees elected by the Association. An overriding provision was also inserted in Article 125 by which all customs and precedents which may not fit in with the new constitution have been scrapped, without any consideration whether. such customs and precedents were in respect of the fundamental principles governing the faith and distinctive features of the Church. All these drastic changes were introduced into the new constitution passed at a meeting held by the 1st defendant and his supporters. The Patriarch was not even consulted in the matter and it is obvious that the protagonists of this move did not do so because their idea was to see that the Patriarch had nothing to do with the Malankara Church. A reading of the several provisions in the constitution leaves no room for doubt that Ex. AM cannot be the constitution for the Malankara Church which was owing unwavering allegiance to the Patriarch of Antioch in respect of faith, doctrine and discipline of a fundamental nature, but can apply only to an entirely new Church as conceived by the framers of the constitution. Nobody can question their right to bring into existence such a new Church, but they cannot carry with them the properties of the trust founded for the benefit of those who adhere to the principles governing the foundation i. e., those who have as their fundamental principles of faith that the Patriarch of Antioch is the supreme ecclesiastical or spiritual head of the Church, that the Metropolitans must take their ordinations from the Patriarchs or their duly authorized delegates, that only Morone consecrated by the Patriarch can be used for baptismal and other purposes, that the Patriarch is entitled to collect Ressisa as provided for in the canons embodied in Ex. BP and to allot Idavagas to the several Metropolitans who are to he in charge of the same on the strength of the staticon issued to them. Only those who stand by these fundamental principles of faith can be trustees and beneficiaries of that trust. This was what happened in Ex. DY case where the Marthomites who departed from the aforesaid principles had to go out of the Church, leaving the trust properties to those who adhered to those principles. So far as the defendants in this case and their supporters who stand by the new constitution Ex. AM are concerned, the position is exactly similar with only one difference. The defendants in Ext. DY suit openly questioned the authority of the Patriarch and also the fundamental doctrines advanced by the plaintiffs in that suit. In the present case the defendants wanted to disguise their real intentions and to make it appear that they were not repudiating the authority of the Patriarch, and that appears to be the reason for mentioning in. Article 1 of the constitution that the Patriarch is the supreme head of the Orthodox Syrian Church, though by the subsequent Articles he has been completely effaced from the new Church by not conferring any power or authority on him in respect of that Church. The principles enunciated by the House of Lords in *Free Church of Scotland v. Overtoun*[9]are clearly applicable to a situation like the present. In that case Earl of Halsbury observed as follows:

> "Speaking generally, one would say that the identity of a religious community described as a Church must consist in the unity of its doctrines. Its creeds, confessions, formularise, tests, and so forth are apparently intended to ensure the unity of the faith which its

> adherents profess, and certainly among all Christian Churches the essential idea of a creed or confession of faith appears to be the public acknowledgement of such and such religious views as the bond of union which binds them together as one Christian Community".

Later on, the learned Law Lord observed.

> "I do not think we have any 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",

In the same case Lord Davey observed as follows:

> "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 axe 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

[9](1904) Appeal Cases 515

> the trust are being duly observed. I appreciate, and if I may properly say so, I sympathies 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".

A large number of cases where these and other principles enumerated in the Free Church case were cited before us. But we do not think it necessary to refer to all of them. Our attention has not been drawn to any case where the soundness of the above principles has been doubted.

52. An argument was advanced on behalf of the respondents that the acceptance of the new constitution embodied in Ex. AM would not result in a voluntary separation of the defendants and their followers from the Malankara Church, because the changes brought about by the constitution were within the authority derived from Ex. 223 and Ex. FO. At the outset, it has to be stated that nothing contained in these documents would amount to an authority to effect a change in the fundamental principles governing the trust. Such authority must be given by the founder or founders of the trust and must be embodied in the deed of endowment. So far as the plaint trust is concerned there has been no such deed of endowment. Ext. 223 is the award setting the disputes between the Malankara Church and the Church Missionary Society in respect of certain trust properties were jointly managed by them. Naturally therefore the scope of the award was limited to the setting apart separately of the trust properties belonging to each sect. The arbitrators were not concerned with nor had they the authority to decide as to the nature of these trusts or as to the possibility of any change being effected in these trusts. Great emphasis was

placed on the expression used in Ext. 223 in referring to the trust properties of the Malankara . Church, as "being indisputably the property of the Syrian Community". On the strength of this expression it was argued that the members of the Syrian community are the owners of the properties and that they can by a majority decide as to the manner in which such properties are to be managed or utilised. This argument did not appeal to us. The properties are trust properties and the members of the M1ankara Church are only beneficiaries. The properties were endowed for the benefit of a particular religious denomination and Ext. 223 has made provisions for regulating the management of the trust by three trustees belonging to the same persuasion. Thus no question of the majority of the beneficiaries being competent to effect a change in the nature of the trust, can arise. The resolutions passed at the Mulanthuruthu synod and embodied in Ext. FO cannot also confer authority on the Malankara Association or the Managing Committee to bring about a change in the fundamentals of the trust. The authority conferred on these bodies was meant only to make the necessary rules and also to alter the existing rules relating to the administration of the properties belonging to the Church and the community. The opening address of the Patriarch to the Synod and the reply given by the Synod, as also the first resolution passed by it, would clearly indicate that the fundamental principles of the faith of the Church have to be maintained intact.

53. Another contention urged on behalf of the respondents was that the constitution Ext. AM was unanimously accepted at the M. D. Seminary meeting and hence the entire Church is bound by it. This argument is based on two assumptions; one being that the meeting was held with notice to every one of the churches in Malankara and the other being that the members of these churches were made aware of the contents of Ext. AM. Both these assumptions are incorrect. We have already found that there is no satisfactory or convincing evidence that notice of the M. D. Seminary meeting had been properly given to one and all of the churches in Malankara. It has to be stated that the notices Exts. 59, 60 and 61 merely stated that a meeting of the representatives of the churches was proposed to be held for considering many important matters regarding the Malankara Church. No indication was given in these notices that the meeting would be considering the idea of forming a new Church or effecting any change in the fundamental principles governing the Church. Item 4 of the agenda merely stated that the meeting was to pass the Bharanakhatana passed by the Association Committee. The nature of the Bharanakhatana was not disclosed in the notice. Since the nature of the Bharanakhatana was not fully disclosed and made known to the members of all the churches by circulating copies of the same among them, it cannot be said that they had notice of the draft of the new constitution. Under these circumstances the entire Church cannot be bound by the constitution passed by a meeting attended by the representatives of some of the churches only. The churches which participated in the meeting and accepted the constitution can alone be bound by it.

54. In order to make out that those who accepted the constitution Ext. AM did not voluntarily go out of the Malankara Church, two points were urged by learned counsel for the respondents. It is said that beyond what had already been done by the 1st defendant and his followers at the time of the installation of the first Catholicos, nothing more has happened with the passing of this constitution. The other argument is that the acceptance of the constitution cannot be said to have been done with the intention of getting away from the Malankara Church or with the idea of establishing a new Church. The wrongful acts which were attributed to the 1st defendant were that in 1912 he accepted the deposed Patriarch Abdul Messiah as the lawful Patriarch and got ordination from him, that he maintained that the Catholicos of the East was revived and re-

established in Malankara in that year and that later on the 1st defendant himself became a Catholicos and also the Malankara Metropolitan, that he has been collecting Ressisa due to the Patriarch and that he has been asserting that he is competent to consecrate Morone and to ordain Metropolitans. It has already been found that these acts would only amount to ecclesiastical offences for which the 1st defendant and others supporting him could be punished after a proper inquiry by competent authorities and that the acts would not ipso facto make them heretics or aliens to the Church. Since there was no such inquiry against these persons, they continued to be members of the Malankara Church. It may also be mentioned that Mar Geevarghese Dionysius and the 1st defendant had repented about these acts and they were making repeated efforts to have the acts done by Abdul Messiah regularized by the lawful Patriarchs Abdullah, Mar Elias and Mar Ephraim. This position is amply borne out by the letters Ext. BB, BC and the Patriarch's Kalpana Ext. Z. It was only when all these attempts failed that the 1st defendant and his supporters made up their minds to have their own way for perpetuating the Catholicate and to have everything done at Malankara under the authority of the Catholicos in defiance of the authority of the Patriarch. In Ext. CB the 1st defendant has given his own account of the final attempt made to get the Catholicate created by Abdul Messiah, accepted by Patriarch Mar Ephraim. Finding that the Patriarch was not amenable to the course suggested by the 1st defendant and his supporters, they thought of breaking away from the Antiochian connection. Such an attitude is sought to be justified by contending that no other alternative was open to them fer maintaining the independence of the Malankara Church as against the claim of temporal power put forward by the Patriarch. That the Patriarch has no such temporal power, was clearly declared in Ext. DY case and to that extent the independence of the Church was assured. Thereafter, the Patriarch's interference could be successfully resisted by resorting to civil courts, if necessary. The 1st defendant and his supporters, on the other hand, appear to have thought that the remedy lies in breaking away from Antioch. It could therefore be said that they had a strong motive for taking the necessary steps in that direction. We are not concerned with the question whether there was sufficient justification for taking such steps. What is relevant to he considered is whether the steps were taken intentionally and with full consciousness of the implications of such steps. Regarding these aspects, there can possibly be no doubt. The new constitution under Ext. AM was evolved at a stage when these people felt that there was no possibility of inducing the Patriarch to accept as valid the unlawful and un-canonical steps taken by Abdul Messiah in respect of the Malankara Church. The constitution was a countermove against the firm attitude adopted by the Holy Patriarch. The several articles inserted in Ext. AM and which we have already referred to make it clear that in framing the constitution the 1st defendant and his supporters intended to bring about drastic changes in the faith, order and discipline of the Church. This cannot he said to be a mere repetition of the unlawful acts committed by them earlier. Ext. AM is much more drastic and wider in its scope. As we have already shown, its effect was 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 1st defendant and his supporters, it is clear that they have voluntarily separated themselves from the Malankara Church for whose benefit the plaint trust was constituted and we hold accordingly.

55. The defendants have a case that the plaintiffs and their partisans have voluntarily separated themselves from the Malankara Church and have established a separate Church of their own. This matter is covered by issues 19 and 20 as framed by the lower court. The grounds urged against the plaintiff, are those enumerated in issue 211. Some of these grounds are that the

plaintiffs were taking the stand that the Patriarch alone can consecrate Morone, that the canon binding on the Church is Ext. BP, that no Catholicate was established at Malankara and that the Patriarch can himself ordain and excommunicate Metropolitans. On all these points it has been found that the stand taken by the Plaintiffs was correct and hence no question of here"y or separation can arise on account of such acts. Another ground urged against the plaintiffs is that they have been contending that Ma Geevarghese Dionysius was not the lawful Malankara Metropolitan was only during the period when the excommunication or Jer passed Abdullah against Mar Geevarghese Dionysius was in force that the Plaintiffs adopted the attitude that the latter was not the lawful Malankara Metropolitan. There cannot he anything objectionable in that attitude because the Plaintiffs were only respecting the authority of the ruling Patriarch. After the excommunication was cancelled at the interview which Mar Geevarghese Dionysius had with Patriarch Mar Elias at the Always Seminary, the 1st Plaintiff and others on his side again accept Mar Geevarghese Dionysius as the lawful Malankara Metropolitan. No doubt the Plaintiffs and their partisans refused to co-operate with Mar Geevarghese Dionysius in his attempts to have the authority of 1st defendant as Catholicos recognized. In doing they were merely obeying and respecting the commands Exts. 9 and 2 issued by the head of the Church. By doing so the Plaintiffs cannot be said to have been acting against the trust. On the other hand they have all along been standing by the fundamental principles governing the trust and hence the charge that they separated themselves from the main body of the beneficiaries of the trust from the year 1912 onwards, is unsustainable. Dissociating from those who were maintaining that a Catholicate had been validly established in Malankara, cannot be said to be an unlawful act when it is found that the Catholicate was not validly established. The charge that the plaintiffs made alterations in the liturgy of the Church has also not been made out. Then there is the charge that the plaintiffs have been claiming that the Patriarch has temporal powers over the Church. It is not shown that the plaintiffs have been contending that the Patriarch is competent to deal with the trust properties or other properties of the Church or that he has the right to interfere in the internal management of the properties. Even if the plaintiffs have been contending against the decision in Ex. DY and trying to maintain that the Patriarch has temporal powers, it could only he said that they were taking a stand against a fundamental principle governing the independence of the Church. At the worst it may amount to an ecclesiastical offence. All the same it would not make the plaintiffs and their partisans ipso facto heretics or aliens to the Church. The reasons on which it was held that the defendants cannot be said to have ipso facto become heretics or aliens on account of their unlawful acts, must hold good in the case of the plaintiffs also. So far as the 1st plaintiff is concerned it is pointed out that he had executed the udampadi Ext. 176 conceding temporal dower- to the Patriarch. The Church will not he bound by any such concession made by the 1st plaintiff. So far as the Malankara Church is concerned, the Patriarch's powers could only be as, defined in Ext. DY. The wrong concession made by the 1st plaintiff in Ext. 176 could not ipso facto make hint a heretic or an alien. The effect of the several charges levelled against the plaintiffs and their partisans is that they have been firm in their adherence to the authority of the Patriarch. This cannot in any sense mean that thy have separated themselves from the Malankara Church. There is nothing to show that they have established a separate Church of their own. They have not evolved any new constitution similar to Ext. AM accepted by the defendants. The consistent stand taken by the plaintiffs has 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 these aspects, we hold that the charges leveled against the plaintiffs under issues 19 and 20 have not been trade out and 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.

56. The plea of limitation and adverse possession set up by the defendants may also be disposed of at this stage. According to them the plaintiffs and their partisans were not being benefitted by the plaint trust at any time subsequent to the establishment of the Catholicate in the year 1912. At that time the Metropolitan was Mar Geevarghese Dionysius. Himself and his co-trustees were in management of the trust properties. The first Catholicos died in the year 1913, and for the next 12 years no successor had been installed. It has already been pointed out that during this period and even subsequently, the position that the Malankara Church was under the supremacy of the Patriarch had not been repudiated by Mar Geevarghese Dionysius in spite of the fact that he had been excommunicated by Mar Abdullah. The attempt was only to question the validity of that excommunication. There was also the dispute about the validity of the acts done by Abdul Messiah at Malankara. During the period when these disputes were agitated in the civil court, the trustees continued to be in management. But on account of the interdicts evidenced by Exts. 9, 166, 168 and 2 issued by Patriarchs Mar Abdullah, and Mar Elias, the members of the Church who were adhering to the original faith of the Church were not co-operating with the attempts of Mar Geevarghese Dionysius to justify the existence of the Catholicos. It was not a case of the plaintiffs and their partisans having been excluded from the benefits of the trust. In fact individual members had not to derive any particular benefit. The trust was being administered for the general benefit of the Church and the community. Possession of the properties was with the trustees and as such it cannot be said that the defendants' party was in exclusive possession as against the plaintiffs' party. The attempt to prop up a Catholicate did not result in the expulsion of one or other of the rival groups from the Churches. The desire of the defendants and their supporters was to see that the Catholicate was accepted by the plaintiff's' group also. To achieve this the essential condition to be satisfied was that the validity of the institution had to be approved by the Patriarch. So long as the efforts, in that direction continued, as is evidenced by Exs. BB, BC and Z all parties remained within the fold of the Church. It cannot therefore be said that from the year 1912 onwards the trust was being administered only for the benefit of those who supported the validity of the Catholicate or that the character of the trust became altered so as to make the followers of the Catholicos the sole beneficiaries of the trust. A desire in that direction can be said to have taken shape only when the constitution Ex. AM was passed and the properties were transferred to the new Church created under it. This was wily in the year 1934. The present suit was instituted soon after the creation of such a situation. Under these circumstances, we hold that there is no force or substance in the plea of limitation and adverse possession as advanced by the defendants.

57. There is still another technical plea raised by the defendants and that is that the dismissal of the suit 0. S. 2,1104 on the file of the Kottayam District Court operates as a bar against the sustainability of the present suit. Ex. 43 is copy of the plaint and Ext. 44 is copy of the written statement in that case. That was a suit instituted by certain uiembcrs of the Malankara Church against Mar Geevarghese Dionysius and his co-trustees. Eat. 45 is copy of the judgment in that case and it shows that the suit was dismissed for default. The move to have the suit restored proved futile, as is evidenced by Exts. 46 and 47. That was not a representative suit. Eats. 247 and 248 show that an attempt had been made to obtain the necessary sanction under Order I Rule 8 of the Code of Civil Procedure for instituting that suit in a representative capacity. But it is not shown that the matter was pursued and the necessary sanction obtained. It has also to be noted

that the present suit is essentially 'different in its nature and scope as compared with Ext. 43 plaint in O. S. 2/1104. The plaintiffs in that suit represent none but themselves. Thus the dismissal of that suit cannot operate as a bar to the present suit.

58. The next important question for consideration is whether the plaintiffs have e4tablighed their right to get a decree for recovery of the trust properties from defendants 1 to 3. The plaintiffs claim such a right primarily on the basis that they have been validly elected as trustees entitled to be in management of these properties for the benefit of the Malankara Church. In the alternative they claim a decree in their favor as individuals suing on behalf of the Church with the sanction of the court under Order I, rule 8 C. P. C. This alternative position will be considered separately. As for the primary stand taken by the plaintiffs that they have been elected as trustees, the sustainability of their claim must necessarily depend on the validity of the election relied on by them. Regarding this matter certain observations have been made by the Supreme Court in paragraphs 32 and 33 of the judgment allowing the application for review of the prior judgment of the High Court and remitting the case for fresh disposal after re-hearing. At such re-hearing of the appeal great emphasis was placed by learned counsel for the respondents on the aforesaid observations. He even went to the extent of suggesting that these observations amount to conclusions reached by the Supreme Court on the question of the validity of the Karingasra meeting at which the plaintiffs were elected as trustees. The learned Judges of the Supreme Court appear to have anticipated the danger of such a possible argument and accordingly made a specific direction in the closing paragraph of the judgment of that court in the following terms:

> "We need hardly add that the observations that we have made in this judgment are only for the purpose of this application for review and should not be taken or read as observations on the merits of the appeal now restored and to be reheard by the High Court".

In view of this specific direction, the observations referred to above have to be taker only as an indication of the different aspects that arise for consideration in dealing with the question of the validity of the Karingasra meeting, but not as suggesting as to the quantum of proof necessary for establishing the validity of that meeting or of the validity of the plaintiffs' election as trustees.

59. The meeting at Karingasra Church was held on 6-1-1111 (22-8-1935). The proceedings of that meeting are contained in Ext. B. This meeting was convened by the 1st plaintiff and three other Metropolitans who were all along upholding the authority of the Patriarch over the Malankara Church as recognized in Ex. DY judgment. Ex. D dated 25-11-1110 (9-7-1935) is copy of the notice issued by them for convening this meeting of the representatives of the several churches. It may be mentioned here that the M. D. Semi- nary meeting (Ex. 64) at which the new constitution Ex. AM was passed was held on 11-5-1110 (26-12-1934). Thus the Karingasra meeting was held nearly 8 months after the M. D. Seminary meeting. The attacks against the validity of the Karingasra meeting are mainly two viz., that the meeting was not convened by competent persons and that notice of the meeting was not given to all the churches. In considering these objections, the situation under which the Karingasra meeting was called together has to be understood and kept in mind. It was by virtue of a resolution passed at the Mulanthuruthu Synod (Ex. FO) that the Malankara Association was formed as a body representing all the churches in Malankara. Authority was also conferred on this body to make

the necessary arrangements for the management of the properties of the Church. All the same no rules were framed under Ex. FO specifying the manner in which notice for calling a meeting of the representatives of the churches are to be issued. Who should convene such a meeting was also not specified. All the same it is seen that such meetings used to be convened by the Malankara Metropolitan as the Ex-officio President of the Association and in his absence by the other Metropolitans who were recognized as the Vice- Presidents of the Association. Mar Geevarghese Dionysius has stated in Ex. EA that the Metropolitans had been functioning as Vice- Presidents. The notice Ext. 60 for the M. D. Seminary meeting was issued by the Metropolitans in their capacity as Vice-Presidents of the Association. Since Mar Geevarghese Dionysius was no more and nobody had been elected in his place as Malankara Mtropolitan, the 1st defendant as Catholicos was taking a leading part in that meeting at which he was accepted as the Malankara Metropolitan. All the members who were on the rolls of the Association were also his supporters. 't'hese members and the Metropolitans who sided with the Catholicos, had all participated in that meeting and accepted the constitution Ext. AM which resulted in their voluntary separation from the Malankara Church and formation of a church of their own, as already found. Thus no member of the Association was available to represent the Churches which still maintained the adherence to the Patriarch and also the fundamental principles governing the trust. The trust (properties had to be conserved for the benefit of the members of these churches which were under the control of the four Metropolitans who stood by the Patriarch. In the interests of the trust a meeting of the representatives of these churches had to be called for electing the trustees and for making other arrangements necessary for the protection of the trust. It was under these circumstances that the notice Ext. D was issued by the four Metropolitans already mentioned. They had not lost their status as Metropolitans on account of their refusal to recognize the Catholicos and to co-operate with him. They retained their status as Metropolitans in Malankara and as Ex-officio Vice-Presidents of the Association. Since all the members of the Association who were in existence at that time had gone over to the side of the Catholicos, these four Metropolitans could alone convene a meeting of the representatives of the churches under their control and which stood by the faith of the Malankara Church. It cannot therefore be said that the signatories of Ext. D notice wore not competent to issue that notice for the Karingasra meeting. Thus we hold that the notice was issued by competent persons.

60. Then there is the further question as to whether notices were issued to all the Churches. The case put forward in the plaint was that notices were issued to all the churches, The expression "all churches', would normally include churches on the plaintiffs' side, churches on the defendants' side and also other churches, if any, which had not aligned with either of these rival groups. The witnesses examined on the plaintiffs' side also understood that expression in such a manner as is obvious from the assertion made by them that even the churches on the defendants' side had been given notice of the Karingasra meeting (Ex. B). But such a case could not be sustained by the evidence on record. The plaintiffs realised this only at the fag end of the case. Wisdom dawned on them at that stage and they were able to understand the scope of the Karingasra meeting. They were calling together a meeting of the representatives of the churches which had not abandoned the original faith and had not taken sides with the Catholicos by going over to the new Church formed as per Ext. AM. This aspect had been made clear by the direction given in Ext. D notice itself. It was to the effect that the Kalpana Ext. Z issued by the Patriarch to the several churches and which had been published for general information, should be strictly adhered to in the matter of electing representatives to be deputed to the Karingasra meeting. The purport of Ext. Z Kalpana was that the 1st defendant and his followers are aliens to the true Church and that they

have gone out of it and those who stand by the true faith have no permission from God or from the Patriarch to co-operate with these people. It was also commanded that they should be treated as men who have no connection whatever with the Church until they repent and do lawful repentance and receive from the Patriarchal throne, redress. Thus it was clear from the notice that the churches which had stood by the 1st defendant and had accepted Ext. AM constitution were not intended to be invited for the Karingasra meeting, which was a meeting of the representatives of the churches continuing allegiance to the Patriarch. Therefore the failure to give notice to the defendants' churches could not affect the validity of the Karingasra meeting.

61. The question, then, is whether notice was given to all the churches excluding the churches on the defendants' side. This could be ascertained only on the basis of a correct list showing the true alignment of the churches under different groups. Neither side had produced such a list in court. But both sides agreed to produce such a list and the court fixed a date for the production of such a list. The defendants produced a list. But the plaintiffs, failed to do so. Thus the trial court had to proceed on the basis of the list produced by the defendants which showed that the majority of the churches are on the defendants' side. The finding of the lower court was that the defendants had not gone out of the Church with the result that notices to their churches also became necessary. On the evidence it was clear that the majority of such churches had not been served with notices and for that reason the objection to the validity of the Karingasra meeting was upheld. But in view of our finding that the defendants' churches are outside the fold of the true Malankara Church, it has become necessary to ascertain if notices were given to the remaining churches. The only basis on which the number of churches falling under different groups could be ascertained is the list produced by the defendants. This list was marked as Ext. 272 in the lower court. Since it is a list produced by the defendants the correctness of the grouping of the churches under different categories as shown in that list, can be taken as admitted by the defendants. The plaintiffs who have failed to produce a list of their own, are not entitled to challenge the correctness of the figures shown in Ext. 272. Going by this list and the sammathapthrams or consent deeds produced in the case, the total number of churches in Malankara that were in existence at the time of the meeting is seen to be 5u8. Some more churches came into existence subsequently. According to the defendants' admission in Ext. 272 the number of churches on their side comes to 310 and the number of churches on the plaintiffs' side comes to 141. The exact position of the remaining 49 churches is not clear. In some of them the majority of the churches may be favoring the Catholicos and the minority standing by the Patriarch, while in some others the reverse may be the position. There may be another group of churches where each party may have equal strength. When the case was being argued in this court. the appellant, wanted to clarify these matters and for that purpose they filed a book containing the lists of churches together with an affidavit from the 1st plaintiff's Secretary, explaining the figures in the list. The respondents objected to the admission of such fresh evidence in the appeal at such a late stage. We could not find sufficient reason to admit the fresh evidence and hence the same was rejected. Thus the appellants had to confine themselves to the evidence already on record.

62. At the time of the Karingasra meeting Dw. 27 was a Metro- politan on the plaintiff's side and in that capacity he has signed Exts. D and B and these documents have been proved by him. He has also deposed about the proceedings of the meeting. P. Ws. I to 6, 8 to 10, 12 to 16 and 18 had also attended this meeting and they have proved the sammathapathrams or consent deeds marked as Ex. B (1) series and also those contained in Ex. EU and EW. It is gathorable from these records that 224 churches had participated in the Karingasra meeting. This is in excess of the

number of the plaintiffs' churches as shown in the defendants' statement Ext. 272. But on a comparison of the samathapathrams produced at the Karingasra meeting (Ext. B) and at the M. 1). Seminary meeting (Ext. 64) it is seen that 61 churches attended both the meetings. Since those 64 churches had accepted Ext. AM constitution passed at the M. D. Seminary meeting, those churches have no right to participate in the Karingasra meeting. Hence those 64 churches have to be deducted from the 224 churches mentioned above. The balance comes to 160. Even this is in excess of the number of churches on the plaintiffs' side as admitted in Ext. 272. But still it cannot be said that the excess takes in all the 43 churches which have not definitely aligned either with the plaintiff, or with the defendants, It is argued for the respondents that notice for these churches had also to be given and since it is not shown that notices were sent to these churches also, it cannot be said that the Karingasra meeting was properly and validly held so as to bind all the churches excepting those which had completely gone over to the defendants' side. No doubt, this position is correct if the validity of the meeting is tested by the rigid rules applicable to such meetings. It cannot be said that the plaintiffs have adduced conclusive evidence that notices for the meeting had been sent to all the churches excepting those which had gone over to the side of the defendants, by accepting the new constitution Ext. AM.

63. The question is whether in view of the several circumstances adverted to above, it will be just and proper to hold that the plaintiffs have failed to make out that they have been duly and validly elected as trustees of the Malankara Church. It has to be remembered that the plaintiffs seek recovery of the trust properties to he administered for the benefit of those who still adhere to the fundamental principles governing the trust. Such recovery is sought for from persons who have gone out of the Ch arch and have thus become disentitled to any right in or benefit from the trust properties. In other words, defendants 1 to 3 are in wrongful possession of the properties and they can be deemed to be trespassers. If they were entitled to any benefit out of the trust and were in lawful possession of the properties, they could put the plaintiffs to strict and conclusive proof of their title as trustees. The same standard of proof cannot he insisted on by trespassers or persons in wrongful possession of properties so as to enable them to continue in such wrongful possession for any indefinite length of time. In the ease of religious charities and public trust the court has a paramount duty to take all possible steps for protecting and conserving the same for the true beneficiaries intended by the foundation. As against persons in wrongful possession, it is enough for the plaintiffs to make out a prima facie title in their favor so as to sustain a suit for eviction. Stronger and more conclusive proof may have to lie given by the plaintiffs when those who have a right or interest in the trust properties ask for the plaintiffs' credentials. As already stated, the position here is different. From the analysis of the evidence on record, it has already been shown that notices of the Karingasra meeting which elected the plaintiffs as trustees had been issued to almost all the churches which are unquestionably adhering to the faith of the Church and the fundamental principles governing the trust. Even if a few of the doubtful churches had not been given notice of the meeting, that by itself cannot invalidate the election. It has to he remembered that the election is not challenged by any one of such churches but only by the defendants who are in wrongful possession of the trust properties. In connection with the plaintiffs' application for sanction under Order I rule 8 C. P. C., there, was a publication in the Government Gazette inviting objections. from persons interested in the Church to the permission sought for by the plaintiffs to maintain the present suit on behalf of the Malankara Church. There is a statement in that notice that the plaintiffs are suing in their capacity as trustees also. No doubt, it may not have been very necessary to mention that fact also in the notification. However it was there in the notification published. But nobody from any of the churches on the plaintiffs'

side or from any of the doubtful churches had come forward questioning the plaintiffs' status as trustees lawfully elected. The validity of the Karingasra meeting and the status of the plaintiffs as trustees have been questioned only by the defendants who have become strangers to the trust. This means that all the churches excepting those on the defendants' side have acquiesced in the plaintiff's claim as lawful trustees. Such acquiescence is tantamount to ratification of the proceedings of the Karingasra meeting. These facts and circumstances are sufficient in our opinion to show that the Karingasra meeting was properly and validly held. At this meeting the 1st plaintiff was elected as the Metropolitan trustee and plaintiffs 2 and 3 were elected as the priestly trustee and layman trustee respectively. The election of the 1st plaintiff as the Metropolitan trustee was duly reported to the Patriarch as admitted by Dw. 27 (page 30) and Ext. BA is the Kalpana issued by the Patriarch approving and confirming such election. The meeting further declared that defendants 2 and 3 had ceased to be trustees. A formal resolution was also passed removing them from trusteeship. The plaintiffs were authorized to take the necessary legal steps for recovery of the trust properties from persons in wrongful possession of the same. Thus we hold that the plaintiffs have been validly elected as trustees and in that capacity they are entitled to maintain the present suit for recovery of the trust properties.

64. Out of the three plaintiffs, the first two are no more and the 3rd plaintiff is the only surviving trustee. He cannot be allowed to continue in management as the sole trustee even after recovering the trust properties as per the decree to be passed in this case. Appropriate directions will therefore be made in the decree for calling together a meeting of the representatives of the churches adhering to the fundamental principles of the Church within a reasonably short time so than the new trustees elected at that meeting may take charge from the 3rd plaintiff of the management of the trust and may be in a position to enforce the decree as his successors-in-interest.

65. In view of our finding on the question of the plaintiffs' status as validly elected trustees, the alternative position taken up by the plaintiffs that they are also entitled to maintain the suit as one under Order I rule 8 C. P. C., does not strictly arise for consideration. However, we shall consider that aspect also in view of the elaborate arguments addressed by both sides. It was urged on behalf of the respondents that in the plaint there was no definite averment that the plaintiffs were suing in their representative capacity also. Going by the exact words used in paragraph 35 of the plaint it is seen that there is some force in this argument. What is stated there is that although the plaintiffs are fully entitled to sue in their capacity as trustees, they have prayed that they might be permitted to file this suit in their personal capacity as members of the community as well. The expression "personal capacity" as used in this paragraph appears to have been followed up in the issue paper also. However, it is clear from paragraph 35 of the plaint that what the plaintiffs meant was that they might be permitted to file the suit for and on behalf of the Malankara community. If they were seeking relief for themselves as particular individuals, no special permission of the court would have been asked for. But such permission has been expressly asked for in paragraph 35 of the plaint. This is the permission or sanction contemplated by Order 1 rule 8 C. P. C. In fact a separate application (C. M. P. 4277 dated 27-7-1113) under that rule was also filed in court along with the plaint. Even though the application bears the date 21-7-1,13 as shown in the plaint, it was actually filed in court only on 27-7-1113 along with the plaint. The averment in the plaint has therefore to be read and understood in the light of that application and also the affidavit in support of it. In paragraphs 2 and 5 of the affidavit in support of that application, it is expressly stated that the sanction applied for under Order I rule 8 C. P. C is to permit the plaintiffs to institute the suit in a representative capacity on behalf of the Malankara

community. The notification contemplated by Order I, rule 8 was also duly published. The additional defendants got themselves impleaded in the suit in pursuance of that notification. It is therefore clear that they understood the position that the alternative capacity mentioned by the plaintiffs was the plaintiffs' representative capacity under Order I, rule 8 of the C.P.C. Defendants 1 to 3 and the additional defendants all go together and the contentions raised by all of them are substantially the same. Under these circumstances it cannot be said that the defendants did not understand the nature of the alternative capacity in which the plaintiffs wanted to maintain their suit or that any prejudice was caused to the defendants on account of the failure of the plaintiffs to use the specific expression "representative capacity" in paragraph 35 of the plaint.

66. The next point urged on behalf of the defendants is that the procedure contemplated by Order I, rule 8 C.P.C., had not been strictly complied with and that the failure to do so is a fatal defect, and in support of that position reliance was placed on the ruling in *Kumaravelu v. Ramaswami*[10] With reference to the sanction under Order I, rule 8 C.P.C. and the conditions under which such sanction is to be given and the manner in which notice to the numerous persons interacted in the litigation is to be given, the following observations were made in that case:

> "For the rule to apply the absent persons must be numerous: they must have the same interest in the suit which, so far as it is representative, must be

[10](A.I.R. 1933 P.C. 183)

> brought or prosecuted with the permission of the court. On such permission being given it becomes the imperative duty of the court to direct notice to be given to the absent parties in such of the ways prescribed as the court in each case may require: while liberty is reserved to any represented person to apply to be made a party to the suit, The obtaining of the judicial permission and compliance with the succeeding orders as to notice, are quite clearly the conditions on which the further proceedings in the suit become binding on persons other than those actually parties thereto and their privies".

In the present case the persons having the same interest in the suit as the plaintiffs are undoubtedly numerous. They are the members of the Malankara Church who adhere to its original faith and to the fundamental principles governing the plaint trust. Thus the provisions of Order I, rule 8 C.P.C. are clearly applicable to the present case. Clause 1 of rule 8 makes it perfectly clear that the sanction or permission contemplated therein has to be given by the court at the stage of the institution of the suit and not at a later stage. Such sanction is to he given on the application of the persons interested in prosecuting such a suit. The question of issuing sanction is a matter between them and the court and at that stage the question of notice to anybody else does not arise. It has therefore to be seen whether the necessary sanction was given at the outset. That it was given is clear from the order passed by the court on the very day the application was presented in court. That order was passed by Mr. Satyanesan who was the Judge then in charge of the court and the order was in the following terms: "Notice under Order I rule 8 by publication in the Gazette". It is clear from clause 1 of rule 8 that the direction as to the manner in which notice of the institution of the suit has to be given is the next step after giving the sanction contemplated by the rule. The direction in the order quoted above that notice is to be given by publication in the Gazette is therefore a sufficient indication that the court had already given the permission or sanction required under that rule. Even though the order does not in

express terms state that such sanction was given the grant of such sanction is implied in the order itself. The rule does not insist on express written consent. Subsequently, the notification was published in the Gazette and as already stated a few persons carne up in pursuance of that notification and got themselves impleaded as additional defendants. Thus it is clear that the conditions required by rule 8 of Order I and as explained in A. I. R. 1933 P. C. 183 were fully complied with in the present case. A second order is seen to have been passed on C. M. P. 4277 of 1113 by the Judge who succeeded Mr. Satyanesan and who decided the case in the trial court. That order appears to have been passed just two days prior to the closing of the final arguments in that court. In that order it is stated "This petition is granted". It is on the strength of this order that the respondents have developed their arguments that the sanction required under rule 8 Order I was given only by this order and thereafter there has been no notice or publication in the Gazette. It is obvious that the whole argument proceeded on a misconception of the real position. The Judge who passed the second order was also laboring under that misconception. He did not understand the real purport, scope and effect of the first order dated 27-7-1113 that had been passed on C.M.P. 4277 by Mr. Satyanesan. As already pointed out the required sanction was implicit in that order and as such no further order was called for on that application. The succeeding Judge did not realise this position and hence he passed the second order stating that the petition is granted. This was a superfluity and an unnecessary formality and on the basis of such an order, no argument can he sustained that the conditions required by rule 8 of Order I have not been complied with. The question whether any prejudice has been caused to the defendants on account of the non-compliance of the conditions contemplated by rule 8 of Order I does not, therefore, arise for consideration in this case. It may also be pointed out in this connection that in considering the scope of rule 8 of Order I, the Madras High Court held in *Muthukaruppa v. Appavoo*[11] that it will be sufficient if the conditions required by rule 8 have been substantially complied with and an apparently different view taken by the Privy Council in *Kumaraoelu v. Ramaswamy*[12] was attempted to be explained. For the purpose of this case it is not necessary for us to examine the question whether the Privy Council decision has been correctly read in the Madras case. So far as the facts of the present case go it is clear that the conditions of rule 8 of Order I have been strictly complied with and that no prejudice has been caused to the defendants on account of any failure in that direction. Even if the fact that sanction under Order I, rule 8 C.P.C. had been given by the court with the direction to publish the notice in the Government Gazette was not specifically stated in the summons issued to the defendants, the failure to do" so cannot he anything more than an irregularity and it cannot affect the plaintiffs' right to maintain the suit as a representative action under rule 8. The preparation of summons and notices and the insertion of the necessary particulars In them are matters over which the plaintiffs could not have any control and hence they cannot be held responsible for any irregularity committed in the issue of such summons and notices. This observation applies with equal force to the notification published in the Government Gazette by the Sheristadar under orders of the court. That notification dated 23-12-1113 appeared at page 729 in Part III of the Travencore Government Gazette dated 4-12-1113. A printed copy of that notification is among the records of the case. It gives in full the personal addresses of all the three plaintiffs and all the three defendants and the body of the notification contains two specific tatters for the information of all persons concerned. One such information is that the plaintiffs in their capacity as trustees have sued or certain reliefs in respect of the trust properties. The second is hat the plaintiffs have filed the suit on behalf of the Malankara Syrian Church obviously meaning thereby that they were suing in a representative capacity on behalf of the Church. It is also significant to note that in describing the plaintiffs in the notification, their personal addresses are alone given and they are

not described as trustees. Thus all the essential particulars necessary for a notification under Order I, rule 8 C.P.C. were given in the notification so that every- body could understand its real nature. The additional information given that the plaintiffs have claimed reliefs as trustees also cannot have the effect of changing the nature and scope of the notification. Thus the objections to the notification have also to be repelled as unsustainable. Since all the conditions required under Order I rule 8 were satisfied and the necessary sanction was obtained from court, it is clear that the plaintiffs in their individual capacity as distinguished from their capacity as trustees, are entitled to maintain this suit in a representative capacity also for and on behalf of the true Malankara Church and we hold accordingly.

67. The next aspect for consideration is whether Section 92 of the Code of Civil

[11](A.I.R. 1943 Mad 161)

[12](A.I.R. 1933 P.C. 1933)

Procedure operates as a bar to the present suit. On this question very learned and elaborate arguments were addressed by counsel appearing on both sides. Numerous authorities were also cited at the Bar: But on a correct approach to the question in the light of the peculiar facts of this case it is seen that the question is simple enough and capable of an easy answer. The question as to how far Section 92 C.P.C. is attracted by the present suit, depends essentially on the nature of the suit. The plaintiffs' main prayer in the suit is that they may be declared to be duly elected trustees of the plaint trust and may be allowed to recover the trust properties in their capacity as trustees. It is settled law that Section 92 will not be a bar to such a suit. I he question whether the section stands as a bar to the suit can, if at all, arise for consideration only while dealing with the alternative position taken 'up by the plaintiffs that as persons suing in their representative capacity for and on behalf of the Malankara Church they are entitled to get a decree in their favor. Here again, we have to scrutinise the averments made in the plaint and also the reliefs claimed by the plaintiffs to see if Section 92 would come in. In the plaint there are no allegations to the effect that defendants 1 and 2 have committed acts of breach of trust. The plaintiffs have not also asked for framing a scheme for the management of the trust. The position taken up by the plaintiffs is that the defendants who had gone out of the Malankara Church have ceased to be trustees of the plaint trust and that they are in wrongful possession of the trust properties. Learned counsel for the respondents argues that even though the plaint has been drafted in such a way as to take it out of the scope of Section 92, the essential reliefs claimed in the suit are (1) for removal of defendants 1 to 3 from trusteeship, (2) for appointment of the plaintiffs as trustees and (3) for compelling the defendants to render accounts. If such is the nature of the reliefs claimed in the plaint, there can be no doubt that the suit will come under Section 92. There is no admission in the plaint that the defendants are in possession of the properties as trustees. On the other hand, the definite allegation is that they are in wrongful possession of the trus6 properties, Naturally, therefore, there is no prayer for removal of these defendants from trusteeship. There is a relief that an injunction may be issued to restrain them from doing any act in their professed capacity as trustees of the plaint trust. This only means that even though they are not trustees they profess or pretend to be trustees. So far as the plaintiffs are concerned they do not ask for a decree appointing them as trustees. The specific case put forward by them is that they have been validly elected as trustees and all that they have prayed for is for a declaration to that effect. Since recovery of properties has been sought for there is a prayer to compel the defendants to render accounts of the profits which the defendants have derived from these properties. The prayer for such a relief by itself cannot attract Section 42. Such a relief is not peculiar to a suit under Section 92 but is one which could he asked for in various other types

of suits also. Thus the suit as framed is plainly one outside the scope of Section 92. It will not be proper to read into the plaint something which is not there so as to bring the suit under that section. Only a suit fully satisfying all the conditions specified in Section 92 can come under the mischief of that section. In *Ranchhoddas v. Mahaluxmi Vahuji*[13] it was held that a suit for a declaration that the property in the suit belongs to a public trust of a religious and charitable character, did not fall within the mischief of Section 92. The claim for possession of the trust properties in that case was held to be a claim made against alienee's. It was pointed out that the plaintiffs had not sought for the removal of the 1st defendant from

[13](A.I.R. 1953 Bom 153)

trusteeship and that the relief of possession merely amounted to a claim for restoring the property to where it belonged. Such a suit was held to be outside the scope of Section 92. The decision of the Supreme Court in *Pragdasji v. Ishwarlalblai*[14] was against any enlargement of the scope of Section 92.

68. The position of defendants 1 to 3 in relation to the plaint trust has to be clearly understood. Defendants 2 and 3 were joint trustees along with Mar Geevarghese Dionysius and the status of these persons as trustees was upheld in 45 T. L. R 116. After the death of Mar Geevarghese Dionysius defendants 2 and 3 continued as trustees until the M. D. Seminary meeting (Ext. 64) was held by the defendants and their supporters and the new constitution Ext. AM was passed. Until the date of that meeting, the first defendant had nothing to do with the plaint trust. He claimed to have become Metropolitan trustee by virtue of his election at that meeting as the Malankara Metropolitan. We have already found that with the passing of that constitution all those who accepted it, voluntarily separated themselves from the Malankara 'Church and became members of the new Church created under Ext. AM. Thus the election of the 1st defendant could not be as the Malankara Metropolitan but could only be as the head of the new Church. The 1st defendant not having been ordained by a lawful Patriarch, he did not possess the essential qualification required of a Malankara Metropolitan. The participation of defendants 2 and 3 in the M. D. Seminary meeting and their acceptance of the new constitution had the inevitable result of their being separated from the Malankara Church. The properties which were under their control as trustees were surrendered by them to the new Church formed under Ext. AM, the legal effect of which was an alienation of the trust properties by these two defendants to the new Church. The subsequent possession of the properties by defendants" 1 to 3 could only be as trustees under the new Church and as per the scheme of management provided for in Articles 86 and 87 of Ext. AM. The new scheme was to the effect that some properties were to be in the exclusive possession of the 1st defendant as Metropolitan trustee and the remaining items were to be managed by two joint trustees, one being a priest and the other a layman. Thus the original trust was put an end to and two new trusts were brought into existence. In such a situation defendants 1 to 3 cannot he said to be holding the properties for the original trust. They cannot also be said to be the lawful trustees of that trust or even constructive trustees holding the properties for that trust. Since the new Church had become an alienee of these properties by virtue of the transfer effected in favor of it by defendants 2 and 3, the subsequent possession of the properties by defendants 1 to 3 could only he possession under the alienee. Plaintiffs as trustees of the original trust are seeking recovery of possession of the properties from such alienees and for such a suit no sanction under Section 92 is necessary.

69. Viewed in another aspect also it can be seen that defendants 2 and 3 who have been accepted as trustees by the Malankara Church had by their own conduct voluntarily surrendered their

trusteeship and had ceased to he trustees from the moment of their acceptance of Ext. AM constitution. While dealing with the fundamental principles of the plaint trust, it was shown that the trust had to be administered for the benefit of those adhering to the faith of the founder and that only persons of the same persuasion are eligible to become trustees. This position is made
[14](1952 S.C. 143)
clear in Ext. 223 where particular emphasis has been made on this aspect of the matter viz., that the three trustees should belong to the Malankara Syrian Christian community adhering to the faith of the founder of the trust. This principle was being adhered to all along and such adherence is of the outmost importance in the case of religious charities. A trustee who fulfils the essential condition of belonging to the same persuasion to which the founder belonged and the beneficiaries should belong, can continue as trustee only so long as he continues to belong to that persuasion. Change of faith on his part must necessarily result in a forfeiture or surrender of his trusteeship of the particular trust. Change of faith being a voluntary act on his part he must be deemed to be voluntarily forfeiting or surrendering his trusteeship by that act of change of faith. Nobody can compel him to change his faith. Similarly, it is not open to him to stick on to the trusteeship even after his change of faith. "Once a trustee, always a trustee" is not a rule known to or recognized under the Law of Trusts. Defendants 2 and 3 appear to have realised this position and that must be the reason why they transferred properties to the new trust and accepted trusteeship under it when they also joined the new Church. Acceptance of trusteeship under the new Church amounted to a surrender of their trusteeship under the Malankara Church. So far as the 1st defendant is concerned, his trusteeship commenced only under the new Church. These three defendants who are trustees under the new Church cannot at the same time be deemed to he trustees under the Malankara Church also The position taken up by these defendants in their written statements also makes it clear that subsequent to the acceptance of Ext. AM. these defendants are functioning only as trustees under the new Church. In paragraph 46 of the written statement they have put forward a definite plea that ever since the establishment of a Catholicate in Malankara the defendants and their followers were treated as sole beneficiaries of the trust and the plaintiffs and their supporters were treated as non-beneficiaries. A plea of limitation and adverse possession has also been urged against the plaintiffs and their followers. This idea is further developed in paragraph 47 of their written statement. There it is stated that the properties have become subject to a new trust of which the sole beneficiaries are the followers of the Catholicos. From these contentions it is abundantly clear that the position of defendants 1 to 3 is that they are trustees under the new Church. This necessarily means that they have abandoned or surrendered their trusteeship under the original trust. So far as that trust is concerned and on behalf of which the plaintiffs have instituted the present suit, defendants 1 to 3 are utter strangers who are in wrongful possession of the trust properties. They are mere trespassers in the eye of law. There is therefore no scope for argument that these defendants should be deemed to be holding the properties as lawful trustees or as trustees 'do son tort' in relation to the original trust and that there must be a suit instituted with sanction under Section 92 for removing them from such trusteeship. There is no force or substance in such a contention and hence we repel the same and hold that Section 92 is no bar to the present suit.

70. The Caste Disabilities Removal Net (Act XXI of 1950) was also pressed into service by learned counsel for the respondents to support his argument that the defendants cannot be said to have lost their trusteeship under the Malankara Church on account of their change of faith. Section 1 of that Act runs as follows:

> "So much of any law or usage now in force within India an inflicts on any person

forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in any Court".

We do not think that this section has any application to the rights and liabilities of trustees of public trusts. The section is obviously intended to the personal and proprietary rights of individual citizens. A trustee has no personal right in the trust property entrusted to his management. The determination of one's trusteeship will be in accordance with the principles of the law of trusts. It cannot be said that the Caste Disabilities Removal Act was intended to abrogate the law of trusts altogether. The Act does not also stand in the way of the trustees surrendering their office and severing all connections with the trust. Thus the argument based on the Caste Disabilities Removal Act must also fail.

71. From the findings so far recorded, it follows that this appeal has substantially to be allowed and a decree passed in favor of the surviving third plaintiff to recover the trust properties from the defendants in possession of the same. The properties scheduled to the plaint are grouped under four different schedules A, B, C and D. A schedule consists of 5 items of immovable properties and B schedule consists of 33 items of immovable properties. 205 items of movables are included in the C schedule-D schedule consists of schools, 24 in number. Since all these items covered by all the schedules are not admitted to he common trust properties, the question as to which are the items of trust properties, has to he considered. The appellants have given up their case in respect of a few of these items and the items thus given up have been specified in a statement filed in court by their Advocate Shri K. P. Abraham on 28-10-1955. Some of these items are those included in Ext. 56, the will executed by the late Mar Geevarghese Dionysius, Items 8, 19, 20, 23, 27 and 28 of the B schedule form one set of properties over which the claim has thus been given tip. Similarly, the claim in respect of items 10, 29 and 30 of the B schedule has been given up. The claim in respect of items 2 to 106 of the C schedule has also been given up. In respect of the items thus given up the appeal has to be dismissed with proportionate costs.

72. Out of the remaining items, item 1 of the A schedule and item 1 of the C schedule which are respectively the old Seminary and the investment of the trust fund of 3000 Star Pagodas, are admitted to be common trust properties. They have also been so declared in Ext. 223. the Cochin award of 1840. These and items 2 to 5 of A schedule were treated alike in Ext. DY case where a decree w:s passed in favor of Mar Joseph Dionysius. Ext. DL is copy of the decree in that case. It was found in Ext. DY case that items 2 to 5 of the present A schedule are accretions to the other trust properties obtained under the Cochin award. All these items which were recovered as per Ext. DL decree had later on passed into the possession of Mar Geevarghese Dionysius and his co-trustees and finally they came into the possession of defendants 1 to 3. Thus there can be no doubt that all the 5 items included in the A. schedule are joint trust properties. The more fact that items ,4 and 5 of the A schedule are under the control of the Trivandrum Parish, does not affect the nature of these items as trust properties, because the Parish at Trivandrum is also under the ultimate authority and control of the Malankara Metropolitan.

73. Coming to the B schedule items, excluding those in respect of which the plaint claim has been given up, items 1 to 4 and 9 form one group and they are properties attached to the M. D.

Seminary at Kottayam. It is not disputed that these are trust properties. All the same the 1st defendant has a contention that these form a separate trust under the Malankara Metropolitan. Such a special claim has not been made out. These items have to he treated on a par with items 2 to 5 of the A schedule. Items 1 to 4 of the 13 schedule were acquired under a sale deed Ext. 252 taken in the names of Mar Joseph Dionysius and another, a Roman Catholic priest. The consideration under the sale deed was ultimately paid off by Mar Joseph Dionysius. In Ext. EA it was admitted by Mar Geevarghese Dionysius that common funds of the Church were utilised by Mir Joseph Dionysius in connection with the acquisition of these items and the properties ultimately came into the exclusive ownership and possession of himself as the successor to Mar Joseph Dionysius. Thus these items have to be treated as having been acquired to the Malankara Church and as such they form part of the common trust properties. Item 9 has also to go with items 1 to 4 is view of the admission that all these items are attached to the M. D. Seminary at Kottayam. About B schedule items 5, 6, 7 and 11 also the 1st defendant's contention is that they are trust properties to be administered by the Malankara Metropolitan alone. Having admitted that these are trust properties, it was for him to make out the right to exclusive possession and management of these items by the Metropolitan. There is no such proof. Hence these items have to he treated as common trust properties. Items 12, 13, 14, 15, 24 and 25 of the B schedule go together. According to the 1st defendant, these are trust properties attached to the Parumala Seminary. it is an institution common to the Niranam, Quilon and Thumpaman Dioceses. According to the plaintiffs, these properties were acquired by Mar Joseph Dinnysius by way of gift and also under sale deeds taken with the monev collected from the members of the Malankara Church. Eat. AW dated 13-2-1047 is the gift deed relied on by the plaintiffs. Ext. AY is another udampadi for a property set apart to the Church. These documents relate to portions of item 12 and it is stated that the Parumala Seminary stands on the property covered by Ext. AY. Ext. AZ is a mortgage taken in the name of Mar Geevarghese Dionysius on behalf of the Parumala Seminary and it relate to items 14 and 15. These acquisitions in the names of successive Metropolitans like Mar Joseph Dionysius and Mar Geevarghese Dionysius, lead to the inference that the properties grouped as Parumala Seminary properties are really common trust properties of the Malankara Church. The defendants have produced a series of documents to show that Mar Gregorius of Parumala was taking great interest in the development of the Parumala Seminary. Ext. 242 is a Kalpana issued by him to some churches in the Quilon Diocese asking for contribution towards the expenses of putting up the buildings for the Seminary. Ext. 236 is a mortgage deed taken by Mar Geevarghese Dionysius while he was the manager of the Seminary. Exts. 234, 235. 237 and 238 are documents taken by Mar Gregorius Metropolitan and others on behalf of the Seminary. Exts. 240 and 241 are similar documents taken in the name of Mar Geevarghese and Mar Sevarios. These documents do not establish that the aforesaid items belong exclusively to the Parumala Seminary. The fact that the Seminary and the properties were acquired with funds contributed by the members of the Malankara Church, taken along with the further fact that these properties have been under the control of the Malankara Metropolitans, can only go to show that these items also ar8 common trust properties. Exts. AW and AY go to strengthen that inference. Then there are items 16, 17 and 18 which the defend ants claim to he the properties attached to the M. G. M. High School at Thiruvalla. The contention put forward by the 6th defendant was that these properties were acquired by Metropolitan Mar Gregorius of Niranam and the school building was put up with funds collected from the Niranam Diocese and these properties have never been treated as common properties. The 6th defendant had a special claim for reimbursement of an amount which he had to spend in connection with the management of the M. G. M. School. It may be stated here that even though the 6th defendant

died some years back, nobody has brought on record his legal representatives. Kora Mathen Malpan appears to have admitted in his deposition Ext. EC that the M. G. M. School belongs to the Thiruvalla Church and not to the Malankara Church as a whole. The plaintiffs have not adduced any satisfactory evidence to show that the aforesaid items i. e., items 16, 17 and 18 are common trust properties. Hence the plaintiffs' claim for recovery of these items as common trust properties must fail. Items 21 and 22 are known as Badhani properties. Even according to the defendants' contentions, Mar Geevarghese Dionysius had spent a large amount for putting up build- ings in these items. He was the Malankara Metropolitan at that time and hence it has to be taken that he was utilising common trust funds for acquiring the Badhani properties. Items 21 and 22 are accordingly held as common trust properties. Item 26 of the B Schedule is the property on which the Alleppy Church is built and it is under the control of the Malankara Metropolitan and it must also be deemed to he common trust property. Items 21 and 32 are properties at Trivandrum and these are on a par with items 4 and 5 of the A Schedule. All these items have been under the control of the Malankara Metropolitans and no special claim is made out in favor of the Trivandrum Parish. Hence items 31 and 32 are also held to be common trust properties. Item 33 in B Schedule is a property at Kottarakkara and it is in the possession and control of the 1st defendant by virtue of his claim as Malankara Metropolitan. Naturally it has to be treated as an item of common trust property.

74. Coming to the C schedule items, the first item has already been found to be an item of common trust property. Claim in respect of items 2 to 106 has been given up by the plaintiffs. In the statement filed by the appellants' advocate it is conceded that items 113, 117, 118, 123, 124, 131, 133, 134 to 137, 139, 171 to 173, 175 to 179, 1252, 183 to 186, 190, 191, 192, 193, 194, 195, 196, 197 and NS to 2U5 are not in existence. As for the remaining few items also there is no satisfactory and convincing evidence to substantiate the claim put forward by the plaintiffs on the basis that these are common trust properties and are in the possession of the defendants. The follows therefore that only in respect of item 1. of the C schedule the plaintiffs' claim can succeed. Regarding all the other items in the C schedule the claim must fail

75. Then there are the schools included as items 1 to 24 of the 1) schedule. These schools having been under the control of the Malankara Metropolitan, they have to he treated as forming part of the common trust properties.

76. While dealing with the plaint schedule items, it has already been found that the defendants' claim that some of the items found to be trust properties are Metropolitan trust properties, has no basis whatever. Some of the properties involved in Ext. DY suit were those which were declared to be common trust properties as per the Cochin Award Ext. 223, and the remaining items were those subsequently acquired by and in the names of the Metropolitans. No distinction was maintained between these two sets of properties. When Mar Joseph Dionysius and Mar Geevarghese Dionysius were Metropolitans, all properties were treated alike even though under special arrangements made y the three trustees for their own convenience the Metropolitans used 1) exercise an overriding power in the matter of the management of he properties. All the same, there appears to have been no classification of those properties so that one set of properties may be under he exclusive management of the Metropolitan and another set of properties to be managed by all the trustees jointly. Under these circumstances, the case now put forward by the defendants that some items re Metropolitan trust properties, cannot he accepted as true. Learned counsel for the respondents had to concede that the defendants have of adduced all their evidence

in support of such a contention. But e fault is attempted to be laid at the door of the plaintiffs by inning out that at the stage of the hearing of the case in the were court, the plaintiffs' advocate had stated that the matter may left to he decided at the time of the passing of the final decree. But it has to be remembered that such a suggestion came long after e evidence was closed. It is therefore obvious that the suggestion ade at the time of argument could not have been responsible for the failure on the part of the defendants to adduce the required evidence establish the special claim that some of the trust properties have be in the exclusive management of the Malarkara Metropolitan. he fault was that of the defendants themselves and hence they have to hear the consequences of such default. We hold that the defendants have failed to establish the case that some of the trust properties are Metropolitan trust properties and have to he in the exclusive management of the Malankara Metropolitan.

77. What, if any, is the effect of the death of some of the par lies to the suit, is the only other matter that remains for consideration. Plaintiffs 1 and 2 died during the course of the suit. Their rights in the suit as duly elected trustees could not survive to their legal representatives. Their rights as trustees could survive only so long as they continued to be trustees. Such rights would have come to an end if they were removed from their trusteeship during their lifetime. With their death such rights automatically came to an end and their heirs or legal representatives could not succeed to such rights and hence there was no necessity to bring them on record. All the rights of the trustees became vested in the surviving trustee, the 3rd plaintiff, and the suit could be continued by him. The principles governing such a situation have been explained in *Thirumalai v. Arunachella*[15] and *Keshab Rai v. Jyothi Prosad*[16] So far as the alternative position taken up by the plaintiffs that they could maintain the suit as a representative action under Order I, rule 8 C.P.C., is concerned, the consequence of the death of plaintiffs 1 and 2 is not in any way different. The surviving 3rd plaintiff alone could continue the suit. Any of the numerous persons having the same interest in the suit and whom he represents, could come in as additional plaintiffs at any stage if they choose to do so. They have only to apply to the court for permission to do so.

[15](A.I.R. 1926 Mad 540)

[16](A.I.R. 1932 Cal783)

In this matter the position is similar to that of two or more persons suing with the sanction obtained under Section 92 C.P.C. The principles governing the matter have been explained in *Anand Rao v. Ramdas Daduram*[17] in *Bapiraji v. Ramachandra Das*[18] and in *Surendra Nath v. Harendra Kumar*[19] Thus the death of plaintiffs 1 and 2 and the omission to bring on record their personal representatives do not in any way affect the sustainability and continuance of the suit. The surviving 3rd plaintiff trustee is competent to continue the suit.

78. The death of defendants 2 and 3 cannot also be said to have affected the plaintiffs' right to continue the suit. The position taken up by them was that they were in possession of the properties as trustees. Such rights in them could not devolve on their personal representatives but could only devolve on the surviving 1st defendant who was also claiming possession as trustee. It is also seen that the 1st defendant alone is in possession of the trust properties after the death of defend- ants 2 and 3. Since such possession is found to be wrongful, the surviving trustee plaintiff is entitled to a decree for recovery of the same. There was no necessity to bring on record the legal representatives of defendants 2 and 3. In the nature of this suit, such impleating is not necessary and the suit can be continued against the surviving 1st defendant alone and we hold accordingly.

79. It follows from the findings recorded above that this appeal has to be substantially allowed. Accordingly a decree is passed in the following terms:

(1) It is declared that plaintiff', 1 to 3 were validly elected as trustees to be in management of the plaint items as have been found to be joint trust properties of the Malankara Church and that as trustees they were entitled to maintain the suit. The alternative claim that the plaintiffs could maintain the suit in their representative capacity under Order I, rule 8 C. P. C., is also upheld.

(2) Since plaintiffs 1 and 2 and defendants 2 and 3 are dead, a decree is passed in favor of the surviving 3rd plaintiff trustee to recover all the items which have been found to be common trust properties, from the 1st defendant who is in sole possession of all these items after the death of defendants 2 and 3, and also from those who are holding the properties under the 1st defendant.

(3) The items thus allowed to be recovered are items 1 to 5 of the A schedule and items 1 to 7, 9, 11 to 15, 21, 22, 24 to 26, and 31 to 33 of the B schedule and also items 1 to 24 of the D schedule. Item 1 of the C schedule is declared to be as item of common trust property and the third plaintiff trustee is allowed to recover the interest due on that fund.

(4) The first defendant will also be liable for the mesne profits of the items allowed to be recovered from him by the third plaintiff trustee. Liability for such mesne profits will be for the period from date of suit to the date of decree and also for the further period till the date of recovery of properties, or for a period of three years from the date of decree, whichever is earlier. In respect of the items put in the possession of the receivers, the decree for mesne profits for the period of the receiver's possession will he satisfied by payment to the decree-holder the amounts collected and deposited in court by the receiver or

[17](A.I.R. 1921 P.C. 123) [19](A.I.R. 1935 Cal 413)

[18](A.I.R. 1933 Mad 854)

by those who have enjoyed the properties under him.

(5) Other amounts deposited in court by way of income of the properties towards rent by the lessees in possession of some of the items covered by the decree, will also be paid to the decree-holder towards satisfaction of the mesne profits decreed.

(6) Over items 14 and 15 of the B schedule there was only a mortgage right and the first defendant who has realised the mortgage amount, will account for the same. The amount due on that account will he fixed by the execution court. The decree-holder will recover that amount with interest at 9 per cent per annum from the 1st defendant.

(7) The rate of mesne profits due in respect of the several items decreed will also be ascertained and fixed by the execution court.

(8) A perpetual injunction will be issued against the first defendant restraining him from dealing with the properties covered by this decree and also from doing any act as Malankara Metropolitan. (9) Regarding the plaint claim in respect of items 8, 10, 16, 17, 18, 19, 20, 23 and 27 to 30 of the B schedule, the suit fails and to that extent the suit will

stand dismissed. Except in respect of the first item in the C schedule, the suit fails in respect of the remaining items in that schedule, and to that extent also the suit will stand dismissed.

(10) On the basis of the value shown in the plaint, of the items for which a decree is passed, in favor of the third plaintiff trustee, he will get proportionate costs throughout from the first defendant. On the basis of the value shown in the plaint of the items in respect of which the suit stands dismissed, the first defendant will get pro-portionate costs throughout from the trustee third plaintiff.

(11) To the-'extent specified above, the appeal is allowed with proportionate costs, and in other respects it is dismissed with proportionate costs. The memorandum of objections is also dismissed with costs.

(12) Within six months from this date the third plaintiff trustee will convene a meeting of the representatives of all the churches in Malankara, which continue allegiance to the Patriarch of Antioch, and also accept the fundamental principles governing the plaint trust as specified in this judgment. The election of the representatives will be in the manner provided for in Ext. FO. Notice about the holding of the meeting of the representatives specifying the time and place at which the meeting is to he held, will he issued to all such churches by registered post. Such notice will also be widely published at least in two daily newspapers having circulation in Malankara. The notice will also be published in the Government Gazette. The representatives of the churches will also he required to bring with them sammathapathrams or consent deeds containing an undertaking by the church representatives that the said church is owing allegiance to the Patriarch of Antioch and also that the church is prepared to abide by all the fundamental principles governing the Malankara Church and the plaint trust. The meeting of the representatives thus held will elect the Metropolitan trustee and also the two other trustees, as provided for in Ext. 223. The Metropolitan trustee thus elected will be one ordained by the Patriarch or his duly authorized delegate. The third plaintiff trustee will surrender possession of the trust properties and their management to the three trustees elected in this manner. The election will be controlled and supervised by a Commissioner to be appointed by court on the third plaintiff's application. If the third plaintiff fails 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 already indicated, may apply to the court for appointing a Commissioner to call together 'a meeting of the representatives of the churches and to have the new trustees elected. The period of six months mentioned above may also be extended by the court if the situation demands such extension.