

## EXCERPTS FROM THE PLAINTIFF'S BRIEF PREPARED BY HIS ATTORNEY

Defendant, Athenagoras Spyrou, is an Archbishop of that branch of the Eastern Orthodox Church which acknowledges the jurisdiction of the Patriarch of Constantinople. The Archbishop, by virtue of an appointment by the Patriarch of Constantinople, claims to hold, on behalf of that Church, the office of Archbishop of the Diocese of North and South America, that is, of the western hemisphere.

Defendant, Greek Archdiocese of North and South America, Inc., is a domestic religious corporation, of which the Archbishop is now, and since his appointment as Archbishop in 1931, has been the President. The corporation is in form governed by a Board of Trustees which meets three or four times a year, and in the interim, its affairs are administered by the Archbishop. The residence of the Archbishop is the same as the headquarters of the corporation. The corporation is the legal embodiment of the religious organization of which the defendant, Spyrou, is the Archbishop and he dominates and controls the affairs of the Archdiocese.

Plaintiff is a Bishop of an independent or autonomous branch of the Eastern Orthodox Church, separate from and not under the jurisdiction of the Archbishop or of the Patriarch of Constantinople.

### THE JURISDICTION OF THE COURT

The jurisdiction of this Court is based on diversity of citizenship. Plaintiff is a resident of Lowell, Massachusetts. Defendants are residents of the City and State of New York. The amount involved exceeds the sum of \$3,000.00.

### THE NATURE OF THE ACTION

As alleged in the complaint:

The action is one in tort, for damages alleged to have been suffered by plaintiff, by defendants and others to injure plaintiff in his profession and calling as Priest and Bishop, to pre-

vent him from exercising his calling, and to detach from plaintiff the communities acknowledging his jurisdiction and to induce them to affiliate themselves with defendants, thereby diverting the revenues derived from said communities from plaintiff to themselves.

Specifically, plaintiff alleges that defendant:

1. In violation of the usages of the Eastern Orthodox Church, without notice to or knowledge by plaintiff and without any hearing or trial, requested and procured by cable an alleged excommunication of plaintiff by the Patriarch of Constantinople in February of 1934.

2. Knowing that said excommunication was null and void, circulated from 1934 to the commencement of this action among the public-at-large, and particularly among the Greek speaking communities, circulars and statements, oral and written, to the effect that plaintiff had been excommunicated, was a mere layman, that he had no authority to perform any sacraments, that all sacraments performed by him or by any of the priests ordained by him were void and of no effect, etc.

3. Induced Greek newspapers to refuse to accept any notices or advertisements with respect to any religious activities of plaintiff, or of any communities affiliated with him or any priests ordained by him.

4. Induced priests whom plaintiff had ordained to denounce their ordination by plaintiff and to become affiliated with defendants.

5. Induced communities organized by plaintiff to leave plaintiff's jurisdiction and to affiliate themselves with defendants.

6. Sought to prevent a bishop of the Russian Orthodox Church from officiating with plaintiff in religious sacraments under threat of severing relations between the Church of Constantinople and the Russian Church.

7. Committed like acts of a similar nature, designed

to prevent plaintiff from exercising his calling as priest and bishop.

The original answer of defendants, served in December, 1942, was in substance a general denial and contained no defenses whatever. In August of 1943, defendants moved to amend their answer to plead the six-year Statute of Limitations, and this motion was granted.

Plaintiff contends that this purported excommunication was void because:

1. Plaintiff was a priest and bishop of a branch of the Eastern Orthodox Church over which the Patriarch of Constantinople had no jurisdiction whatever.

2. Even if plaintiff was subject to the jurisdiction of Constantinople, the alleged excommunication was procured by defendants without notice to plaintiff, without any hearing or trial, in violation of the rules and laws of the Church and of the Constitution and by-laws of the defendant Archdiocese and the laws of the land.

### THE EASTERN ORTHODOX CHURCH

It is apparent that properly to appreciate the issues in this case, a word should be said about the Constitution and structure of the Eastern Orthodox Church, the jurisdiction and authority of its various branches, and the rules governing the exercise of such authority, and particularly excommunication proceedings.

About 900 years ago, the Christian Church divided into the Western and Eastern Churches. The Western Church became the Roman Catholic Church, and the Bishop of Rome became the Pope. This case in no way involves the Roman Catholic Church.

The Eastern Church is officially known as "The Holy Orthodox Catholic Apostolic Eastern Church". It is also known as the Eastern Orthodox Church, and sometimes referred to as the Greek Orthodox Church or Greek Catholic Church. The last two designations are misleading. The term Greek

Catholic Church refers to the few Eastern Churches united with Rome. The term Greek Orthodox Church is confusing, since it may apply to the independent Church of Greece. Accordingly, the term Eastern Orthodox Church is more accurate and will be employed in this brief.

Unlike the Roman Catholic Church, whose supreme head is the Pope, the Eastern Orthodox Church had no single head, but consisted of various independent units known as Patriarcates, at the head of which was a chief official known as a Patriarch. Originally there were four Patriarcates, that of Constantinople, Alexandria, Antioch and Jerusalem, to which were subsequently added, when the Russian nation was established and the Balkan countries won their freedom from Turkey, the independent national Churches of these states. The Eastern Orthodox Church was and is not a single unit, except in a spiritual sense, but is an aggregate of independent units or entities, consisting of the Partriarcates and the independent national Churches.

In a standard book called "THE ORTHODOX EASTERN CHURCH", by Fortescue (1911), the author states, under the heading of "The Orthodox Church at the Present Day", as follows:

(p. 273) **"THE CONSTITUTION OF THE  
ORTHODOX CHURCH**

The Orthodox Church consists of 16 separate independent bodies and all profess the same faith, use the same liturgy (though in different languages) and are all (with one exception) in communion with one another and with the Patriarch of Constantinople, though he has no authority over them. The list of these 16 churches is: (1) The Great Church (Patriarchate of Constantinople). The Churches of (2) Alexandria, (3) Antioch, (4) Jerusalem, (5) Cyprus, (6) Russia, (7) Carlowitz, (8) Montenegro, (9) Sinai, (10) Greece, (11) Hermannstadt, (12) Bulgaria (in Schism), (13) Czernowitz, (14) Serbia, (15) Rumania, (16) Bosnia and Hercegovnia. It is curious to note how in this complex system the most unequal bodies, the colossal Russian Church and the one Monestary on Mt. Sinai, for instance, are arranged side by side as equal branches and sister churches."

The author further states:

(p. 337) "The Orthodox Church consists at present of 16 independent churches over which the Patriarch of Constantinople has primacy of honor but no jurisdiction, except in his own Patriarchate. These churches are first the far Eastern Patriarchates—Constantinople, Alexandria, Antioch and Jerusalem, as well as the old Independent Church of Cyprus. Since the Schism, 11 other churches have been added to these, which were all formed at the expense of the Byzantine Patriarchate. It has become a recognized principle that each Independent State should have an ecclesiastical independent church so there are the National Churches of Russia, Greece, Serbia, Montenegro, Rumania, Bulgaria."

Each Patriarch is supreme in his own jurisdiction. All Patriarchates are of equal standing. No one Patriarch has any jurisdiction over any other Patriarch or any other branch of the Eastern Church. As the author states:

(p. 283) "Canonically he (the Patriarch of Constantinople) has no jurisdiction outside of his own Patriarchate."

A recent writer, C. Callinicos, in his book "A BRIEF SKETCH OF GREEK CHURCH HISTORY" (1931), states:

(p. 69) "Thus by the middle of the Fifth Century there were in the Christian world five supreme ecclesiastical rulers who then began to receive the title of Patriarchate, namely, the Archbishop of Rome, Constantinople, Alexandria, Antioch and Jerusalem."

(p. 19) "The Orthodox Eastern and Apostolic Church . . . is not represented only by the four oldest Patriarchates and the Greek Orthodox Church of Cyprus. By the grace of God it is also represented by various local and independent churches; namely, the churches of Russia, Greece (etc.) . . . together with the autonomous churches of Finland, Czechoslovakia, Esthonia and AMERICA."

The territorial jurisdiction of Constantinople, in ancient times, embraced portions of Asia Minor, the Balkans and part of Russia. The independent Churches of Russia and of the Balkan countries were all established at the expense of the jurisdiction of Constantinople. This historical process, that ecclesiastical independence should accompany political independence, was accelerated by the fact that the Patriarch of

Constantinople was (as indeed he now is) a Turkish subject, and (willingly or unwillingly) opposed the movement for Balkan independence from Turkish rule. The result was that the jurisdiction of Constantinople shrank to European and Asiatic Turkey, and since nearly all orthodox believers who survived massacre were expelled from Turkey after the first World War, very few Churches remained within the jurisdiction of Constantinople. Indeed Turkey, which sought to establish an Islamic state, sought to expel the Patriarchate from Constantinople altogether, but under pressure of the western powers, Turkey, by the Treaty of Lausanne, permitted the Patriarch to remain. Such was the State of the Church of Constantinople after the first World War, that one writer described it as the "shadow of a shade" (ENCYCLOPAEDIA BRITANNICA, 14th Ed., Vol. 16, ORTHODOX EASTERN CHURCH, p. 941.).

### THE EASTERN ORTHODOX CHURCH IN AMERICA

The Eastern Church is a missionary Church, and the Russian Church was the first one that established missions in the far flung quarters of the earth. Russian missions were established in Siberia, China and Japan. The Russian Church was the first to establish a mission in the western hemisphere—in Alaska. It then spread to Canada and the United States and southward. An ecclesiastical organization under a Russian Archbishop was established, known as the Diocese of North America and the Aleutian Islands, the headquarters of which was first established in Sitka, Alaska, then removed to San Francisco, and in 1905, to New York. Of all the Eastern Orthodox Churches, the Russian was the first to establish an ecclesiastical organization in the western world, and all orthodox believers of whatever nationality, Greek, Rumanian, etc., were under the jurisdiction of the Russian Church.

Toward the end of the Nineteenth Century immigration of orthodox believers from the Balkan countries and Asia Minor grew in volume. They used their native language in their liturgy, but their Priests were ordained by Russian Bishops and, under the established rules and canons of the Church,

they came under the existing and established jurisdiction of the Russian Church. Under the canons, the jurisdiction of new territory belonged to that Church which had control of the territory for thirty years. Canons 25 of Quinisext and canon 17 of Chalcedon. The African Code, reduced the period to three years (Canon 119). Thus the Russian Church, being the first established Church in North America, had exclusive ecclesiastical jurisdiction over all orthodox worshippers on this continent.

Be that as it may, after a time the various national groups, the Rumanians, Syrians, the Greeks, etc., organized their own Churches, and some remained under the Russian Church, others affiliated themselves with the Churches of their national origin, while others remained wholly independent. This process was accelerated by the disintegration of the Russian Church after the Russian Revolution. Thus there are now in this country Syrian, Rumanian, Greek, Albanian Churches, Priests and Bishops and a number of autonomous or independent Eastern Orthodox Churches.

In *KEDROVSKY v. ROJDESDENSKY*, 214 App. Div. 483, aff'd 242 N. Y. 547, the Court held that Kedrovsky was the duly appointed Archbishop of the Russian Church in this country. However, a great number of the Russian communities declined to accept this decision and established an independent American Russian Church. In view of recent developments in Russia, it may well be that the ancient exclusive jurisdiction of the Russian Church in this country may be re-established.

Defendants claim that the Church of Constantinople has exclusive jurisdiction in the western hemisphere over all orthodox believers who use the Greek language in their liturgy. Thus in defendants' view a Greek, while in Greece, will be subject to the Church of Greece—which is independent of Constantinople—but if he came to the United States, he would become subject to Constantinople, because he uses the Greek language in his liturgy. This claim seems unfounded because at no time in the history of the Church, as far as I am aware, was jurisdiction based on the use of a particular language in

the liturgy. On the contrary, ecclesiastical jurisdiction followed exclusively geographic lines. Thus there is a large community of Greeks in Russia, but no claim has been made that they are subject to Constantinople or the Church of Greece. Being in Russian territory they are subject to the Russian Church. Similarly, all orthodox believers of whatever nationality or language in China or Japan are subject to the Russian Church. And suppose the English language was substituted for Greek in the ritual in Greek Churches in the United States, would the jurisdiction of Constantinople cease?

Defendants' claim is thus untenable and is contrary to the facts, because there are a number of Greek speaking communities in the United States who are independent and who do not recognize the jurisdiction of Constantinople, and there is nothing in the rules or practices of the Church which requires them to do so. (See *DROZDA v. BASSOS* 260 App. Div. 408).

*KALAPOTHAKIS v. SPYROU*, et al. was an action in the Federal Court, Eastern District of New York, against the same defendants in this case, and there was judgment against them. Kalapothakis, a Greek, who had been ordained by a Syrian Bishop from Antioch, visiting in this country, was a Priest of St. John the Baptist Church, a Greek Church in Boston, which declined to accept the jurisdiction of defendants or of Constantinople. Defendants sought to have the Priest discharged and to induce the Church to come under their jurisdiction. In pursuance of their plan defendants, among other things, sent a letter to the Trustees of that Church denouncing the Priest, declared he was not duly ordained and that he lacked the divine power to perform sacraments, etc. There was judgment for Kalapothakis for a substantial sum. This case necessarily held that the Greek Church and its Priests were independent of defendants and had a right to be unmolested by defendants.

### **PLAINTIFF'S STATUS**

Plaintiff was ordained and officiated as Priest in Greece, where he was under the jurisdiction of the Church of Greece. Thereafter he officiated in Ethiopia, which has an independent branch of the Eastern Church. Thereafter he came to the



United States, where he joined the Church of defendants but, owing to some differences with the Archbishop—he raised some question as to the use of certain funds collected for a cemetery—he, in December 1933, formally resigned from this Church and affiliated himself with the Pan American Orthodox Church, and later with the jurisdiction of that branch of the Eastern Church whose regularity had been established in the KEDROVSKY case, SUPRA. On February 10th, 1934 he was duly ordained a Bishop by two other Bishops, Bishop Sophronious, of the Pan American Orthodox Church, and Bishop Fan Noli, of the Albanian Orthodox Church. Thereafter, various communities recognized, and now recognize him as Bishop, and from these communities he has derived and now derives various fees and emoluments.

After plaintiff's resignation from the Church of Constantinople he joined the Church of Bishop Sophronious, under whom he officiated as a Priest of the latter's Church.

Since his resignation, plaintiff has never held himself out as Bishop or Priest of defendant's church. Defendants did nothing about this and acquiesced in and accepted the situation. They then learned that plaintiff was to be consecrated a Bishop of the Pan American Orthodox Church by Bishops Sophronius and Fan Noli early in February, 1934. To prevent this consecration—which was no concern of defendants—they procured the alleged excommunication complained of.

### THE EXCOMMUNICATION

On February 2nd, 1934, defendant Archbishop sent a cable to the Patriarch of Constantinople charging plaintiff with "rebellion" and asking that he be excommunicated forthwith. On February 3rd, the Patriarch cabled the Archbishop asking if the formalities, that is, trial before a Spiritual Court, had been complied with. Here was express recognition by the Patriarch himself, that preliminary formalities had to be instituted against plaintiff by a Spiritual Court here in the United States. The Archbishop cabled the Patriarch that plaintiff should be excommunicated anyway, and he, the Archbishop, would keep the excommunication secret and use it when neces-

sary. The Archbishop then circulated to the press and the public-at-large an alleged copy of a purported cable of the Patriarch, dated February 6th, 1934, purporting to excommunicate plaintiff. Notwithstanding this, on February 10th, 1934 plaintiff, in accordance with the rules of the Eastern Orthodox Church, was consecrated a Bishop of the Pan American Orthodox Church by Bishop Sophronious and Bishop Fan Noli of the Albanian Branch of the Eastern Church. Plaintiff at no time, held himself out or professed to be a Bishop of the Church of Constantinople.

There was no summons of or notice to plaintiff of any kind; he had no opportunity of any defense; he was not apprised of any charges; there was no trial or hearing of any kind. Plaintiff was "excommunicated" by fiat by an alleged cable. I say plaintiff was "excommunicated"; actually there is no proof of that. All we have is defendants' statement that they received a cable from Constantinople purporting to excommunicate plaintiff.

The alleged excommunication was void for three reasons:

1. Since plaintiff was no longer a member of the Church of Constantinople, defendant had no jurisdiction to excommunicate him.

2. Even if plaintiff were a member of the Church of Constantinople, the alleged excommunication violated the due process of the Eastern Church and the defendant Archdiocese.

3. The excommunication having been procured without notice or trial is void under the laws of the land.

Plaintiff was no longer a member of the Church of Constantinople, but had affiliated himself with another and independent branch of the Eastern Orthodox Church, the Pan American Church which had been in existence in this country for many years under the headship of Archbishop Eftimios who was recognized by all the Orthodox Churches in the United States. Bishop Sophronius succeeded Eftimios. Constantinople thus had no jurisdiction over him. Plaintiff had an absolute right to resign from the Church of Constantinople

and affiliate himself with another independent branch of the Eastern Orthodox Church without incurring any disabilities. The Patriarch of Constantinople cannot excommunicate a member of the Russian Church or the Church of Greece or any other independent Eastern Orthodox Church.

Even if plaintiff were a member of the Church of Constantinople, the alleged excommunication was void, as defendants well knew, because it violated the due process established by the rules of the Eastern Church and the constitution of the Archdiocese. Excommunication is an extreme penalty, in the nature of a pronouncement of death within the Church. Needless to say, it cannot be pronounced arbitrarily, but only upon proper cause after due notice, fair trial, right of appeal, etc., and the rules of the Church provide a regular procedure, which must be followed: The Priest must be three times admonished by the Bishop (Apostolic Code 31); he must be summoned (Apostolic Code 74); there must be a trial before 12 Bishops, if the accused is a Bishop, or six, if he is a Priest (African Code 12,20); captious excommunication is forbidden (Nice, 5).

The constitution of the Archdiocese, which were approved and accepted by the Patriarch, have elaborate provisions for safeguarding the rights of the accused in excommunication proceedings. They provide in substance, that an accused clergyman must be personally served with a summons, he must be apprised of the charges against him, he must have an opportunity of defense, he has the right to challenge judges for bias, he has a right to have counsel, and has a right to offer testimony on his behalf and cross examine opposing witnesses and he has the right of appeal. All these provisions were flouted. Not one of them was complied with. Instead defendants sought to excommunicate plaintiff by fiat, by cable. And they have utilized this "excommunication" procured in the manner aforesaid as a club with which to beat the plaintiff from 1934 to the commencement of this action in 1942.

### THE CANONS

The canons are the rulings of the first seven Ecumenical

Councils, the first of which was held in 325 and the last in 787 A. D., and also those which are ascribed to the apostles. These are collected in a book entitled, "A Select Library of Nicene and Post-Nicene Fathers of the Christian Church". Volume 14 of this work is entitled "The Seven Ecumenical Councils" and is translated into English by Henry A. Percival, M.A.D.D. The references following are to the pages of Volume 14 of this book.

Needless to say, because of the enormous changes that have occurred since the 9th century, many of the canons are now out of date. Thus some canons forbid feasting with Jews, receiving food or medicines from them, bathing with them, having any familiar intercourse with them, etc., under penalty of deposition (pp. 151, 370, 598). Other canons define the territorial jurisdiction of the early patriarchates (p. 15). Needless to say, history has made these canons inapplicable. We must keep this in mind when we apply, as defendants attempt to do, literally some of the ancient canons.

The canons specifically provide that if a bishop or priest fall under "any accusation" his case must be tried by a jury of twelve or six bishops and that he must be summoned at least three times (pp. 448, 451-2, 599). This requirement of notice or a trial has at no time been repealed and is firmly established in the practices of the Orthodox Church and is confirmed by the provisions of the constitution, approved by the Patriarch of Constantinople, of the Archdiocese and, indeed, it is a fundamental requirement of our civil law that an accused in any proceeding against him be given notice and have a fair trial.

To overcome the foregoing requirements defendants offer several canons which provide in substance that a priest may not leave his parish and join another without the consent—letters dimissory—of his own bishop (p. 594), that a priest may not "recklessly" (p. 35) go from a church in one city to another without the consent of his own bishop unless "driven by necessity" (p. 282), that a bishop may not accept clergymen without such consent, that bishops shall not perform sacraments outside their own province (p. 115); and that if this

be done the priest and receiving bishops are subject to excommunication (pp. 596, 427, 429, 115).

On the other hand, another canon says that if a priest "not having any grounds for condemning the bishop with regard to religion or justice" (p. 595), that is, without just cause, leave his bishop and "collect another congregation" he is to be admonished three times and if this is unavailing the priest shall be excommunicated.

The canons thus make provision for the case where a priest (since he is not the slave of his bishop) may leave his bishop "out of necessity" or for "grounds with regard to justice" and, of course, it is always open to the priest, if he be accused, to defend himself and show the "necessity" or "justice" of his action. This, of course, can be shown only by a trial and the canons expressly provide for a trial by reason of "any accusation". Our penal code prohibits various actions. But a trial is always necessary to determine whether the code has been violated or whether there has been legal justification for the act complained of. By the same token under the laws of the church a trial is necessary to determine whether an accused priest violated the canons or the laws of the church. There is nothing in the canons which authorizes excommunication without a trial. On the contrary they are explicit that a trial must be had in the case of "any accusation."

In a book entitled "Ecclesiastical Law of the Eastern Orthodox Church", by Nicodemus Milas, a work recognized as authoritative in all Greek Orthodox Churches on all questions involving the canons and usages of the Church, the author states (p. 722) that if the civil courts must examine minutely accusations of crime "much more must do so the ecclesiastical judge who is called upon to apply justice in the name of God \* \* \* If the act was committed out of physical need, the accused is absolved of any responsibility by the canons."

In any event, irrespective of what the canons say, the Constitution of the Archdiocese which binds defendants expressly provides for a trial. Moreover, it is questionable

whether any canon which would purport to forbid the transfer of priests from one church to another, is applicable to the situation existing in the United States. Here we have many independent branches of the Eastern Church existing side by side. Each has jurisdiction within the same territory, which was not the case in the ancient world when the canons were drawn. No one branch has any authority over the other. Churches and priests have shifted from one jurisdiction to another. Originally the Russian Church was the sole Orthodox Church in the United States. After the Russian revolution various groups established their own independent Orthodox Churches. Thus defendants' Church was originally under the jurisdiction of the Church of Greece and thereafter transferred to the Church of Constantinople. The Ukranian Church was under the jurisdiction of the Russian Church and then transferred without anybody's consent to the Church of Constantinople. Many priests ordained by Russian bishops transferred to and were accepted by defendants without any letters dimissory. Defendant, Spyrou, while a prelate of the Church of Greece became the Archbishop of the Church of Constantinople without such letters dimissory. In other words, it has been an established practice in this country for priests of one branch of the Eastern Church to transfer to another branch without written consent of anybody, and this has been freely done, so long as the receiving bishop is willing to accept the priest. Plaintiff, under the practice existing in the United States for many years, accepted and followed by the defendants themselves, was free to resign from defendants' church as he did and join the Pan American Orthodox Church, which accepted him. In any event, he was entitled to a trial before being condemned for his action. In our case defendants not only condemned plaintiff without a trial, but condemned him for an act which is in no way subject to punishment.

Finally, if it be the case, as clearly it is not, that a priest by resigning from a bishop who oppresses him and joining another independent church which accepts him, is somehow placed under excommunication by the laws of the Eastern Orthodox Church (and I repeat, it is absolutely not the case) then such a rule, if there be one, is oppressive, void and con-

trary to the public policy of the land and no effect whatever will be given to it by the civil court. Thus, in *O'hara v. Stack*, 90 Pa. St. 477 (discussed in our main brief, p. 34-36), the Court said:

(p. 491) "We cannot assent to the doctrine that a party's rights of property may thus be stricken down and he (a clergyman) be prohibited from following his profession without accusation and opportunity for a hearing and trial. If it is not contrary to the laws of the church, which we are not prepared to admit, it is contrary to the supreme law of the land."