Disst. Council Of United Basel ... vs Salvador Nicholas Mathias & Ors on 20 January, 1988

Equivalent citations: 1988 SCR (2) 737, 1988 SCC (2) 31, AIRONLINE 1988 SC 12, (1989) ILR (KANT) 587, 1988 (2) SCC 31, (1988) 1 JT 173, (1988) 1 JT 173 (SC), (1993) 112 CURTAXREP 308, (1993) 116 TAXATION 37, (1993) 201 ITR 253, (1993) 71 TAXMAN 165, 1993 SCC (SUPP) 3 195

Author: M.M. Dutt

Bench: M.M. Dutt, M.H. Kania

PETITIONER:
DISST. COUNCIL OF UNITED BASEL MISSIONCHURCH & ORS.

Vs.

RESPONDENT:
SALVADOR NICHOLAS MATHIAS & ORS.

DATE OF JUDGMENT20/01/1988

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
KANIA, M.H.

CITATION:
1988 SCR (2) 737 1988 SCC (2) 31
JT 1988 (1) 173 1988 SCALE (1)127

ACT:
Challenging resolution proposing merger of United Basel Mission Church (UBMC) of South Kanara and Coorg with the Church of South India (C.S.I.), as void, illegal and ultra vires the provisions of Religious Societies Act.1880.

HEADNOTE:
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The respondents, members of the United Basel Mission Church (U.B.M.C.) of South Kanara and Coorg, instituted a suit in the Court of Munsif, Mangalore, praying for a declaration that the resolution dated May 9, 1961, passed in the extraordinary meeting of the District Church Council of UBMC of South Kanara and Coorg, proposing the merger of UBMC

of South Kanara and Coorg with the Church of South India (C.S.I.). was void, illegal and ultra vires the constitution of the UBMC and also the provisions of the Religious Societies Act, 1880, and not binding on the respondents/plaintiffs or other members of the UBMC of South Kanara and Coorg. The suit was contested by the appellants defendants. The trial Court dismissed the suit, holding that (i) the suit was maintainable but the respondents were not entitled to file the suit in a representative character, representing the UBMC of South Kanara & Coorg, (ii) there was no fundamental difference between the UBMC and CSI, and (iii) the impugned resolution was legal and valid. The respondents filed appeal against the judgment of the trial court. which was dismissed by the Additional Civil Judge, who, however, held that the respondents were entitled to file the suit in a representative character. The respondents preferred a second appeal to the High Court against the judgment and decree of the Additional Civil Judge. The High Court (Single Judge) took a contrary view and allowed the appeal, holding that there were fundamental differences in doctrine. faith, tradition, heritage and practices between UBMC and CSI. and the resolution impugned was illegal and void. Aggrieved by the decision of the High Court, the appellants moved this Court for relief by special leave.

Allowing the appeal, the Court

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HELD: It was well-established that the dispute as to the right of worship was one of a civil nature within the meaning of section 9 of the Code of Civil Procedure and a suit was maintainable for the vindication or determination of such a right. It must be made clear that maintainability of the suit would not permit a Court to consider the soundness or propriety of any religious doctrine, faith or rituals. The scope of enquiry in such a suit was limited to those aspects only that had a direct bearing on the question of right of worship, and with a view to considering such a question, the Court might examine the doctrines. faith. rituals and practices for the purpose of ascertaining whether the same interfered with the right of worship of the aggrieved parties. In view of section 9 of the Code of Civil Procedure, the enquiry should be confined to the disputes of a civil nature. Any dispute, which was not of a civil nature should be excluded from consideration. [745B,D-F]

Both the churches were Protestant Churches. The fundamental doctrines, faith and belief appeared to be the same. Both UBMC and CSI believed in Jesus Christ, the Incarnate Son of God the Redeamer of the World. Both also believed that man was saved from sin through grace in Jesus Christ. Both believed in the Holy Spirit and in the Supreme Power of Holy Spirit and that there should be free access of man to God. [745G-H;746A]

U.B.M.C. was a Presbyterian Church and the respondents

did not believe in the concept of Episcopacy or apostolic succession, associated with historic Episcopacy. UBMC was opposed to Episcopacy, but Episcopacy, adopted by the CSI was not that historic Episcopacy, but historic Episcopacy in a constitutional form. The CSI believed that in all ordinations and consecrations the true ordainer and consecrater was God. From all this, the irresistible conclusion was that there was neither apostolic succession nor historical Episcopacy in CSI as contended on behalf of the respondents. [746B-C,E-F]

The respondents placed much reliance on the universal priesthood. That was said to be prevalent in UBMC. The submission in this regard, however, did not find support from the constitution of UBMC. The universal priesthood, which was said to be prevalent in UBMC, did not permit lay preachers and Evangelists to administer the sacraments. [747C,G]

In the CSI, Presbyters had the authority to administer the sacraments and in the UBMC, the Pastors, who were ordained ministers, were authorised to administer the sacraments. There was, therefore, no
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distinction between a pastor in the UBMC and a Presbyter in the CSI. As the functions and duties of Presbyters and Pastors were the same and as both of them were ordained ministers, no exception could be taken by the respondents if the sacraments were administered by Pastors instead of the Presbyters. No objection could also be taken to the Bishops administering the sacraments, for they did not emerge from the apostolic succession which was the main characteristic of historical episcopacy. If the respondents or any members of the UBMC had any Objection to the administering of sacraments by the Bishops, the sacraments could be administered by the Presbyters. The Malabar and Bombay-Karnataka Units of UBMC had already joined the CSI. The CSI had accepted already the form of worship followed in the UBMC before the Union of the two units with the CSI, and such acceptance was indicated in Rule 12 of Chapter II of the Constitution of the CSI, and in view of this it was difficult to accept the contention of the respondents that in case of merger or implementation of the impugned resolution, the right of worship of the impugned resolution, the right of worship of the members of the UBMC would be affected. [748A-F]

After a person was appointed a Bishop or a Presbyter in the CSI or a Pastor in UBMC, he had to be ordained in almost the same manner. The Court did not think it was within the purview of the enquiry in this litigation whether such ordination in the CSI had a spiritual significance of a transfer of grace or whether it was only a symbol of conferment of authority, so far as UBMC was concerned. The mode or manner of ordination or the underlying object of such ordination had, in the Court's opinion, nothing to do

with the right of worship of the respondents. [749B-C]

Both UBMC and CSI believed in Apostles Creed and Nicene Creed. If shorter Catechism, as stated by D.W. t consisted of the Creeds in the form of questions and answers, the Court did not think that merely because there was no mention about Shorter Catechism in the Constitution of the CSI, it could be said that there was a difference in the faith and doctrine of the two Churches, as held by the High rt [749F-G]

There was no cause for apprehension of the respondents that in case of merger, the Apocrypha would be imposed upon them which was repugnant to their religious faith, in the liturgy of the CSI, the prayer from Apocrypha had been made optional which showed that there was no scope for the imposition of Apocrypha on the respondents in the case of Union of UBMC and CSI. [751A-B]

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As regards the properties of the UBMC, even though there was merger, the properties or the income thereof would be utilised only for the benefit of the members of the UBMC of the South Kanara and Coorg. It was difficult to accept the contention of the respondents that in the case of merger, there would be diversion of the properties in the hands of the UBMC Trust Association to the CSI in breach of trust. [752B-C]

There was little or no difference between the doctrines, faith and religious views of UBMC and the CSI. The objection of the respondents to historical Episcopacy had no solid foundation inasmuch as historical Episcopacy was not in existence in the true sense of the term in the CSI, and it was none in a constitutional form. In other words, the Bishops were elected and Apostolic succession which was associated with historical Episcopacy, was totally absent. The observations made in General Assembly of Free Church of Scotland v. Lord overtoun, [1904] AC 515, could not in any event be applicable to the facts of this case, which are different from the said Free Church Case. [753F-H]

As regards the question whether the District Church Council had the authority to pass the impugned resolution, it was true that the District Church Council had only the power of amendment of the Constitution and no power had been conferred on it to pass a resolution relating to the union of the UBMC of South Kanara and Coorg with the CSI, but the Synod was the highest authority and the Synod of UBMC had the power to sanction merger of any unit of UBMC in the CSI, and the Synod passed a resolution, permitting the District Church Council of South Kanara and Coorg to join the Church of South India-CSI. As the Synod was a representative body of the units, it stood dissolved after passing the said resolution, but until such a resolution was passed, it existed as the highest authoritative and administrative body of the UBMC. [757A-B, E-F]

The challenge to the validity of the resolution

impugned on the ground of violation of the provisions of section 6 of the Religious Societies Act, 1880, was misconceived and without any substance. The section dealt with the dissolution of societies and adjustment of their affairs. There was no question of dissolution of UBMC of South Kanara and Coorg and disposal of settlement of its property, claims and liabilities, etc., and as such the provision of section 6 was not at all applicable to this case. [758C-D]

The Court disagreed with the High Court that the impugned
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resolution violated the provision of section 6 of the Religious Societies Act, and in view of the fact that the Synod had unanimously accorded permission for the merger, the High Court was not justified in striking down the said resolution. On the ground that it was beyond the authority of the District Church Council to pass such a resolution. The impugned resolution was legal and valid. [758E-F]

Ugamsingh and Mishrimal v. Kesrimal, [197l] 2 S.C.R. 836; Thiru-venkata Ramanuja Pedda Jiyyangarlu Valu v. Prathivathi Bhayan Karam Venkatacharlu, A.I.R. 1947 PC 53; General Assembly of Free Church of Scotland v. Lord overtoun, [1904] AC 515 and N.P. Barwell v. John Jackson, A.I.R. 1943 All. 146.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 84 of From the Judgment and order dated 19.4 1974 of the Karnataka High Court in R S A. No. 741 of 1971.

T.S. Krishnamurthy Iyers, ATM Sampath and Srinivasa Anand for the Appellants B.P. Halda, S.S. Javeli and Ranjit Kumar for the Respondents.

The Judgment of the Court was delivered by DUTT? J. This appeal by special leave at the instance of the defendants is directed against the judgment and decree of a learned Single Judge of the Karnataka High Court whereby the learned Judge reversed the judgment and decree of the Additional Civil Judge, Mangalore, affirming those of the Munsif, Mangalore, dismissing the suit filed by the plaintiff-respondents.

The respondents, who are the members of the United Basel Mission Church (for short 'UBMC') of South Kanara and Coorg, instituted a suit in the court of the Munsif, Mangalore, praying for a declaration that the resolution dated May 9, 1961 passed in the extraordinary meeting of the District Church Council of UBMC of South Kanara and Coorg proposing the merger of UBMC of South Kanara and Coorg with the Church of South India was void, illegal and ultra vires the Constitution of UBMC and also the provisions of the Religious Societies Act, 1880 and not binding on the respondents or other members of UBMC of South Kanara and Coorg. The respondents also prayed

for a permanent injunction restraining the defendants-appel-

lants from implementing the said resolution.

The Evangelical Missionary Society in Basel (Basel Mission), which is a religious Society, consisting of missionaries of different denominational churches of Switzerland and Germany constituted UBMC in South Kanara, Coorg, Malabar and North Karnataka for the purpose of spreading the Gospel. The UBMC has a written constitution (Ex. A-1). Under the Constitution, the UBMC is divided in three Ecclesiastical Districts, namely, the South Kanara and Coorg, Bombay-Karnataka and Malabar. Each District had its own representative body known as the District Church Council to supervise the work of the churches. The District Church Board was the Executive body consisting of a few members of the District Church Council. The highest authority of UBMC is a body known as Synod which is constituted with the representatives of the District Church Councils, the Basel Mission and certain ex officio members.

In 1905, a number of Congregational Churches under the London Mission Society united with the Congregational Churches and the Presbyterian Churches in South India and such union came to be called the South Indian United Church. Subsequently, the South India United Church and the Anglican Church in South India came to be united and this union brought into existence the Church of South India (for short 'CSI') in 1941.

After the creation of CSI, there had been a move that the churches in the three Districts of UBMC should join the CSI. Indeed in 1943, the Malabar District Church of UBMC joined the CSI with the approval of the Synod. Further, it appears that the Bombay- Karnataka Unit of UBMC had also joined the CSI. The only Unit of UBMC that remained is the South Kanara and Coorg Unit. By the impugned resolution dated May 9, 1961, the majority of members of the District Church Council of UBMC of the South Kanara and Coorg decided to join the CSI. Being aggrieved by the said resolution and to get rid of the same, the respondents instituted the said suit in a representative character under order I, Rule 8 of the Code of Civil Procedure as representing the members of UBMC of South Kanara and Coorg.

The case of the respondents is inter alia that they are Protestant Christians belonging to the Ecclesiastical Districts of South Kanara and Coorg of UBMC. Every member of UBMC has a right vested in him under its Constitution to be a member of a District Church Board and District Church Council and to administer the properties vested in them and to manage their affairs. These rights guaranteed under the Constitution cannot be altered or abridged except under Rule 14 of the Constitution providing for amendment. According to the respondents, the CSI is fundamentally different in doctrine, faith, worship, tradition, heritage and practices from UBMC of South Kanara and Coorg. An important distinguishing fundamental principle is the principle of Episcopacy adopted by the CSI, but rejected by the UBMC, which cherishes as a great treasure the principle that priesthood is given to all believers. It is the case of the respondents that the Union of UBMC and CSI would be colourable one, since there can be no union of two bodies holding fundamentally different doctrines and believing in different declarations of faith. It is contended that the impugned resolution is ultra vires Rule 14 of the Constitution of UBMC. The resolution is also bad, since it is

beyond the power of the District Church Council to dissolve the Constitution. It is alleged that the funds and properties of UBMC are held in trust for the propagation and advancement of the faith and doctrine of UBMC and, as such, they cannot be diverted to different purposes. It is contended that the majority who disagree with the doctrine and faith of UBMC cannot impose on the minority fl ritual, a ministry, and a Constitution opposed to the doctrinal faith of UBMC. Upon the said pleadings, the suit was instituted for the reliefs aforesaid.

The suit was contested by the appellants by filing a written statement. It was contended that the suit was not one of a civil nature within the meaning of section 9 of the Code of Civil Procedure and, accordingly, it was not maintainable. Further, the contention of the appellants was that the respondents did not represent the members of UBMC and so the respondents were not entitled to sue the appellants in a representative capacity as representing the members of UBMC in South Kanara and Coorg. It was denied by them that there was any fundamental difference between UBMC and CSI in doctrine, faith, worship, tradition, heritage and practices. It was averred that the Constitution of the CSI and the doctrinal faith, the ministry and the form of worship adopted by the CSI were in no way fundamentally different from those adopted and practised by the UBMC. The Protestant Churches were not committed to any doctrine regarding historic Episcopacy. The constitutional Episcopacy adopted by the CSI was not contrary to the Presbyterian heritage and the ministers of UBMC were also ordained. The freedom of interpretation given with regard to the Creeds was not opposed to the union. The contention of the respondents that in case of merger, there would be diversion of the properties of the UBMC was emphatically disputed by the appellants. It was averred that as the impugned resolution was passed by an overwhelming majority of the members of UBMC it was binding upon the respondents. They denied that the resolution was ultra vires Rule 14 of the Constitution of UBMC. The appellants, accordingly, prayed that the suit should be dismissed.

The respondents examined the 4th plaintiff as P.W. 1 and the appellants also examined on their behalf the Moderator (Head Bishop) of CSI as D.W. 1. Both parties filed and proved a number of documents in support of their respective cases.

The learned Munsif, after considering the evidences and the sub missions made on behalf of the parties, came to the findings that the suit was maintainable but the respondents were not entitled to file the suit in a representative character as representing the UBMC of South Kanara and Coorg. Further, the learned Munsif found that there was no fundamental difference between UBMC and CSI in matters of doctrine, faith, worship, tradition, heritage and practices. The impugned resolution was held by the learned Munsif to be legal and valid. Upon the said findings, the learned Munsif dismissed the suit. On appeal by the respondents, the learned Additional Civil Judge came to the same findings as that of the learned Munsif except that it was held by him that the respondents were entitled to file the suit in a representative character. The appeal preferred by the respondents was, consequently, dismissed by the learned Additional Civil Judge.

Being aggrieved by the judgment and decree of the learned Additional Civil Judge, the respondents preferred a second appeal to the High Court. A learned Single Judge of the High Court took a contrary view and held that there were fundamental differences in doctrine, faith, worship,

tradition, heritage and practices between UBMC and CSI. The impugned resolution was held by the learned Judge as illegal and void. The learned Judge, accordingly, allowed the appeal of the respondents and set aside the judgments and decrees of the first appellate court and of the trial court and dismissed the suit. Hence this appeal.

The first point that has been urged by Mr. Krishnamurthy Iyer, learned Counsel appearing on behalf of the appellants, is that the dispute between the parties is not one of a civil nature and, as such, the suit was not maintainable. It has been already noticed that all the courts below including the High Court have concurrently come to the finding that the suit was of a civil nature within the meaning of section 9 of the Code of Civil Procedure and, accordingly, it was maintainable It is the case of the respondents that if the impugned resolution is implemented or, in other words, UBMC of South Kanara and Coorg is allowed to merge in CSI, the right of worship of the members of UBMC will be affected. It is now well established that the dispute as to right of worship is one of a civil nature within the meaning of section 9 of the Code of Civil Procedure and a suit is maintainable for the vindication or determination of such a right. The question came up for consideration before this Court in Ugamsingh & Mishrimal v. Kesrimal, [1971] 2 SCR 836 where this Court observed as follows:

> "It is clear therefore that a right to worship is a civil right, interference with which raises a dispute of a civil nature though as noticed earlier disputes which are in respect of rituals or ceremonies alone cannot be adjudicated by Civil Courts if they are not essentially connected with Civil rights of an individual or a sect on behalf of whom a suit is filed "

In the instant case also, there is a question as to whether the right of worship of the respondents will be affected in case of implementation of the impugned resolution. It must be made clear that maintainability of the suit will not permit a court to consider the soundness or propriety of any religious doctrine, faith or rituals. The scope of the enquiry in such a suit is limited to those aspects only that have direct bearing on the question of right of worship and with a view to considering such question the court may examine the doctrines, faith, rituals and practices for the purpose of ascertaining whether the same interfere with the right of worship of the aggrieved parties. In view of section 9 of the Code of Civil Procedure, the enquiry of the court should be confined to the disputes of a civil nature. Any dispute which is not of a civil nature should be excluded from consideration It is the case of the respondents that there is a fundamental difference in doctrine, faith, worship tradition, heritage and practices between UBMC of South Kanara and Coorg and the CSI and in case of implementation of the impugned resolution leading to the merger of UBMC with CSI, the right of worship of the respondents would be greatly affected. Both the Churches are Protestant Churches. The fundamental doctrines, faith and belief appear to be the same. Both UBMC and CSI believe in Jesus Christ, the Incarnate Son of God and Redeemer of the World. Both also believe that man is saved from sin through Grace in Jesus Christ, the Son of God. Both the Churches believe in The Holy Spirit and in the Supreme power of the Holy Spirit and that there should be free-access of man to God.

One of the principal objections of the respondents to the merger of UBMC with CSI is that CSI believes in Episcopacy which is said to have been rejected by the UBMC. The High Court had devoted several pages relating to the origin, growth and other aspects of Episcopacy. It is not necessary for us to consider the origin or growth of Episcopacy and suffice it to say that Episcopacy means Church ruled by Bishops. UBMC is a Presbyterian Church and according to the respondents they do not believe in the concept of Episcopacy or apostolic succession which is associated with historic Episcopacy. Rule 11 of the Constitution of CSI (Ex. B-39) provides, inter alia, that CSI accepts and will maintain the historic Episcopacy in a constitutional form. Rule 11 further provides that as Episcopacy has been accepted in the Church from early times, it may in this sense fitly be called historic and that it is needed for the shepherding and extension of the Church in South India and any additional interpretations, though held by individuals, are not binding on the CSI.

It is true UBMC is opposed to Episcopacy, but Episcopacy which has been adopted by the CSI, is not that historic Episcopacy, but historic Episcopacy in a constitutional form. In other words, the Bishop will be one of the officials of the Church under its Constitution performing certain duties and functions. The Bishops are appointed by election and there are provisions for the retirement of Bishops at the age of 65 years, and also for their removal. It is significant to notice that CSI believes that in all ordinations and consecrations the true ordainer and consecrator is God. From all this, the irresistible conclusion is that there is neither apostolic succession nor historical Episcopacy in CSI as contended on behalf of the respondents.

The grievance of the respondents is that universal priest hoodthat is recognised in UBMC is not there in the CSI. In view of such universal priesthood, a layman can administer sacraments in UBMC. It is not disputed that there are two sacraments, namely (1) Lord's Supper and (2) Baptism. It is urged that in the CSI a layman cannot administer these sacraments, and it is only the ordained minister who can administer the sacraments. It is contended that the absence of universal priesthood in the CSI is due to the fact that Episcopacy is still maintained there. The learned Judge of the High Court observes that Presbyters under the CSI are ordained persons whereas Presbyters in UBMC are all unordained elders. In the CSI, only the Bishops and the Presbyters who are ordained ministers can administer sacraments of Lord's Supper. But in UBMC, the sacraments can be administered by a layman. It is submitted on behalf of the respondents that in case of union of UBMC with the CSI, the form of worship will change and that the person doing the service of Holy Communion, that is Lord's Supper, will be changed and only ordained persons will do the service. This, it is submitted, will affect the right of worship of the respondents.

Much reliance has been placed on behalf of the respondents on the universal priesthood that is said to be prevalent in UBMC. The submission in this regard, however, does not find support from the Constitution of UBMC. Under the heading "The Local Church", paragraph 4 of the Constitution of UBMC (Ex. A-1) provides as follows:

> "Church workers are those either paid or honorary ordained or lay, who are appointed by the church for a definite piece of work under the supervision of the church. It is the duty of the Pastors appointed to shepherd the churches to teach the Word of God, to administer the sacraments and to propagate the Gospel among those

> who have not yet come to the saving knowledge of Christ Evangelists and lay preachers appointed to the charge of churches shall have no authority to administer the sacraments. In places where it is impossible for the pastor to administer the sacraments regularly, the District Church Board may give evangelists in pastoral charge authority to fulfil this duty."

It is apparent from paragraph 4 that Evangelists and lay preachers have no authority to administer the sacraments. It is only in exceptional cases where it is impossible for the Pastor to administer the sacraments regularly, the District Church Board may give Evangelists in pastoral charge authority to fulfil this duty. Thus, the universal priesthood which is said to be prevalent in UBMC, does not permit lay preachers and Evangelists to administer the sacraments.

It is true that in the CSI the Presbyters are ordained persons, but in UBMC they are unordained, as has been noticed by the learned Judge. But nothing turns out on that distinction. In UBMC the Pastor is an ordained minister and paragraph 4 (Ex. A-1), extracted above, provides that it is the duty of the Pastors to shepherd the churches to teach the Word of God, to administer the sacraments and to propagate the Gospel among those who have not yet come to the saving knowledge of Christ. While a Presbyter in the CSI is an ordained minister, in UBMC the ordained minister is a Pastor. In the CSI Presbyters have the authority to administer the sacraments and in UBMC the Pastors, who are ordained ministers, are authorised to administer the sacraments. There is, therefore, no distinction between a Pastor in UBMC and a Presbyter in the CSI. As the functions and duties of Presbyters and Pastors are the same and as both of them are ordained ministers, no exception can be taken by the respondents if the sacraments are administered by Pastors instead of by the Presbyters. No objection can also be taken to the Bishops administering the sacraments, for they do not emerge from the apostolic successsion which is the main characteristic of historical episcopacy. If the respondents or any of the members of UBMC have or has any objection to the administering of sacraments by the Bishops, the sacraments can be administered by the Presbyters. It may be recalled that units of UBMC, namely, Malabar and Bombay- Karnataka units have already joined the CSI. The CSI has accepted the form of worship which used to be followed in UBMC before the union of the two units with CSI and such acceptance has been indicated in Rule 12 of Chapter II of the Constitution of CSI (Ex. B-39). Rule 12 specifically provides that no forms of worship, which before the union have been in use in any of the united churches, have been forbidden in the CSI, nor shall any wonted forms be changed or new forms be introduced into the worship of any congregation without the agreement of the Pastor and the congregation arrived at in accordance with the conditions laid down in Chapter X of the Constitution. Thus, the CSI has already accepted the form of worship which the members of UBMC used to follow before the union of UBMC with the CSI. In view of this specific provision in Ex. B-39, it is difficult to accept the contention of the respondents that in case of merger or the implementation of the impugned resolution, the right of worship of the members of UBMC will be affected.

The learned Judge of the High Court has referred to the manner of consecration and ordination in the CSI. Clause

(iv) of Rule 11, Chapter II of Ex. B-39, inter alia, provides that every ordination of Presbyters shall be performed by the laying on of hands by the Bishops and Presbyters, and all consecrations of Bishops shall be performed by the laying on of hands at least of three Bishops. Clause (iv) further provides that the CSI believes that "in all ordinations and consecrations the ordainer and Consecrator is God who in response to the prayers of His Church, and through the words and acts of its l representatives, commissions and empowers for the office and work to which they are called the persons whom it has selected". It may be mentioned here that in UBMC the method of consecration and ordinar Action is also the same as in the CSI. After an elaborate discussion, the learned Judge of the High Court has come to the conclusion that the laying of hands on the person to be ordained in the case of Episcopal Church, meaning thereby the CSI, has a spiritual significance of a transfer of Grace, whereas it has no such spiritual significance in UBMC, but is a symbol of conferment of authority only. After a person is appointed a Bishop or a Presbyter in the CSI or a Pastor in UBMC, he has to be ordained in almost the same manner as indicated above. We do not think it is within the purview of the enquiry in this litigation whether such ordination in the CSI has a spiritual significance of a transfer of Grace or whether it is only a symbol of conferment of authority, so far as UBMC is concerned. The mode or manner of ordination or the underlying of such ordination has, in our opinion, nothing to do with the right of worship of the respondents.

UBMC believes in Apostle's Creed and Nicene Creed. Creeds are biographical sketches of Lord Jesus and they are the main items of all Church Services. Under its Constitution (Ex. B-39), the CSI also accepts the Apostle's Creed and the Nicene Creed. The complaint of the respondents is that while the Shorter Catechism of Luther is placed on the same footing as the Apostle's Creed and the Nicene Creed in UBMC, there is no reference to this in Constitution (Ex. B-39) of the CSI. The Shorter Catechism of Luther is the instruction in the form of a series of questions and answers to be learnt by every person before he is baptised. According to W 1, the Shorter Catechism of Luther is a statement of faith in the form of questions and answers based upon Scriptures and Creeds intended to be used in instructing those who are to be baptised. That statement of D.W. 1 has not been challenged in cross-examination on behalf of the respondents. Both UBMC and the CSI believe in Apostle's Creed and Nicene Creed. If Shorter Catechism, as stated by D.W. 1, consists of the Creeds in the form of questions and answers, we do not think that merely because there is no mention about Shorter Catechism the Constitution of the CSI (Ex. B-39), it can be said that there is a difference in the faith and doctrine of the two Churches as held by the learned Judge. Moreover, this has nothing to do with the right of worship of the respondents and, accordingly, we do not think we are called upon to consider the effect of non-mention of Shorter Catechism in Ex. B-39.

It is, however, urged on behalf of the respondents that the right of worship of the respondents will be greatly affected in case of union of the two Churches, as the CSI uses in prayers Apocrypha, the meaning of which will be indicated presently. The Bible consists of 66 "Cannonical Books"39 books of the old Testament and 27 books of the New Testament. Later on 14 additional books were added to the old Testament. These 14 additional books are together named 'Apocrypha'. The Bible that CSI uses contains not only "Canonical Books", but also those 14 books known as 'Apocrypha'. It is apprehended by the respondents that in case of merger, there is a possibility of their being subjected to accept Apocrypha in their prayers stated to be prevalent in the CSI. It is submitted by the learned Counsel for the respondents that as Apocrypha has been eschewed completely and not at all used in

Church Service by UBMC, it would affect the right of worship of the respondents by reason of merger, as Apocrypha would be imposed on them.

In support of the contention, much reliance has been placed by the learned Counsel for the respondents on a decision of the Privy Council in Thiruvenkata Ramanuja Pedda Jiyyangarlu Valu v. Prathivathi Bhayankaram Venkatacharlu, AIR 1947 PC 53. In that case there was a dispute between two sections of the Vaishnavites, one known as Vadagalais and the other as Tengalais. The question that came up for consideration by the Privy Council was whether in the Vaishnavite temples, situate in Trimulai and in Tripatti, worship would be conducted exclusively in Tengalai order or the Vadagalai ritual would form part of the worship in these temples. The Privy Council came to the conclusion that Vadagalai community was not entitled to interfere with Tengalai ritual in the worship in those temples by insisting on reciting their own "Manthram" simultaneously with the Tengalai "Manthram". The suit instituted by the High-Priest of the Tengalai community was decreed and the Vedagalai community was restrained from interfering with the Tengalai ritual in worship in those temples conducted by the appellant or his deputy by insisting on reciting their own "Manthram" simultaneously with the Tengalai "Manthram" .

The above decision of the Privy Council only lays down that if the right of worship is interfered with, the persons responsible for such interference can be restrained by an order of injunction. Even if Apocrypha is followed in the CSI that would not interfere with the right of worship of the respondents. We have already referred to Rule 12, Chapter II of the Constitution of the CSI (Ex. B-39), inter alia, providing that no forms of worship, which before the union have been in use in any of the united churches, shall be forbidden in the CSI nor shall any wonted forms be changed or new forms introduced into the worship of any congregation. There is, therefore, no cause for apprehension of the respondents that in case of merger, the Apocrypha will be imposed upon them which is repugnant to their religious faith. Moreover, in the liturgy of the CSI, the prayer from Apocrypha has been made optional which shows that there is no scope for the imposition of Apocrypha on the respondents in case of union of UBMC and CSI.

It is vehemently urged on behalf of the respondents that in case of merger, the property held in trust by the United Basel Mission Church in India Trust Association, hereinafter referred to as 'UBMC Trust Association", for UBMC of South Kanara and Coorg will be diverted to the CSI and such diversion will be in complete breach of trust and the court should not allow such breach of trust taking place by the merger of UBMC of South Kanara and Coorg in the CSI.

It is the case of the respondents in the plaint that the properties of UBMC have been vested by the Evenglical Missionary Societies in Basel (Basel Mission) in the UBMC Trust Association by a declaration of trust. It appears that by a deed dated September 18, 1934 (Ex. A-146), the Evenglical Missionary Society in Basel (Basel Mission) declared itself as the trustee seized of or entitled to the lands and premises mentioned in the schedule to the said deed, holding the same in trust, inter alia, for the benefit of the members of the Church founded by the Society in the districts of South Kanara, Bombay, Karnataka and Malabar known as UBMC in India. Further, it appears that the said Society appointed the UBMC Trust Association, a Company incorporated under the Indian Companies Act, 1913, the managers of the trust properties, which belong to the Society and not to the UBMC Trust

Association. Indeed, it has been noticed that in the plaint the respondents also admit that the properties belong to the Society and the Society holds the same as the trustee for the benefit of UBMC in India. In case of merger, there cannot be any diversion of the properties held in trust by the Society and managed by the UBMC Trust Association. The properties will remain the properties of the Society which holds them only for the purposes as mentioned in the said deed (Ex. A-146). In other words, even though there is merger, the properties or the income thereof will be utilised only for the benifit of the memhers of the UBMC of South Kanara and Coorg.

Although the UBMC Trust Association and the Society have been made parties in the suit as defendants Nos. 9 & lo respectively, no relief has been claimed against either of them and there is no prayer for restraining them from diverting the property upon merger. It may be inferred from the absence of such a prayer that it was known to the respondents that there would be no diversion of the properties upon such merger. It has been rightly observed by the learned Munsif that as the respondents have not prayed for any relief against the Society and the UBMC Trust Association, they cannot urge that UBMC of South Kanara and Coorg will lose their rights in the properties held by the UBMC Trust Association, if a merger is permitted with the CSI. There is no material to show that the UBMC Trust Association has agreed to transfer the properties to the CSI in case of merger. There is no allegation in that regard in the plaint. In the circumstances, it is difficult to accept the contention of the respondents that in case of merger there will be diversion of the properties in the hands of the UBMC Trust Association to the CSI in breach of trust.

Much reliance has been placed on behalf of the respondents in the decision of the House of Lords in General Assembly of Free Church of Scotland v. Lord overtoun, [1904] AC 515 which, in our opinion, has no application to the facts and circumstances of the instant case, in view of our finding that there will be no diversion of the trust properties in the hands of the UBMC Trust Association to the CSI. What happened in Free Church case was that majority of the members of Free Church of Scotland united and used the funds, of which they claimed to be the beneficial owners, for the use of the new united body. It was contended on behalf of the minority, who chose to be out of such union, that the user of such funds constituted breach of trust. The enquiry in that decision was consequently directed to the question whether there was a breach of trust or not and it was held by majority of the Law Lords that there was such a breach of trust. As there is no question of such breach of trust in the instant case, the Free Church case has no manner of application, even though the High Court had made elaborate discussions over the case and came to the finding that certain observations made by Lord Halsbury, L.C. were applicable. It appears that in considering the question as to whether there was a breach of the trust or not, Lord Halsbury made the following incidental observations:

> "My Lords, I am bound to say that after the most careful examination of the various documents submitted to us, I cannot trace the least evidence of either of them having abandoned their original views. It is not the case of two associated bodies of Christians in complete harmony as to their doctrine agreeing to share their funds, but two bodies each agreeing to keep their separate religious views where they differ-agreeing to make their formularies so elastic as to admit those who accept them according as their respective consciences will permit.

> Assuming, as I do, that there are differences of belief between them, these differences are not got rid of by their agreeing to say nothing about them nor are these essentially diverse views avoided by selecting so elastic a formulary as can be accepted by people who differ and say that they claim their liberty to retain their differences while purporting to join in one Christian Church.
>
> It becomes but a colourable union, and no trust fund devoted to one form of faith can be shared by another communion simply because they say in effect there are some parts of this or that confession which we will agree not to discuss, and we will make our formularies such that either of us can accept it.
>
> Such an agreement would not, in my view, constitute a Church at all, or it would be, to use Sir William Smith's phrase, a Church without a religion. Its formularies would be designed not to be a confession of faith, but a concealment of such part of the faith as constituted an impediment to the union "

The observations extracted above have been strongly relied upon by the learned Counsel for the respondents. According to the observations, no objection can be taken, if there be complete harmony as to their doctrine. As discussed above, there is little or no difference between the doctrines, faith and religious views of UBMC and the CSI. The objection of the respondents to historical Episcopacy has no solid foundation inasmuch as historical Episcopacy is not in existence in the true sense of the term in the CSI, and it is now in a constitutional form. In other words, as earlier pointed out, the Bishops are elected and apostolic succession which is associated with historical Episcopacy, is totally absent. Moreover, the observations in the Free Church case have been made in connection with the question whether there was breach of trust or not. Therefore, the said observations cannot, in any event, be applicable to the facts of the present case which are different from those in the Free Church case. We, accordingly, reject the contention of the respondents that following the observations made by Lord Halsbury, the impugned resolution should be struck down and the appellants should be restrained from effecting any merger.

Now the question that remains to be considered is whether the District Church Council had the authority to pass the impugned resolution for the union of UBMC of South Kanara and Coorg with the CSI. The impugned resolution dated 9-5-1961 (Ex. A-39) runs as follows: .

> "61.04. Afterwards Rev. S.R. Furtado moved the following resolution:
>
> Resolved that the suggestion, appearing in Minute 60.16 of the District Church Council held on 12-5-60 that our South Kanara and Coorg District Church should join the Church of South India, is adopted, confirmed and finally passed.
>
> Therefore, this District Church Council, besides resolving to accept the constitution of the Church of South India, authorises the District Church Board to proceed to correspond in connection with this matter with the authorities of the Church of South India after obtaining permission of the Synod of the United Basel Mission Church."

under the Constitution of UBMC (Ex. A-1), Item 9 is the District Church Council. Paragraph 1 of Item 9 provides as follows:

> 1. The governance of the United Basel Mission Church in India shall in each District be vested in a body called the District Church Council which shall be the final authority in all matters relating to the church except those of faith and order and the disciplining of pastors, evangelist and Thus, the District Church Council is the final authority in all matters relating to the Church except those of faith and order and the disciplining of Pastors, Evangelist and Elders. Rule 14 of the Constitution confers power on the District Church Council relating to the amendment of the Constitution. Rule 14 provides as follows:
>
> Whenever an amendment to the constitution is found necessary any member of the Church Council may propose the same in the meeting of the Council and if it is duly seconded it shall be included in the minutes of the Council. When the Council meets again the proposed amendment shall once more be moved and seconded and if three-fourth of the members present vote in favour of the amendment, it shall be passed and the fact be communicated immediately to the Synod. "
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> It is, however, submitted on behalf of the respondents that Rule 14 only relates to the amendment of the Constitution, but in case of merger there will be a total abrogation of the Constitution of UBMC. The Constitution has not conferred any power on the District Church Council to abrogate the Constitution. It is contended that amendment of the Constitution and abrogation of the same are completely different and, as no such power of abrogation of the Constitution has been conferred on the District Church Council, it had no authority whatsoever to pass the impugned resolution which would mean the complete abrogation of the Constitution of UBMC.
>
> In support of their contention, the learned Counsel for the respondents has pressed into service the decision of the Special Bench of the Allahabad High Court in N.F. Barwell v. John lackson, AIR 1948 All. 146 SB. In that case, the members of unregistered Members' Club owning certain properties passed a resolution by a majority vote that the Club should be dissolved. It was held by the Special Bench that in the absence of any provision in the Rules of the Club laying down the circumstances and the manner in which the dissolution of the Club could take place, the dissolution of the Club would not be brought about by a majority vote. The Club could be dissolved only if all the members unanimously agreed to such dissolution. We are afraid, this decision has no manner of application to the facts of the instant case. Here we are not concerned with the question of dissolution of UBMC of South Kanara and Coorg, but with the question of merger. Dissolution contemplates liquidation of the Club and distribution of all assets among the members, but in the case of merger, there is no question of liquidation or distribution of assets. Moreover, we have already discussed above that the properties held in trust for UBMC will not be diverted to the use of the CSI, but will continue to be held in trust by the UBMC

Trust Association for the benefit of the members of the UBMC of South Kanara and Coorg, even if a merger takes place.

It is the contention of the appellants that the District Church Council had the authority to pass the impugned resolution. It is submitted that in any event the Synod of UBMC having permitted the. District Church Council of South Kanara and Coorg to join the CSI, the validity of the resolution is beyond any challenge. Our attention has been drawn on behalf of the appellants to Rule 13(2) of the Constitution of UBMC (Ex. A-1) which deals with the functions of the Synod. Rule 13(2) reads as follows: "R. 13(2). Its functions shall be:

(a) to hear the reports of church and mission work of each District:

(b) to suggest such measures of uniformity as may be necessary for the mission and church work in the three districts;

(c) to give suggestions on problems pertaining to (1) the spiritual life and work of the different churches (2) the common evangelists activities of church and mission (3) the church union and (4) the administration of Church property, funds, etc;

(d) to decide finally all questions of faith and order in the United Basel Mission Church of India, provided that all that all such decisions are arrived at by a majority of three fourths its total strength."

One of the functions of the Synod, as contained in clause (c)(3), is to give suggestions on problems pertaining to the Church Union. Another function is that contained in clause (d), upon which much reliance has been placed on behalf of the appellants. Clause (c)(3) and clause (d) read together confer authority on the Synod to grant permission for union keeping in view the question of faith and order. It is the case of the appellants that Synod has accorded its permission for the merger of UBMC of South Kanara and Coorg in the CSI. It is also their case that the resolution has already been implemented. The learned Judge of the High Court has taken much pains in coming to the conclusion that there has been no such implementation as alleged by the appellants. The question before us is not whether there has been any implementation of the resolution or not, but the question is whether the District Church Council had the authority to pass such a resolution. It is true that the District Church Council has only the power of amendment of the Constitution. No power has been conferred on it to pass a resolution relating to the union of UBMC of South Kanara and Coorg with the CSI. But the Synod is the highest authority and there can be no doubt that the Synod has the power to sanction merger of any unit of UBMC in the CSI. On 24-6-1968, the Synod of UBMC passed the following resolution:

"Resolved unanimously that this Synod of the United Basel Mission Church permit the District Church Council of South Kanara and Coorg to join the Church of South India and that with effect from the date of affiliation this Synod cease to exist"

The learned Judge of the High Court has also noticed in paragraph 19 of his judgment that such a resolution of the Synod according permission for the union was passed on 24-6- 1968. The resolution was passed unanimously by all the members present on that date. It is, however, faintly suggested by the learned Counsel for the respondents that Synod was not in existence after the merger of Bombay, Karnataka and Malabar units of UBMC in the CSI. The suggestion is not correct, for the Synod that existed after the merger of the said two units in the CSI unanimously passed the resolution. As the Synod was a representative body of the units, it stood dissolved after passing the resolution sanctioning the merger of the only remaining unit of South Kanara and Coorg in the CSI. But, until such a resolution was passed, it did exist as the highest authoritative and administrative body of UBMC.

Another ground challenging the validity of the resolution that has been urged on behalf of the respondents is that it violates the provision of section 6 of the Religious Societies Act, 1880. Section 6 provides as follows:

> "S. 6. Provision for dissolution of societies and adjustment of their affairs.-Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time when agreed upon; and all neces-
>
> sary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine:
>
> Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building o. such body is situate; and the Court shall make such order in the matter as it deems fit."

This challenge is misconceived. Section 6 deals with dissolution of Societies and adjustment of their affairs. It has been already observed by us that there is no question of dissolution of UBMC of South Kanara and Coorg and the disposal and settlement of its property and claims and liabilities etc., consequent upon such dissolution as provided in section 6 and, as such, the provision of section 6 is not at all applicable to the facts and circumstances of the instant case. The contention made on behalf of the respondents is without any substance .

We are unable to agree with the finding of the learned Judge of the High Court that the impugned resolution violates the provision of section 6 of the Religious Societies Act and in view of the fact that the Synod had unanimously accorded permission for the merger, the High Court was not justified in striking down the impugned resolution of the ground that it was beyond the authority of the District Church Council to pass such a resolution. In our opinion, the impugned resolution is legal and valid.

In the result, the appeal is allowed. The judgment and decree of the learned Judge of the High Court are set aside and the judgment and decree of the first appellate court affirming those of the trial court are restored.

In the facts and circumstances of the case, we direct the parties to (J hear their own costs in this Court.

S.L. Appeal allowed.