



CLASS MARK

ACCESSION NUMBER

91367

UNIVERSITY OF LONDON  
**INSTITUTE OF ADVANCED**  
LEGAL STUDIES  
15 MAR 1968  
25 RUSSELL SQUARE  
LONDON, W.C.1.



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 LONDON, W.C.1.

91367

EXHIBITS

Exhibit Mark	Description of Document	Date	Page
	<u>Plaintiff's Exhibits</u>		
1	Authority given to Chung Hwe Senior School Sandakan to employ the Plaintiff	21st January 1959	50
2	Translation of Clause 4 from a Chinese document	18th November 1963	51
3A	Letter Education Department Jessolton to Plaintiff	30th November 1961	51
3B	Letter Education Department Jessolton to Plaintiff	2nd January 1962	53
4	Letter Kwan Yui Ming to Plaintiff	8th October 1962	54
5	Letter Kwan Yi Wing to Plaintiff	10th October 1962	54

EXHIBITS REFERRED TO IN RECORD BUT NOT TRANSMITTED  
TO PRIVY COUNCIL

Exhibit Mark	Description of Document	Date
6	Certificate of School Appointment in Chinese (not translated) signed by KHOO SIAK CHIEW, Supervisor, WU KWOK LIANG, Head of Education Committee and LEE KWEE THAU, Principal	15th October 1960
A	Piece of paper in Plaintiff's handwriting.	

DOCUMENTS TRANSMITTED TO PRIVY COUNCIL BUT NOT REPRODUCED

Description	Date
Summons	21st January 1964
Affidavit of Shelley Yap Yeok Liew	17th January 1964
Notice of Motion	26th August 1964
Affidavit of Peter Lo Su Yin	23rd July 1964
Order	8th September 1964
Notice of Change of Advocates	8th September 1964

1.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

TIO CHEE CHUAN (Plaintiff) Appellant

- and -

- 1. KHOO SIAK CHIEW
- 2. KWAN YUI MING
- 3. WONG CHUNG MAN
- 10 4. SEAH TEE SHU
- 5. TAN TZE SHU
- 6. CHOI WING
- 7. TAN SEI JOO
- 8. TAN TECK BAK
- 9. WU KWOK LIANG
- 10. CHAN YUEN YAN (Defendants) Respondents

In the  
High Court of  
Borneo

No.1

Particulars  
of Claim

27th February,  
1963.

RECORD OF PROCEEDINGS

NO. 1

PARTICULARS OF CLAIM

20 TIO CHEE CHUAN  
c/o P.O. Box 773,  
Sandakan ..... Plaintiff

vs.

- 1. The Educational Sub-Committee  
The Chinese Chamber of Commerce  
Sandakan
- 2. KHOO SIAK CHIEW  
WU KWOK LIANG  
LEE KWEE THAU ..... Defendants

30 PARTICULARS OF CLAIM

- 1. That the Plaintiff was employed by the  
Management Committee of Sandakan Chinese  
Secondary School, Sandakan, as a School

In the  
High Court of  
Borneo

—  
No. 1

Particulars  
of Claim

27th February,  
1963

- continued.

teacher by virtue of a Letter of Appointment dated 15th October, 1960.

2. That the term of employment was for four years, commencing on 1st January 1961 and expiring on 31st December 1964.
3. That his salary was fixed at \$310/- per mensem.
4. That on 2nd October 1962 there appeared in the Borneo Times Sandakan, the news that the Plaintiff had been given three-month Notice to leave the service. 10
5. That on 8th October, 1962 (i.e. six days after the Notice of dismissal had been published in the newspapers) Plaintiff received a NOTICE, which stated that the Plaintiff would have to cease teaching at a date of 3 months from the 1st August 1962.
6. That according to Clause No.4 of the Letter of Appointment there should not be any termination of Contract unless there be some flagrant breach of conditions. Translation of condition No.4 reads: "during the continuance of this Letter of Appointment any teacher of the School shall not annul this Agreement unless there be very serious (or important) cause and in the case of special circumstances which necessitate annulment or dissolution of this contract, either party shall give three months notice". 20
7. That the Plaintiff contends that he has been wrongfully dismissed on the wrong interpretation of condition No. 4. 30
8. That the Plaintiff also contends that the Management Committee had no right whatever to cause publication of the notice of dismissal, especially prior to sending the Notice of Termination of Service to the Plaintiff.
9. That on the true construction of condition 4, Plaintiff contends that the Management Committee have NO power to dismiss him. At 40



best, they could make their recommendations for dismissal to the Education Department, Sandakan

In the High Court of Borneo

10. Plaintiff therefore prays,

\_\_\_\_\_  
No.1

Particulars of Claim

- (a) that the notice issued by the Management Committee be declared null and void;
- (b) that the Court doth declare the Plaintiff to be entitled to remain in service until 31st December, 1964 or in the alternative, the Defendants be ordered to compensate Plaintiff for the premature termination of the Contract without cause;
- (c) costs;
- (d) any other remedies as the Honourable Court may deem meet.

\_\_\_\_\_  
27th February, 1963  
- continued.

10

Dated the 27th February 1963.

Sd. Shelley Yap  
Plaintiff's Advocate

NO. 2.

No.2

FURTHER AND BETTER PARTICULARS OF CLAIM

Further and Better Particulars of Claim

20 The Registrar, High Court, Jesselton.

Sir,

\_\_\_\_\_  
27th May, 1963.

TIO CHEE CHUAN ... .. Plaintiff

versus

- 1. The Education Sub-Committee, Chinese Chamber of Commerce, Sandakan
  - 2. Khoo Siak Chiew
  - Wu Kwok Liang
  - Lee Kwee Thau
- } Defendants

30

FURTHER AND BETTER PARTICULARS OF CLAIM

- 1. All the three persons named as 2nd Defendants

In the  
High Court of  
Borneo

\_\_\_\_\_  
No.2

Further and  
Better  
Particulars  
of Claim

\_\_\_\_\_  
27th May,  
1963  
- continued.

- are Signatories to the Chinese Letter of Appointment dated 15th October 1960. Mr. Khoo Siak Chiew signed as the Supervisor, Mr. Wu Kwok Liang placed his seal under the words Head of Education Sub-Committee, and Mr. Lee Kwee Thau signed as the Headmaster (or Principal).
2. The Management Committee of the Sandakan Secondary School is none other than the Education Sub-Committee. The Education Sub-Committee is responsible for the administration of the Sandakan Chinese Secondary School. On the Letter of Appointment issued to Plaintiff, a seal of the School was affixed. 10
  3. The Chinese edition of the Borneo Times dated 2nd day of October, 1962.
  4. The Notice of dismissal bears the date of 8th October, 1963. It was signed by Mr. Kwan Yui Ming as the Supervisor and the Head of Education Sub-Committee. 20
  5. Paragraph 9 of the Plaint is sufficient clear as to the meeting "At best". The Management Committee have NO power to dismiss the Plaintiff in the arbitrary manner as they did. At the highest they could report to the Education Department and leave to the Education Department to decide what steps to take against the Plaintiff. 30

Dated this 27th day of May, 1963.

Sgd. Shelley Yap  
Advocate for Plaintiff

---

AMENDMENTS TO FURTHER AND BETTER PARTICULARS

In the  
High Court in  
Borneo

The Registrar, High Court,  
Jesselton.

—  
No.3

Amendments to  
Further and  
Better  
Particulars

Sir,

Civil Action No.0/29/63

—  
3rd June,  
1963.

TIO CHEE CHUAN                   ...   ...   Plaintiff

vs.

10

- 1. The Education Sub-Committee,  
Chinese Chamber of Commerce,  
Sandakan
  - 2. Khoo Siak Chiew  
Wu Kwok Liang  
Lee Kwee Thau
- } Defendants

AMENDMENT TO "FURTHER AND BETTER PARTICULARS"  
dated 27th May, 1963

Re Paragraph 2 - "On the Letter of Appointment  
last sentence issued to Plaintiff, a Seal of  
the School was affixed"

20

Please delete "a seal of the  
School" and substitute therefor  
a Seal of the Chung Hwa Middle  
School.

Re Paragraph 4 - "The Notice of dismissal bears  
1st sentence the date of 8th October, 1963"

1963 should read 1962. This  
was a typing error.

30

Re Paragraph 4 - "....Mr. Kwan Yui Ming as the  
2nd sentence Supervisor and the Head of  
Education Sub-Committee"  
should read Mr. Kwan Yui Ming  
as Acting Supervisor and the  
Chairman of the Education  
Sub-Committee.

In the  
High Court in  
Borneo

Sgd. Shelley Yap  
(Advocate for Plaintiff)

No.3

cc. Mr. Tio Chee Chuan,  
P.O. Box 150,  
Lahad Datu.

Amendments to  
Further and  
Better  
Particulars

3rd June,  
1963.  
- continued.

No.4

Defence

NO. 4

DEFENCE

27th June,  
1963.

Tio Chee Chuan,  
c/o P.O. Box 773,  
Sandakan.

.....

Plaintiff

10

AND

1. The Educational  
Sub-Committee.  
The Chinese Chamber  
of Commerce Sandakan.

2. Khoo Siak Chiew  
Wu Kwok Liang  
Lee Kwee Thau .....

Defendants

DEFENCE

1. The First and Second Defendants admit that by a Letter of Appointment dated October 15, 1960, the plaintiff was employed by the First Defendants as a School teacher of the Sandakan Chinese Secondary School. 20
2. Paragraphs 2 and 3 of the Particulars of Claim are admitted.
3. The First and Second Defendants deny the allegations contained in paragraph 4 of the Particulars of Claim. They admit, however, that on October 2, 1962 the minutes of the 30

6th Meeting of the First Defendants in regard to the Sandakan Chinese Secondary School were published in the Borneo Times (Chinese Edition), in which it was stated, inter alia, that other teachers be engaged to replace the plaintiff and Yu Ting Jeh.

In the  
High Court in  
Borneo

\_\_\_\_\_  
No.4

- 10 4. The First and Second Defendants deny the allegations contained in paragraph 5 of the Particulars of Claim but admit that on October 8, 1962, the First Defendants sent to the Plaintiff a letter giving him three months' notice of termination of his service agreement in accordance with the terms of the said agreement, such notice expiring on January 6, 1963.
- 20 5. The First and Second Defendants deny the allegations contained in paragraph 6 of the Particulars of Claim. They say, however, that in so far as Clause 4 of the Letter of Appointment is concerned, the proper translation should read as follows:-
- 30 "4. No teacher or clerk of the School may seek release from his contractual obligations during the validity of the service contract except for cogent reasons. If, under special circumstances, it should be necessary to seek release from or a cancellation of the contract, the party seeking such release or cancellation shall serve 3 months' advance notice on the other party."
6. The First and Second Defendants deny the allegations contained in paragraph 7 of the Particulars of Claim. They say that the service agreement referred to above has been lawfully terminated pursuant to Clause 4 thereof.
7. The First and Second Defendants deny the allegations contained in paragraphs 8 and 9 of the Particulars of Claim.
- 40 8. The First and Second Defendants deny that the plaintiff is entitled to any of the relief claimed in this action.

Defence

\_\_\_\_\_  
27th June,  
1963.  
- continued.

In the  
High Court of  
Borneo

9. The First and Second Defendants say that they have been improperly joined as parties to the suit and that their names should accordingly be struck out.

No.4

Delivered this 27th day of June, 1963.

Defence

Sgd. Peter S.Y. Lo

Solicitor of 1st & 2nd  
Defendants.

27th June,  
1963.

- continued.

This Defence is filed by Peter S.Y. Lo, Esq., Sandakan Solicitor for the Defendants. The Defendants' address for service is c/o Peter S.Y. Lo, Esq., Sandakan.

10

No.5

NO. 5

Reply

REPLY

18th July,  
1963.

The Registrar, High Court,  
Jesselton.

Sir,

Civil Action No.0/29/63

TIO CHEE CHUAN ..... Plaintiff

vs.

20

1. The Education Sub-Committee, Chinese Chamber of Commerce, Sandakan	}	Defendants
2. Khoo Siak Chiew Wu Kwok Liang Lee Kwee Thau		

R E P L Y

1. The Plaintiff will seek an official English Translation of the Letter of Appointment written in Chinese, for use at the hearing of this case. 30

- 2. Re paragraph 6 of the Defence: the Plaintiff joins issue with the Defendants.
- 3. Re paragraph 7 of the Defence: the Plaintiff joins issue with the Defendants.
- 4. Re paragraph 9 of the Defence: the Plaintiff reiterates the statement supplied in paragraph 1 of "Further and Better Particulars" dated 27th May, 1963, that is to say, all the three persons named as 2nd Defendants are signatories to the Chinese Letter of Appointment dated 15th October, 1960. Mr. Khoo Siak Chiew signed as the Supervisor, Mr. Wu Kwok Liang as a Member of the Sub-Committee and Mr. Lee Kwee Thau as the Headmaster.

10

In the High Court in Borneo

\_\_\_\_\_  
No.5

Reply

\_\_\_\_\_  
18th July, 1963  
- continued.

Dated this 18th day of July, 1963.

Sgd. Shelley Yap

Counsel for the Plaintiff

NO. 6

JUDGES NOTE OF HIGH COURT PROCEEDINGS

20 In Open Court, this 21st day of November, 1963.

Coram: Mr. Simpson, J.

Civil Suit No. O/29/63.

Tio Chee Chaun vs. 1. The Educational Committee  
The Chinese Chamber of Commerce.  
2. Khoo Siak Chiew & others.

Peter Lo - for defendants

Shelley Yap - for plaintiff

30

Peter Lo: Applies for postponement. Khoo Siak Chiew unable to attend - another defendant not here. Secretary of Chinese Chamber of Commerce & Chairman of sub-committee not in term.

No.6

Judge's Note of High Court Proceedings

\_\_\_\_\_  
21st November, 1963.

In the  
High Court in  
Borneo

—  
No.6

Judge's Note  
of High Court  
Proceedings

—  
21st November,  
1963  
- continued.

Khoo Siak Chicw better acquainted  
with facts than anyone else.

Summons on Education Sub-Committee not  
properly served - not a legal entity.

Question of status of defendants in  
question - may be convenient to deal  
with preliminary point.

Shelley Yap: Case set down for hearing to-day. If  
earlier notice given would have been  
no objection. Would agree if costs  
given. 10

Prepared to agree preliminary point.

Court: A last minute application for adjourn-  
ment such as this indicates lack of  
respect for the Court - not on the  
part of counsel in this case but on  
the part of his clients.

As the adjournment is not opposed  
(subject to payment of costs) I shall  
grant it after hearing the preliminary  
point. 20

It is the duty of counsel seeking  
orders for adjournment or discontinu-  
ance to make application as soon as  
practicable so that the circuit  
arrangements may be adjusted  
accordingly.

Lo: Defendants - Education sub-committee &  
3 individuals. 1st defendant should  
not be made party - unincorporated. 30  
Society not capable of suing or being  
sued. Association registered under  
Soc. Ord. - Chitty - Contract - 21st  
Edn. Vol. I p.673.

Application should have been made for  
a rep. order - O.16 r.9.

Redly Egg. Farm Ltd. v. Clifford &  
others 1943 2 All E.R. 378.



Society cannot be sued in corporation name representation order must be taken out. I ask for 1st Defendants to be struck out. Not shown in particulars of claim that the defendants were in any way connected with the claim except as persons who signed service agreement. If judgment given as it stands these people personally liable - members of unincorporated society - not liable for contracts entered into by office - bearers. I ask for 2nd defendants to be struck out. Proper procedure to write to C.C.C. as to who would represent them. If no reply representation order. If refused plaintiff would have to be left to take what steps they thought fit.

In the High Court in Borneo

\_\_\_\_\_  
No.6

Judge's Note of High Court Proceedings

\_\_\_\_\_  
21st November, 1963

- continued.

10

20

Yap: Taken by surprise. Lo should have asked for further particulars.

Court: Yap should apply for leave to substitute proper defendants. I am satisfied wrong defendants are sued.

Yap: May I ask for an adjournment to substitute the proper defendants.

Court: Adjourned accordingly sine die. No order as to costs both parties having requested adjournment for different reasons.

30

(Signed) A.H. Simpson,  
Judge.

21.11.63.

\_\_\_\_\_



13.

NO. 8

AMENDED WRIT AND AMENDED PARTICULARS OF CLAIM

Civil Suit No.0/29/63.

BETWEEN

Tio Chee Chuan, ..... Plaintiff  
c/o Shelley Yap Esq.,  
Advocate, Jesselton.

AND

~~The Education Sub-Committee-The Chinese  
Chamber of Commerce-Sandakan~~

10 1. Khoo Siak Chiew  
2. Kwan Yui Ming  
3. Wong Chung Man  
4. Seah Tee Shu  
5. Tan Tze Shu  
6. Choi Wing  
7. Tan Sie Joo  
8. Tan Teck Bak  
9. Ngui Ah Kui  
10. Wu Kwok Liang  
11. Chan Yuen Yan  
20 12. Lee Kwee Thau Defendants

The Honourable Sir C. Wylie, Chief Justice of the High Court in Borneo, in the name and on behalf of His Majesty the Yang'di Pertuan Agong.

To Khoo Siak Chiew, Kwan Yui Ming, Wong Chung Man, Seah Tee Shu, Tan Tze Shu, Choi Wing, Tan Sie Joo, Tan Teck Bak, Ngui Ah Kui, Wu Kwok Liang, Chan Yuen Yan and Lee Kwee Thau, all of Sandakan.

30 WE COMMAND you, that within 20 days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at this suit of Tio Chee Chuan, Sandakan.

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS, Sgd. Tan Yam Thong registrar of the High Court, Borneo, this 17th day of December, 1963.

40 Sgd. Shelley Yap  
Plaintiff's Advocate

Sgd. D. Chong  
Deputy Registrar

In the  
High Court in  
Borneo

—  
No.8

Amended Writ

—  
17th December,  
1963

and

Amended  
Particulars  
of Claim

—  
14th December,  
1963.

In the  
High Court in  
Borneo

—  
No.8

Amended Writ

—  
17th December,  
1963

and

N.B. - This writ is to be served within twelve months from the date thereof, or if renewed, within six months from the date of last renewal, including the day of such date, and not afterwards. The Defendant may appear hereto by entering an appearance either personally or by Advocate at the Registry of the High Court at Jesselton. A Defendant appearing personally, may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of High Court at J'ton.

10

Amended  
Particulars  
of Claim

—  
14th December,  
1963  
- continued.

AMENDED PARTICULARS OF CLAIM

1. That the Plaintiff was employed by the Management Committee of Sandakan Chinese Secondary School, Sandakan, as a School teacher by virtue of a Letter of Appointment dated 15th October, 1960. The Management Committee was registered under Section 18 of the Education Ordinance 1961.
2. That the term of employment was for four years, commencing on 1st January 1961 and expiring on 31st December, 1964.
3. That his salary was fixed at \$310/- per mensem.
4. That on 2nd October, 1962 there appeared in the Borneo Times (Chinese Edition) in which it was stated, inter alia, that teachers will be engaged to replace the Plaintiff and Yu Ting Jeh.
5. That on 8th October, 1962 (i.e. six days after the Notice of dismissal had been published in the newspapers) Plaintiff received a NOTICE, which stated that the Plaintiff would have to cease teaching at a date of 3 months from the 1st August 1962.
6. That according to Clause No.4 of the Letter of Appointment there should not be any termination of Contract unless there be some flagrant breach of conditions. Translation of condition No.4 reads: "during the continuance of this Letter of Appointment any teacher of the School shall not

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40

annul this Agreement unless there be very serious (or important) cause and in the case of special circumstances which necessitate annulment or dissolution of this contract, either party shall give three months' notice".

In the  
High Court in  
Borneo

—  
No.8

7. That the Plaintiff contends that he has been wrongfully dismissed on the wrong interpretation of condition No. 4.

Amended Writ

10 8. That the Plaintiff also contends that the Management Committee had no right whatever to cause publication of the notice of dismissal, especially prior to sending the Notice of Termination of Service to the Plaintiff.

17th December,  
1963

and

9. That on the true construction of condition 4, Plaintiff contends that the Management Committee have NO power to dismiss him. At best, they could make their recommendations for dismissal to the Education Department, Sandakan.

Amended  
Particulars  
of Claim

10. Plaintiff therefore prays,

14th December,  
1963

- continued.

20 (a) that the notice issued by the Management Committee be declared null and void.

(b) that the Court doth declare the Plaintiff to be entitled to remain in service until 31st December, 1964 or in the alternative, the Defendants be ordered to compensate Plaintiff for the premature termination of the Contract without cause;

(c) costs;

30 (d) any other remedies as the Honourable Court may deem meet.

Dated this 14th day of December 1963.

Sgd. Shelley Yap  
Plaintiff's Advocate

THIS WRIT was issued by Shelley Yap Esq., whose address for service is 93 Gaya Street, P.O. Box No.276, Jesselton, Advocate for the said Plaintiff who resides at Sandakan.

In the  
High Court in  
Borneo

This Writ was served by me at  
on the Defendant  
on the \_\_\_\_\_ day of \_\_\_\_\_ 196 ,  
at the hour of \_\_\_\_\_ .

No.8 Indorsed this \_\_\_\_\_ day of \_\_\_\_\_ 196 .

Amended Writ (Signed)

(Address)

17th December,  
1963

and

Amended  
Particulars  
of Claim

14th December,  
1963,  
- continued.

No.9

NO. 9

Judge's Note  
of High Court  
Proceedings

JUDGE'S NOTE OF HIGH COURT PROCEEDINGS

In open Court, Sandakan

10

Thursday, 6th February, 1964.

6th and 26th  
February, 1964.

Coram: Simpson J. (Application for leave to amend  
particulars of claim)

Yap for Applicant.

Respondents absent (Peter Lo in Bangkok).

Yap: Applies in terms of motion and affidavit.

Court: Mr. Lo was summoned urgently to Bangkok by  
the Prime Minister. Before going he  
telephoned the Court seeking an adjournment  
of all cases.

20

The matter is therefore adjourned  
provisionally to 26th Feb. at 2 p.m. with

§10.00 costs to the applicant.

(Signed) A.H. Simpson,  
Judge,  
6.2.64.

In open Court, Sandakan

Wednesday, 26th February, 1964.

Coram: Simpson J.

Shelley Yap for applicant.

Lo for respondents.

10 Yap: Application to substitute fresh defendants. Facts set out in affidavit. Names of 11 persons substituted for 1st defendant. The Education Sub-Committee, Chinese Chambers of Commerce, Sandakan.

Lo: Under what rule is application made?

Proper person to be sued would be owners of the school. This is merely a list of names of managers.

20 Yap: The persons named are registered as members of the management committee. O.28 r. 1,6,12.

Court: Are you not making this application under O.16 rules 11 and 12?

Lo: Another point - two names now appear twice on list of defendants.

30 Yap: These two were not only members of the sub-committee but supervisor and head. I would be content to sue one of them under O.16. r.9 if Mr. Lo would suggest a name. Meanwhile I would apply to further amend the list of defendants by deleting the reference to 1st and 2nd defendants and the names of Khoo Siak Chiew and Wu Kwok Liang where they appear the second time this hearing a list of 12 defendants.

In the  
High Court in  
Borneo

—  
No.9

Judge's Note  
of High Court  
Proceedings

—  
6th and 26th  
February, 1964  
- continued.

In the  
High Court in  
Borneo

Lo: No objection.

Court: Application granted accordingly. The names  
of defendants will now appear as follows:-

No.9

Judge's Note  
of High Court  
Proceedings

6th and 26th  
February, 1964  
- continued.

1. Khoo Siak Chiew
2. Kwan Yui Ming
3. Wong Chung Man
4. Seah Tee Shu
5. Tan Tze Shu
6. Choi Wing
7. Tan Sei Joo
8. Tan Teck Bak
9. ~~Ngai Ah Kui~~
10. Wu Kwok Liang
11. Chan Yuen Yan
12. ~~Lee Kwee Thau~~

10

(Signed) A.H. Simpson  
Judge,  
26.2.64.

No.10

Re Amended  
Writ and  
Statement  
of Claim

NO. 10

RE AMENDED WRIT AND STATEMENT OF CLAIM

B E T W E E N

20

11th March,  
1964.

Tio Choo Chuan, ... .. Plaintiff  
c/o Shelley Yap Esq.,  
Advocate, Jesselton. A N D

~~The Educational Sub-Committee the Chinese  
Chamber of Commerce, Sandakan.~~

1. Khoo Siak Chiew
2. Kwan Yui Ming
3. Wong Chung Man
4. Seah Tee Shu
5. Tan Tze Shu
6. Choi Wing
7. Tan Sic Joo
8. Tan Teck Bak
9. ~~Ngai Ah Kui~~
10. Wu Kwok Liang
11. Chan Yuen Yan
12. ~~Lee Kwee Thau~~

30

The Honourable Sir. C. Wylie, Chief Justice of



the High Court in Borneo, in the name and on behalf of His Majesty the Yang di-Pertuan Agong.

In the High Court in Borneo

To Khoo Siak Chicw, Kwan Yui Ming, Wong Chung Man, Seah Tee Shu, Tan Tze Shu, Choi Wing, Tan Sie Joo, Tan Teck Bak, Wu Kwok Liang and Chan Yuen Yan all of Sandakan.

No.10

Re Amended Writ and Statement of Claim

10 WE COMMAND you, that within 20 days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at this suit of Tio Chee Chuan, Sandakan.

11th March, 1964  
- continued.

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and Judgment may be given in your absence.

WITNESS, Sd. Tan Yam Thong Registrar of the High Court, Borneo, this 11th day of March, 1964.

Sd. Shelley Yap  
Plaintiff's Advocate

Sd. D. Chong  
Asst. Registrar.

20 N.B.- This writ is to be served within twelve months from the date thereof, or if renewed, within six months from the date of last renewal, including the day of such date, and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by Advocate at the Registry of the High Court at Jesselton.

30 A Defendant appearing personally, may if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of High Court at J'ton.

Amended this 3rd day of March, 1964, pursuant to Order of Court dated the 26th February 1964.

STATEMENT OF CLAIM

1. That the Plaintiff was employed by the Management Committee of Sandakan Chinese

In the  
High Court in  
Borneo

—  
No.10

Re Amended  
Writ and  
Statement  
of Claim

11th March,  
1964  
-continued.

Secondary School, Sandakan, as a School teacher by virtue of a Letter of Appointment dated 15th October, 1960. The Management Committee was registered under Section 18 of the Education Ordinance 1961.

2. That the term of employment was for four years, commencing on 1st January 1961 and expiring on 31st December, 1964.
3. That his salary was fixed at \$310/- per mensem. 10
4. That on 2nd October, 1962 there appeared in the Borneo Times (Chinese Edition) in which it was stated, inter alia, that teachers will be engaged to replace the Plaintiff and Yu Ting Jeh.
5. That on 8th October, 1962 (i.e. six days after the Notice of dismissal had been published in the newspapers) Plaintiff received a NOTICE, which stated that the Plaintiff would have to cease teaching at a date of 3 months from the 1st August 1962. 20
6. That according to Clause No.4 of the Letter of Appointment there should not be any termination of Contract unless there be some flagrant breach of conditions. Translation of condition No. 4 reads: "During the continuance of this Letter of Appointment any teacher of the School shall not annul this Agreement unless there be very serious (or important) cause and in the case of special circumstances which necessitate annulment or dissolution of this contract, either party shall give three months' notice". 30
7. That the Plaintiff contends that he has been wrongfully dismissed on the wrong interpretation of condition No.4.
8. That the Plaintiff also contends that the Management Committee had no right whatever to cause publication of the notice of dismissal, especially prior to sending the Notice of Termination of Service to the Plaintiff. 40

9. That on the true construction of condition 4, Plaintiff contends that the Management Committee have NO power to dismiss him. At best, they could make their recommendations for dismissal to the Education Department, Sandakan.

In the High Court in Borneo

No.10

Re Amended Writ and Statement of Claim

10. Plaintiff therefore prays,

(a) that the notice issued by the Management Committee be declared null and void;

10 (b) that the Court doth declare the Plaintiff to be entitled to remain in service until 31st December, 1964 or in the alternative, the Defendants be ordered to compensate Plaintiff for the premature termination of the Contract without cause;

11th March, 1964

-continued.

(c) costs;

(d) any other remedies as the Honourable Court may deem meet.

Dated this                      day of                      196 .

20    Sgd. Shelley Yap

Plaintiff's Advocate

THIS WRIT was issued by Shelley Yap Esq., whose address for service is 93 Gaya Street, P.O. Box No. 276, Jesselton, Advocate for the said Plaintiff who resides at Sandakan.

This Writ was served by me at on the Defendant on the                      day of                      196 , at the hour of                      .

30                      Indorsed this                      day of 196 .

(Signed)

(Address)

\_\_\_\_\_

In the  
High Court in  
Borneo

NO. 11

DEFENCE

No.11  
Defence

24th April,  
1964.

1. The defendants admit that the Management Committee of the Sandakan Chinese Secondary School, Sandakan (hereinafter referred to as "the Management Committee") was registered under Section 18 of the Education Ordinance, 1961 but deny that the Plaintiff was ever employed by the said Management Committee as a School teacher by virtue of a Letter of Appointment dated October 15, 1960, or at all, as alleged in paragraph 1 of Particulars of Claim. 10
2. The Defendants repeat paragraph 1 hereof and say that the plaintiff was in fact employed by the Educational Sub-Committee of the Sandakan Chinese Chamber of Commerce in the manner as aforesaid.
3. In so far as the employment of the plaintiff refers to paragraph 2 hereof, paragraphs 2 and 3 of the Particulars of Claim are admitted. 20
4. The Defendants deny the allegations contained in paragraph 4 of the Particulars of Claim. They admit, however, that on October 2, 1962 the minutes of the 6th Meeting of the said Educational Committee of the Sandakan Chinese Chamber of Commerce in regard to the Sandakan Chinese Secondary School were published in the Borneo Times (Chinese Edition), in which it was stated, inter alia, that other teachers be engaged to replace the plaintiff and Yu Ting Jeh. 30
5. The Defendants deny the allegations contained in paragraph 5 of the Particulars of Claim but admit that on about October 8, 1962, the said Educational Sub-Committee sent to the Plaintiff a letter giving him three months' notice of termination of his service agreement in accordance with the terms of the agreement i.e. the said Letter of Appointment, such notice expiring on January 8, 1963. 40

6. The Defendants deny the allegations contained in paragraph 6 of the Particulars of Claim. They say, however, that in so far as Clause 4 of the Letter of Appointment is concerned, the proper translation should read as follows :-

In the  
High Court in  
Borneo

\_\_\_\_\_  
No.11

Defence

\_\_\_\_\_  
24th April,  
1964  
- continued.

10

"4. No teacher or clerk of the School may seek release from his contractual obligations during the validity of the service contract except for cogent reasons. If, under special circumstances, it should be necessary to seek release from or a cancellation of the contract, the party seeking such release or cancellation shall serve 3 months' advance notice on the other party".

20

7. If (which is denied) the Defendants are the proper persons to be sued they deny the allegations contained in paragraph 7 of the Particulars of Claim. They say that the service agreement referred to above has been lawfully terminated pursuant to Clause 4 thereof.

8. The Defendants deny the allegations contained in paragraphs 8 and 9 of the particulars of Claim.

9. The Defendants deny that the plaintiff is entitled to any of the relief claimed in this action.

30

10. The Defendants say that they should not have been made parties to the suit and that the action should be struck out.

Delivered this 24th day of April, 1964.

Sgd. Peter S.Y. Lo

Solicitor of Defendants.

This Defence is filed by Peter S.Y. Lo, Esq.,  
Sandakan Solicitor for the Defendants.

The Defendants' address for service is c/o Peter  
S.Y. Lo, Esq., Sandakan.

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In the  
High Court in  
Borneo

NO. 12

JUDGE'S NOTE OF PROCEEDINGS IN HIGH COURT

\_\_\_\_\_  
No.12

In open Court, Sandakan

Judge's Note  
of Proceedings  
in High Court

Wednesday, the 6th May, 1964

\_\_\_\_\_  
6th May, 1964.

For Plaintiff: Mr. Shelley Yap.

For Defendants: Mr. Peter Lo.

1 - 8 inc. and 10,11.

Tio Chee Chuan, a/s.

Ex.1. I was a school teacher. I produce authority to teach, Ex. 1 (addressed to Chung Hwa School). 10

Ex.2. In January 1959 I began employment with Sandakan Chinese Secondary School. On 15th October 1960 I got my letter of appointment, Ex.2.

Ex.3. Contract is for 4 years. Salary at that time was \$310 later raised to \$330 (from 1st January 1962) (See Ex.1.) I taught Junior Middle School, up to 29.5.1962. I was told by the School Committee to teach other classes - Senior Middle Class - with extra \$100 pay. I continued to 2nd October 1962. I found an article in Borneo Times which stated I would be replaced. That was first I heard of intention to replace me. I continued working. On 8th October I got letter Ex.4 signed by Defendant 2. No reasons for dismissal were given. Then letter 9th October was sent by me: 20

Ex.5. Ex. 5 Letter 10th October.

I was teaching on 10th and went on teaching until the 3 months were up. Since then not employed. I have looked for work. My contract did not specify what classes I was to teach. When I joined the School there was no senior class. When I had taught for a year the class was established and on 29.5.62 I was told to teach senior classes. I still taught more in June. The 30

extra \$100 was for teaching senior classes.

XX

Education Department has given me Ex.1. Chung Hwa Senior School engaged me. I do not know which teachers were registered. I do not know of difficulties with Director of Education. My letter of appointment did not specify Junior or Senior Classes. My contractual pay was \$310. The \$100 extra was not given to me as head or prefect of the class. I see this piece of paper. That is my writing. The writing states as head looking after the affairs of the school. I agree I wrote the sheet. Ex. A.

In the  
High Court in  
Borneo

—  
No.12

Judge's Note  
of Proceedings  
in High Court

—  
6th May, 1964  
- continued.

Ex. A.

When I got Ex.4, I wrote to Chinese Chamber of Commerce. On 9th October I wrote to Education Sub-Committee. They gave me a reply on 10th. In the Newspaper I asked for reasons. I wrote on 9th October and I also wrote prior to that, on 2nd October. I have copy of letter I wrote to Chinese Chamber of Commerce 2nd October. I did protest. I got no reply. I got receipts for my registered letters. On 3rd October 1962 I wrote to the paper - published next day. My withdrawal had been published in the paper. I did not use the word 'BRUTE' - the Chinese means someone who uses force. I received Ex.5. I know it was a grant-aided school. There was a Government grant. Under unified salary scheme pay is responsibility of Government. I know school fees also had to be handed to Government. Government assessed my salary at \$330. I did not ask for extra money from the school. I did not ask for the extra \$100 from the school. They gave it to me. I was content to receive the Government scale and no more. Also I was content to teach in the Junior classes. I did want to teach Junior classes. There was a limited ratio for Junior class teachers. The contract was drafted by Defendants. I did appeal to Director of Education.

To Court: I have made genuine efforts to get employment, but so far unsuccessful. My reputation has been damaged by Defendants. =

ReX

In the  
High Court in  
Borneo

---

No. 12

Judge's Note  
of Proceedings  
in High Court

---

6th May, 1964  
- continued

My published letter was not circulated  
Unified salary scale was introduced after my  
contract. I was willing to continue on terms  
of contract.

(Sgd.) E.R. Harley

CLOSE OF PLAINTIFF'S CASE

Tan Tze Shu a/s (Defendant 5).

I was a member of Management Committee  
when Plaintiff was engaged. Plaintiff's  
letter of appointment was signed by Supervisor 10  
of Education Sub-Committee of Chinese Chamber  
of Commerce. Contract was for four years.  
On 8th October 1962 the Sub-Committee did  
terminate Plaintiffs' contract. Before  
unified scheme Plaintiff was getting over  
\$400. He got \$120 as a supervisor. We  
felt we had no option but to give him extra  
allowance. After introduction of unified  
scheme that extra allowance would be  
cancelled. Under new scheme Plaintiff would 20  
only get \$330. It is not true that he was  
prepared to work on. He complained that  
his allowance should be continued. We  
could not keep Plaintiff on at \$330 anyway  
because we had too large a ratio of Junior  
teachers. Secondly Education Officer  
impressed on us that Plaintiff was qualified  
to teach only in Junior classes. I am still  
a member of the Management Committee. Also  
I am now Supervisor of Schools. 30

XX

There is a 1961 Education Ordinance  
S.79. We were Educational Sub-Committee for  
Chinese Chamber of Commerce. All defendants  
were in 1962 list. Ex.2 is a good contract.



10 Senior class was started in 1962. Plaintiff was only teacher who received a Notice. Headmaster got Plaintiff to teach Senior Classes. \$100 allowance was paid to Plaintiff as supervisor of special section. There was no Senior Class in school when Plaintiff was engaged. We did use Plaintiff to teach Senior Class. We did not know he was not so authorised. So that is why we dismissed him. He refused to teach Senior Class. Plaintiff did say he would continue at \$330 provided he was not called on to teach Senior Class. I know Minutes of our Meeting were published in newspaper.

In the High Court in Borneo

No. 12

Judge's Note of Proceedings in High Court

6th May, 1964  
- continued.

ReX

Senior Classes were first introduced in 1962.

(Sgd.) E.R. Harley

CLOSE OF DEFENDANTS' CASE

20 Le: Sole issue whether termination was within clause 4. Contention is no valid reason to terminate contract. "Very important matter." Ample reasons for ending contract. By retaining Plaintiff School would have to do without senior classes. Are Defendants proper parties to be sued? 0.16 r.9.

S. Y.: Clause 4 is the issue. 0.16 r.6 r.11.

C A V

30 Sandakan,  
6th May, 1964

(Signed) E.R. Harley  
Judge.

Certified true copy  
Sgd. D. Chong.  
Acting Deputy Registrar  
19. 6.64.

In the  
High Court of  
Borneo

No. 13  
Judgment

14th May,  
1964

28.

NO. 13

JUDGMENT

The following facts are either admitted, or proved to my satisfaction:

1. Defendants employed Plaintiff as a teacher. The term of employment was 1st January 1961 to 31st December, 1964.
2. Plaintiff's commencing salary was ~~£~~310. It was raised from 1st January 1962 to ~~£~~330. 10
3. The Director of Education on 21st January, 1959 authorised the Defendants' school to employ the plaintiff, who was an unregistered teacher, but the authority limited his teaching to Junior Middle Classes only.
4. In 1962 Plaintiff was employed by Defendants to teach Senior Middle Class, and he received an extra ~~£~~100. Defendants deny that this was part of the teaching salary. They got Plaintiff to sign a document that he was paid the extra ~~£~~100 in his character as supervisor of a Special section. 20
5. With effect from 1st January 1962, the Director of Education introduced Unified Teachers' Salary Scales. Plaintiff was informed by the Director of Education that he was assimilated on the scale ~~£~~290 x 20 - 410 at the point of ~~£~~330 per month. 30
6. On 2nd October 1962 there appeared in the Borneo Times a statement that Plaintiff and another teacher would

be replaced.

In the  
High Court in  
Borneo  

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No. 13  
Judgment  

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- 10 7. Plaintiff continued working, but on 3rd October he sent to the newspaper an open letter to the Education Sub-Committee complaining about wrongful dismissal. That letter clearly did not endear him to Defendants, but they do not rely on the letter as reason for Plaintiff's dismissal.

14th May,  
1964  
- continued

8. Plaintiff in the event was the only teacher dismissed by Defendants. The following letters were intended and accepted as letters of dismissal:

Ex. 4 -

8th October, 1962.

"to: Mr. Too Chee Chuan,

Dear Sir,

- 20 I have the honour to inform you that, according to the resolution of the sixth meeting of the Education Sub-Committee this year, the post that you held as a teacher at Sandakan Chinese Secondary School will not be continued from 8th January, 1963. Therefore, in pursuance of the terms as set in the contract between you and the Education Sub-committee, we inform you this matter three months in advance, and, to your service to  
30 the school in the past, we sincerely express

In the  
High Court in  
Borneo

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No. 13  
Judgment

---

14th May,  
1964  
- continued.

to you our gratitude.

Yours sincerely,

Kwan Yui Ming,

Acting Supervisor and  
Chairman of the Education  
Sub-committee."

Ex. 5 - 10th October, 1962

"To: Mr. Too Chee Chuan.

Dear Sir,

In regard to the salary that you draw as a  
teacher at Sandakan Chinese Secondary school, 10  
except that part that is paid by the Education  
Department, the Education Sub-Committee has to  
pay additional subsidy to you every month.  
Under the Unified Teaching Scheme, the members  
of the Sub-Committee are of the opinion that  
the payment of this sum of additional subsidy  
should not be continued. Therefore, at the  
sixth meeting of the Education Sub-Committee  
on 29th September, it has been unanimously 20  
passed that the contract with you will not  
be continued; and in pursuance of the terms  
of the contract between the Education Sub-  
Committee and you that a notice should be  
given three months in advance, a letter has  
been written to inform you of this decision.

Furthermore, according to the notice of the  
Education Office of Sandakan, your teaching  
permit is limited to teaching junior middle classes  
only. The Chinese of Senior One of Sandakan 30  
Chinese Secondary School has been taught by you  
for the past several months. The Education.

Department considers that this is a wrong arrangement. For this reason, Sandakan Chinese Secondary School has to find another teacher to teach Chinese in the Senior classes. And, as being limited by the quota of teachers, the annulment of your contract is therefore inevitable. The members of the Education Sub-Committee regret deeply that, without knowing the cause, you have unexpectedly published in the newspapers an open letter which is not correspondent to the facts. I will be gratefully obliged if you appreciate this.

In the  
High Court in  
Borneo

\_\_\_\_\_  
No.13

Judgment

\_\_\_\_\_  
14th May,  
1964

- continued.

Yours truly,

Kwan Yui Ming,  
Acting Supervisor and  
Chairman of Education  
Sub-Committee."

9. Plaintiff was at all times ready and willing to continue at a salary of \$330. This is disputed by Defendants, but I prefer the Plaintiff's evidence on the fact, Plaintiff was not demanding continuation of the \$100 bonus, and he was content to teach only such classes as he was authorised to teach.
10. Under the new scheme the school could only employ a limited ratio of Junior Middle Class teachers, and Defendants chose to consider Plaintiff as surplus to establishment requirements.
11. Plaintiff has made diligent efforts to find other employment, but since January 8th 1963 he has been out of a job. He thinks that the dismissal reflected on his character.
12. Defendants have not pleaded specifically their reasons for dismissing Plaintiff. They rely in their Defence on a clause in the contract of employment which reads as follows:-

"Ex. 2. Translation  
of Clause 4 from a Chinese  
document

In the  
High Court in  
Borneo

\_\_\_\_\_  
No.13

Judgment

\_\_\_\_\_  
14th May,  
1964  
- continued.

4. The teachers and staff of the school must not during the validity of the agreement of appointment rescind the agreement of appointment except for very important matters. If, in case of special circumstances release of or withdrawal from the appointment is necessary either party shall give three months' notice in advance.

Translated by me,  
Tan Chuan Liu  
Court Interpreter.  
18/11/63 "

10

The issue in this case is whether the above clause justifies the dismissal. Before considering that particular clause, it is worth considering what the position would have been without such a clause.

In RUBEL BRONZE AND METAL COMPANY AND VOS,

K.B.1.1918 p.321

McCardie J. said:

20

" To-day it is well settled that a master may dismiss his servant for many reasons, such as misconduct, substantial negligence, dishonesty, and the like. Such matters may, I think, be said to constitute such a breach of duty by the servant as to preclude the further satisfactory continuance of the relationship and to justify the master in electing to treat the contract as repudiated by the servant. But the point is one of doubt, as the light of formulated ratio illuminates but few of the decisions. Perhaps the modern view has been that continued good conduct by the servant is a condition, either express or implied, of the contract of service the breach of which entitles the master to end the employment: see the doubt of Lush J. in Hanley v. Pease (1) Such view is certainly consistent with the effect of the decisions in Ridgway v. Hungerford Market Co. (2), and Baillie v. Kell.

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40

(3) It is clear, however, that if a dismissal be without just cause the master is deemed to have wrongfully repudiated his contractual obligations to the servant: see General Billposting Co. v. Atkinson. (4) "Wrongful Dismissal" is, I think, a mere illustration of the general legal rule that an action will lie for unjustifiable repudiation of a contract."

In the  
High Court in  
Borneo

\_\_\_\_\_  
No.13

Judgment

\_\_\_\_\_  
14th May,  
1964

- continued.

10 IN COLLIER V SUNDAY REFEREE PUBLISHING CO. K.B.2.  
1940 p. 647

a sub-editor was employed by a newspaper. It was held -

20 "that when the defendants sold the newspaper they destroyed the position to which they had appointed the plaintiff and thereby committed a breach of contract for which they were liable to pay him damages amounting to the sums payable to him under the contract, less any remuneration earned by him in employment by third parties after the breach".

30 The above two cases illustrate the principles where no specific dismissal clause governs the contract. In construing the particular clause 4 of the contract in the instant case, the Court aims to give effect to the intention of the parties. In my view the intention was not to widen, but more likely to restrict, the Common Law reasons for dismissal. Moreover this contract was drafted by Defendants, and if it is ambiguous, it should be construed against them. I do not consider it a sufficient reason for the Defendants in this case to dismiss Plaintiff merely because the contract was becoming burdensome or inconvenient. They should have approached Plaintiff and discussed terms for terminating the contract. As it is, to my mind the dismissal was wrongful.

40 As regards damage, Plaintiff, as it seems to me, would have had his salary raised in due course above \$330. However, he has pleaded no particulars of damage. The Court awards him a sum equal to \$330 a month from the date of his ceasing his employment (8th January 1963) up to the date of judgment, and further \$330 a month as from the

In the High Court in Borneo

No.13

Judgment

14th May, 1964  
- continued.

date of judgment up to the date of Plaintiff's re-employment or up to 31st December 1964, whichever is the earlier. If Plaintiff is re-employed and his salary is less than \$330, he will be entitled to be paid the difference up to the end of this year. Defendants will also pay to Plaintiff his costs.

Jesselton,  
14th May, 1964

(Signed)  
E.R. Harley,  
Judge.

10

Certified true copy,  
Sd. Michael Young  
Deputy Registrar.

No.14

Order

14th May, 1964.

NO. 14

ORDER

CORAM: MR. JUSTICE E.R. HARLEY THE 14th DAY OF MAY 1964

O R D E R

UPON HEARING MR. SHELLEY YAP, counsel for the Plaintiff

20

AND UPON HEARING MR. PETER S.Y. LO, counsel for the Defendants:

IT IS ORDERED that the Defendants do pay to the Plaintiff the sum of \$330.- a month from the 8th day of January 1963 up to the 14th day of May 1964, totalling \$5,676.00 and thereafter to pay \$330.- a month as from the 14th day of May 1964 up to the date of Plaintiff's re-employment or up to the 31st day of December 1964 whichever is the earlier. In the event of the Plaintiff obtaining re-employment and his salary is less than \$330.- per month, the Defendants shall pay to the Plaintiff the difference up to the 31st day of December 1964.

30



IT IS ALSO ORDERED that the Defendants do pay to the Plaintiff costs of this action.

Dated the 14th day of May 1964.

(Signed) D.C. Long.

Acting Deputy Registrar  
High Court.

In the  
High Court in  
Borneo

No.14  
Order

14th May,  
1964.  
- continued.

In the  
Federal Court  
of Malaysia.

No.15

Notice of  
Appeal

9th June 1964.

NO. 15

NOTICE OF APPEAL

10 Take notice that Khoo Siak Chiew, Kwan Yui Ming, Wong Chung Man, Seah Tee Shu, Tan Tze Shu, Choi Wing, Tan Sei Joo, Tan Teck Bak, Wu Kwok Liang and Chan Yuen Yan, the Appellants being dissatisfied with the decision of the Honourable Mr. Justice E.R. Harley given at Jesselton on the 14th day of May, 1964 appeal to the Federal Court against the whole of the said decision.

Dated this 9th day of June, 1964.

Sgd. Peter S.Y. Lo  
Solicitor for the Appellants

20 To  
The Registrar,  
The Federal Court,  
Kuala Lumpur.

and to:  
The Registrar,  
The High Court in Borneo at Jesselton.

30 and to:  
The Registrar,  
High Court,  
Kuching.

The address for service for the Appellants is Peter Lo Su Yin, Solicitor, Sandakan.

In the  
Federal Court  
of Malaysia

NO. 16

MEMORANDUM OF APPEAL

No.16  
Memorandum  
of Appeal

16th September,  
1964.

WE, Khoo Siak Chiew, Kwan Yui Ming, Wong Chung Man, Seah Tee Shu, Tan Tze Shu, Choi Wing, Tan Sei Joo, Tan Teck Bak, Wu Kwok Liang and Chan Yuen Yan, the Appellants abovenamed appeal to the Federal Court against the whole of the decision of the Honourable Mr. Justice E.R. Harley given at Sandakan on the 14th day of May 1964 on the following grounds:

1. The learned trial Judge erred in finding of fact that the Appellants employed Respondent as a teacher. The Respondent was not employed by the Appellants but by the Education Sub-Committee of the Chinese Chamber of Commerce under a Certificate of Employment dated 15/10/60 in Chinese and signed by Khoo Siak Chiew as Supervisor, Wu Kwok Liang as Head of the Education Sub-Committee and Lee Kwee Thau as principal of the School. The Appellants therefore say that there is no cause of action against the Appellants in this case. 10
2. The Sandakan Chinese Chamber of Commerce was an unincorporated society which has no legal entity of its own. The Appellants say that the proper procedure to be taken in this action was for the Respondent to apply under O.16 r.9 of the Rules of the Supreme Court 1957 for a representative Order that a representative be nominated by the Chinese Chamber of Commerce to defend in this action and only when a representative Order is opposed, then the Respondent may sue all those persons who employed him. In any event, the Appellants are managers elected on a yearly basis who were not the employers and therefore cannot be made a party to the proceedings. 30
3. The learned trial Judge erred in finding of fact that the Respondent had made diligent efforts to find other employment but since January 8th 1963 he had been out of a job, The Respondent's evidence was not supported by other evidence. The Appellants say that 40

the Respondent failed to lead evidence that he had placed his services on market as decided in Heron, Gethin-Jones & Low v.s. John Chong (C.A.) (1963) 29, Malayan Law Journal 310 (1963 Sept.) and therefore his evidence in respect of unemployment should not be accepted.

In the  
Federal Court  
of Malaysia

            
No.16

Memorandum  
of Appeal

            
16th September  
1964

- continued.

- 10 4. The learned trial Judge was wrong in relying on the fact that the Appellants had not pleaded specifically their reasons for dismissing the Respondent. The Respondent claimed in the Particulars of Claim relied on the Education Ordinance 1961 that he was wrongfully dismissed on the wrong interpretation of Clause 4 of the Letter of Appointment in that according to his own interpretation, the employers (wrongly said to be the Management Committee) had NO POWER to dismiss him and "at best they could make their recommendations for dismissal to the Education Department." The issue was therefore whether the employers or the Education Department had power to dismiss him. Paragraph 7 of the Defence denied the allegation of the Respondent that the employers had no power to dismiss him and as the reasons for the dismissal were better known to the Respondent through the exchange of correspondence as well as evidence led in Court, the "special circumstances" in which either party may terminate the appointment by giving three months' prior notice had been made clear.
- 20
- 30 5. The Appellants say that the cases of Rubel Bronze & Metal Company & Vos, K.B.1. 1918 & Collier v. Sunday Referee Publishing Company K.B.2. 1940 are not applicable to this case in that those two cases merely state the position at common law in the absence of any contract providing for earlier determination of employment, whereas in this case there was a letter of appointment with an escape clause providing for an earlier determination and it was for the Court to decide whether the employers' power to terminate the contract under the escape clause was properly exercised.
- 40
6. The learned trial Judge was wrong in suggesting that the construction of Clause 4 of the Letter of Appointment was ambiguous. The question of

In the  
Federal Court  
of Malaysia

\_\_\_\_\_

No.16

Memorandum  
of Appeal

\_\_\_\_\_

16th September  
1964

- continued.

ambiguity (if any) was never raised by the Respondent in his pleadings and the only ground he relied on was that the employers had No power to dismiss him and that the employers should have recommended to the Education Department for his dismissal. The Appellants say, in any event, Clause 4 was not ambiguous. The first paragraph is solely confined to the employees which provides for an earlier rescission of the agreement for "very important matters" in the case of teachers and staff who are desirous of leaving service. The words "must not" used therein were intended to restrict the right of teachers and staff only to rescind the agreement earlier than the term of service and not to restrict the reasons for dismissal as suggested by the learned trial Judge. The second paragraph provides for earlier termination by either party in case of "special circumstances" by giving three months' prior notice. The Appellants contend that what are the "special circumstances" is a matter of fact as to whether it may justify an earlier termination and the construction of Clause 4 is therefore by no means ambiguous in itself. The introduction of the new Unified Teaching Scheme by the Education Department under which the school could only employ a limited ratio of Junior Middle Class teachers and the Respondent, not being qualified to teach in Senior Middle School Classes upon instructions of the Education Department, had thereby become surplus to the restricted ratio of Junior Class teachers is indeed a sound reason within the meaning of "special circumstances" for the employers to terminate the agreement by giving a three months' previous notice. By retaining the Respondent, the School would have to do without senior classes. The Respondent had agreed and chosen to teach in Senior class with an extra pay as supervisor or "head looking after the affairs of the school" and having accepted that post which was objected to by the Education Department, the School could not accommodate him in Junior classes due to the said restricted ratio. The Appellants further say that even if the

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contract be "burdensome and inconvenient" as suggested by the trial Judge, it might well be a good reason under "special circumstances" to terminate the agreement.

Dated the 16th day of September 1964.

Sd. W.K. Loo & Company,  
Advocates for the Appellant.

To:  
The Registrar,  
Federal Court,  
Kuala Lumpur

10

and to:

Tio Chee Chuan  
or his advocate Shelley Yap Esq.,  
P.O. Box No.980, Jesselton.

The address for service of the appellants is care of W.K. Loo & Company, Advocates & Solicitors, Room 409, Wing On Life Building, P.O. Box No.240, Jesselton, Sabah, Malaysia.

In the  
Federal Court  
of Malaysia

\_\_\_\_\_  
No.16

Memorandum  
of Appeal

\_\_\_\_\_  
16th September  
1964  
- continued.

20

NO. 17

JUDGE'S NOTES OF PROCEEDINGS

Loo for Appellants

Shelley Yap for Respondent

Loo: No order sealed in this case, Counsel consider order could be agreed.

Loo undertakes to seal order and have copy included in record of appeal.

On this basis Court proposes to hear the appeal - no decision until order sealed.

No.17

Judge's Note  
of Proceedin

\_\_\_\_\_  
8th October  
1964.

In the  
Federal Court  
of Malaysia

Loo:

No.17

Judge's Notes  
of Proceedings

8th October,  
1964

- continued.

Ground 1:-

No privity of contract between appellants and respondent except possibly between 1st and 9th appellants and respondent.

Ground 2:-

Unincorporated society.

21st Edition - Chitty on Contracts Vol. 1 p.673 para. 1237. Also P.674, para. 1238 - some liable, some not. Order under O.19, R.6 cannot be made unless all the parties have the same interest.

10

Bradley Egg Farm v. Clifford & others (1943)  
2 All E.R.378 Other party refused to co-operate over rep. order. In present appeal, no rep. order was sought.

Ground 3:-

Heron etc. v. John Chong 1963 M.L.J.310

Collier v. Sunday Referee Publishing Co.  
1940 2 K.B. 647 (1940) 4 All E.R. 234.

20

At p.653 "used all reasonable diligence". Must be claim for wrongful dismissal and attempts to find employment. Here only 2 sentences P.36 - Last 2 lines P.38 B.4. Apparently no cross-examination. No evidence he placed his services on the market.

Ground 4: - (Counsel traverses this ground).

Ground 5:-

Rubel Bronze & Metal Co. v. Vos (1918)  
1 K.B. and Collier's case. Not relevant for reasons stated in ground 4. Circumstances here were special circumstances.

30

- (1) Proportion of teachers exceeded.
- (2) Deft. prohibited payment of special allowance which had been paid by mutual agreement.

In the  
Federal Court  
of Malaysia

\_\_\_\_\_  
No.17

Judge's Notes  
of Proceedings

\_\_\_\_\_  
8th October,  
1964  
- continued.

Ground 6:-

11 Halsbury (3rd Edition) p.394 paras. 642,  
643 & 644.

McClelland v. Northern Ireland General Health  
etc.

10 (1957) 2 All E.R. 129.

An express provision excludes general power  
to dismiss - paras. 643 and 644 in Halsbury.  
Must not lead to injustice or hardship.  
Does not here.

Reigate v. Union Manufacturing Co. (1918)  
1 K.B. 592

No right to terminate by ceasing to carry on  
business - no clause giving right to terminate.  
See p.605 as to implying term.

20

Case

Yap:

Ground 1 & 2

Set up is set out in Educ. Ord. 1961. See  
Sec. 79 as to preserving previous acts and  
appointments.

See section 18 and section 14.

See definition of "supervisor" in section  
2(p.44).

30

Khoo Siak Chiew was supervisor and signed the  
contract,

Section 15 (4).

In the  
Federal Court  
of Malaysia

            
No.17

Judge's Notes  
of Proceedings

            
8th October,  
1964  
- continued.

Ground 3

Refer to evidence. No cross-examination.

Ground 4

Appellants blowing hot and cold.

Reasons clearly stated by appellants at P.63.

No money is the reason.

Contract was for 4 years in 1961.

Unified scheme introduced later. Need not  
have made contract for 4 years.

No evidence to show what were consequences  
of introduction of unified scheme.

10

Resp. produced his certificate and he was  
engaged accordingly - not as a senior  
class teacher. This came later.

Case

Loo:

See Educ. Regs. Vol. VII Reg. 66 at p.336.

Reg. 67.

Court refers to Reg. 65

Should have obtained registration order.

20

To Court:

Further hearing adjourned until cr. appeal  
ended.

Adjourned to 2.10 p.m.

Resumed 2.10 p.m.

Fed. C Civil App. No.53/64 resumed.

Apps. as before.



Loco:-

To Court:- Cannot be found from record what was amount appellants stood to lose if they did not dismiss resp.

Judgment of Court delivered allowing appeal with costs to the appellants here and in the court below.

Deposit to appellant.

Adjourned 3.55 p.m.

In the Federal Court of Malaysia.

No. 17

Judge's Notes of Proceedings

8th October 1964

- continued.

10

Certified true copy,

Sgd. Illegible  
Secretary to Chief Justice,  
Borneo  
18/5/65.

No. 18

JUDGMENT

No. 18  
Judgment

Coram: Cambell Wylie, Chief Justice, Borneo,  
Tan Ah Tah, Judge, Federal Court.  
Simpson, Puisne Judge, High Court,  
Jesselton.

8th October,  
1964.

20

ORAL JUDGMENT OF CAMPBELL WYLIE,  
CHIEF JUSTICE BORNEO.

30

This appeal was fully argued before the Court this morning, Since then we have received the translation of the contract of employment, but we have given full consideration to this matter and we are of the opinion that this appeal can be decided without hearing any further argument concerning the terms of the Contract. Accordingly, the Court will now proceed to give judgment in this appeal.

The appeal is from the decision of Mr. Justice Harley in awarding the Respondent damages for wrongful dismissal from his post as a teacher at the Chinese Secondary School which was established

In the  
Federal Court  
of Malaysia

\_\_\_\_\_  
No.18

Judgment

\_\_\_\_\_  
8th October,  
1964.

- continued.

by the Chinese Chamber of Commerce at Sandakan.

The only facts to which I find it necessary to refer, have been set out in Mr. Justice Harley's judgment. The Respondent was employed as a teacher in the school from 1st January, 1961, until 31st December, 1964, i.e. on a four-year contract at a salary commencing at \$310.00 per month and rising to \$330.00 per month on 1st January, 1962. Special authority was given to employ the Respondent because he was an unregistered teacher. He was employed to teach in junior middle classes only. However, in 1962 the Supervisor of the school did actually use the Respondent to teach in a senior middle class and he was paid an extra \$100.00 per month in respect of this.

10

A unified salary scale was brought into effect on 1st January, 1962, and the salary under that scale was \$330.00 per month apart from his special allowance. On 2nd October, 1962 or just before that, the Management of the school arrived at a decision to give the Respondent three months' notice of termination of employment. There was certain amount of unfortunate publicity about this, but in fact the ensuing correspondence showed that the Respondent was being dismissed because of a change in the regulations concerning schools that received grants-in-aid.

20

On 8th October, 1962, a letter signed by the Acting Supervisor was delivered to the Respondent and it informed him to this effect:

30

"I have the honour to inform you that, according to the resolution of the sixth meeting of the Education Sub-Committee this year, the post that you hold as teacher at Sandakan Chinese secondary School will not be continued from 8th January, 1963. Therefore, in pursuance of the terms as set in the contract between you and the Education Sub-Committee, we inform you this matter three months in advance, and, to your service to the school in the past, we sincerely express to you our gratitude."

40

In the course of evidence the fifth defendant said:

"We could not keep Plaintiff on at \$330.00 anyway because we had too large a ratio of Junior teachers. Secondly, Education Officer impressed on us that Plaintiff was qualified to teach only in Junior Classes."

In the  
Federal Court  
of Malaysia

\_\_\_\_\_  
No.18

Judgment

\_\_\_\_\_  
8th October  
1964  
- continued.

10 On 1st January, 1963, there came into force an amending regulation as part of the Central Education Fund Rules, 1961, for grant-in-aid schools. The new regulation provided that the Director might fix the maximum number of teachers who may be employed at any time in a school receiving grants in aid. The defence said that it was because of this regulation that notice was given to the Respondent. Although his contract was for a period of four years, it had a clause - No.4 - which (translated) read as follows:

20 "No teacher or clerk of the School may seek release from his contractual obligations during the validity of the service contract except for cogent reasons. If, under special circumstances, it should be necessary to seek release from or a cancellation of the contract, the party seeking such release or cancellation shall serve 3 months' advance notice on the other party."

30 Ground 6 of the appeal is directed to the point that the learned trial Judge found that that clause did not justify the dismissal in the circumstances of this case and that he ordered the defendants to pay damages for wrongful dismissal in consequence of this finding. Ground 6 is to the effect that, properly construed, clause 4 of the contract was properly invoked and that, in the circumstances that existed, the giving of notice under the clause was justified. It is necessary first to consider what this rule provides. The first part of this clause obviously imposes a restriction on the right of teachers and staff to secure a release from their  
40 contracts. The second part of the clause gives either party a restricted right to give three months' notice. The condition is this: that the notice may be given if in the case of special circumstances, termination of the contract may be necessary. I referred to the changes that

In the  
Federal Court  
of Malaysia

-----  
No.18

Judgment

-----  
8th October  
1964

- continued.

occured in the regulations as the changes which led to the giving of notice to the Respondent. The principal regulations, as subsequently amended, are the Central Education Fund Rules, 1961, and they provide for the purposes for which grants may be obtained from the Central Education Fund. One of the grants is for the payment of teachers' salaries. Clause 6 seems to be very important in this connection:

"If in the opinion of the Director, a grant-aided school is not conducted in such manner that if it were applying for a grant or a grant-in-aid it would qualify under Rule 5, the Director may ..... reduce or cancel such grant-in-aid." 10

The effect of clause 6 is that if it is fully carried into effect, the whole grant-in-aid may be withdrawn.

Rule 5 provides that there shall be no grant-in-aid unless the school complies with certain conditions. The first is that schools shall be conducted in accordance with any written law. One such written law is the new rule (Rule 5A), pursuant to which the Director of Education may prescribe the maximum number of teachers there may be in any one school. This change in the rules was obviously contemplated at about that time this notice was given and it is to be inferred that it was given as a result of that change. If the school management did not comply with that regulation their grant-in-aid would be jeopardised and they could be expected to face such a responsibility. 20 30

Those were the circumstances. They are, in my opinion, special circumstances, and it did become necessary to reduce the number of teachers in accordance with the new regulations so as not to jeopardise the grant-in-aid.

The point was made as to why the respondent should be the one chosen to be given notice when he had a contract for four years' service. We do not know the terms of employment of the other 40

teachers but we do know that the Respondent willingly agreed to, and signed, a contract containing clause 4. As a matter of law, therefore, the school was at liberty to dismiss this particular teacher in these circumstances.

In the  
Federal Court  
of Malaysia.

\_\_\_\_\_  
No.18

Judgment

\_\_\_\_\_  
8th October  
1964  
- continued.

10 For these reasons I would uphold this appeal on ground 6 and it follows that it will not be necessary to consider the other five grounds and, in particular, who were the proper parties to be sued. I would therefore allow this appeal with costs, including costs in the Court below. Deposit to be repaid to the Appellants.

Taken down by me and seen by the Hon'ble the Chief Justice, Borneo.

Sd. A.F. Dorall  
Secretary to the Chief Justice,  
High Court in Borneo.

Jesselton,  
8th October, 1964.

20 \_\_\_\_\_  
Tan Ah Tah F.J. and Simpson P.J. concurred.

\_\_\_\_\_  
W.K. Loo for Appellants.  
Shelley Yap for Respondent.

NO. 19

ORDER

THIS APPEAL coming on for hearing this day in the presence of Mr. W.K. Loo of Counsel for the Appellants above-named, Mr. Shelley Yap of Counsel for the Respondent above-named AND UPON READING the Record of Appeal filed herein

No.19

Order

\_\_\_\_\_  
8th October,  
1964.

In the  
Federal Court  
of Malaysia

\_\_\_\_\_  
No.19

Order

\_\_\_\_\_  
8th October,  
1964.  
-Continued.

AND UPON HEARING Counsel as aforesaid for the parties

IT IS ORDERED that this Appeal be and is hereby allowed

AND IT IS ORDERED that the Respondent do pay to the Appellants the costs of this Appeal as taxed by the proper officer of this Court AND IT IS FURTHER ORDERED that the Respondent to pay to the Appellants the costs in the Court below AND IT IS LASTLY ORDERED that the sum of Dollars Five hundred (\$500/-) deposited in Court by the Appellants as security for the costs of this Appeal be paid out to the Appellants.

10

Given under my hand and the Seal of the Court this 8th day of October, 1964.

SD. RAJA AZLAN SHAH  
CHIEF REGISTRAR,  
FEDERAL COURT, MALAYSIA,  
KUALA LUMPUR.

No.20

NO. 20

20

\_\_\_\_\_  
Order giving  
conditional  
leave to  
Appeal to  
His Majesty  
the Yang di-  
Pertuan Agong

ORDER GIVING CONDITIONAL LEAVE TO APPEAL TO  
HIS MAJESTY THE YANG DI-PERTUAN AGONG

CORAM: THOMSON, LORD PRESIDENT, FEDERAL COURT,  
MALAYSIA:  
WYLIE, CHIEF JUSTICE, HIGH COURT IN BORNEO:

AND

TAN AH TAH, JUDGE, FEDERAL COURT, MALAYSIA

\_\_\_\_\_  
5th April,  
1965.

IN OPEN COURT

THIS 5TH DAY OF APRIL 1965

O R D E R

30

UPON MOTION made unto the Court this day by Mr. Shelley Yap of Counsel for the Respondent above-

named in the presence of Mr. W.K. Loo of Counsel for the Appellants abovenamed AND UPON READING the Notice of Motion dated the 19th day of November, 1964 and the Affidavit of Tio Chee Chuan affirmed on the 19th day of November, 1964 and filed in support of the said Motion AND UPON HEARING Counsel as aforesaid:

In the  
High Court in  
Borneo

\_\_\_\_\_  
No.20

IT IS ORDERED that leave be and is hereby granted to the Respondent abovenamed to appeal to His Majesty the Yang di-Pertuan Agong from the judgment of the Federal Court given on the 8th day of October, 1964, upon the following conditions:-

Order giving  
conditional  
leave to  
Appeal to  
His Majesty  
the Yang di-  
Pertuan Agong

(a) that the Respondent abovenamed do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia, in the sum of \$5,000/- (Dollars Five Thousand only) for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Appellants abovenamed in the event of the Respondent abovenamed not obtaining an order granting him final leave to appeal or of the Appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the Respondent abovenamed to pay the Appellants' costs of the Appeal as the case may be; and

\_\_\_\_\_  
5th April,  
1965  
- continued.

(b) that the Respondent abovenamed do within the said period of three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England.

AND IT IS FURTHER ORDERED that the costs of this Application be costs in the cause.

GIVEN under my hand and the seal of the Court this 5th day of April, 1965.

10  
Sd. RAJA AZLAN SHAH  
CHIEF REGISTRAR,  
FEDERAL COURT, MALAYSIA,  
KUALA LUMPUR.

\_\_\_\_\_

In the  
Federal Court  
of Malaysia

NO. 21

ORDER GIVING FINAL LEAVE TO APPEAL TO HIS  
MAJESTY THE YANG DI-PERTUAN AGONG

No.21

Order giving  
final leave  
to Appeal to  
His Majesty  
the Yang di-  
Pertuan Agong

CORAM:

THOMSON, LORD PRESIDENT, FEDERAL COURT, MALAYSIA;  
PIKE, CHIEF JUSTICE, HIGH COURT, NORTH BORNEO;

AND

GILL, JUDGE, HIGH COURT IN MALAYA. IN OPEN COURT

1st November,  
1965.

This 1st day of November 1965.

O R D E R

10

UPON MOTION made unto this Court this day by  
Mr. Shelley Yap Yeok Siew of Counsel for the  
abovenamed Respondent in the presence of Mr. W.K.  
Loo of Counsel for the abovenamed Appellants AND  
UPON READING the Notice of Motion dated the 13th  
day of October 1965 and the Affidavit of  
Shelley Yap Yeok Siew affirmed on the 4th day of  
August 1965 and filed herein in support of the  
said Motion AND UPON HEARING Counsel as aforesaid  
for the parties IT IS ORDERED that final leave be  
and is hereby granted to the Respondent to appeal  
to His Majesty the Yang di-Pertuan Agong AND IT IS  
ORDERED that the costs of this Motion be costs in  
the said Appeal.

20

GIVEN under my hand and the seal of the  
Court this 1st day of November 1965.

Sgd. Fawan Ahmad bin Ibrahim  
Rashid,  
CHIEF REGISTRAR  
FEDERAL COURT, MALAYSIA,  
KUALA LUMPUR.

L.S.

30



EXHIBITS

Plaintiff's  
Exhibits

1.

FORM ED 4/7

1.

DUPLICATE

05365 COLONY OF NORTH BORNEO  
FOURTH SCHEDULE  
(Regulation No.96)

Authority  
given to  
Chung Hwa  
Senior School,  
Sandakan to  
employ the  
Plaintiff

The Education Ordinance No.10 of 1954

FORM - 7

21st January,  
1959.

10 AUTHORITY TO EMPLOY AN UNREGISTERED TEACHER

The Supervisor,  
CHUNG HWA SENIOR SCHOOL, SANDAKAN.

Authority is hereby given you to employ Mr.  
Tio Chee Chuan whose photograph is affixed hereto  
as an unregistered teacher at SANDAKAN CHUNG HWA  
SENIOR SCHOOL.

LIMITATIONS (IF ANY) AS TO SUBJECTS AND  
CLASSES.

JUNIOR MIDDLE CLASSES ONLY.

20

PHOTOGRAPH.

Ex.1. (Sgd) D. Chong  
6.5.64

Civil Suit No.0/29/63

(Sgd) ?

Director of Education

REF: ED/HCB/1-29/1371

Dated: 21st January, 1959.

52.

Plaintiff's  
Exhibits

2.

Ex. No. 2 - Civil Suit

2.

No.0/29/63.

Translation  
of Clause 4  
from a  
Chinese  
document.

(Sgd.) D. Chong

6.5.64

TRANSLATION

18th November,  
1963.

of Clause 4 from a Chinese document

The teachers and staff of the school must not during the validity of the agreement of appointment rescind the agreement of appoint except for very important matters. If, in case of special circumstances, release of or withdrawal from the appointment is necessary either party shall give three months' notice in advance.

10

Translated by me,  
(Sgd) Tan Chuan Liu  
Court Interpreter.  
18/11/63

3A.

3A.

Letter  
Education  
Department  
Jesselton to  
Plaintiff

COLONY OF NORTH BORNEO

20

Personal Ref.E.D./AID/823

THE EDUCATION DEPARTMENT  
JESSELTON

30th November,  
1961.

30th November, 1961.

Mr. Tio Chee Chuan,  
c/o Sandakan Chinese Secondary,  
SANDAKAN.

Sir, Unified Teachers' Salary Scales

Under the above scheme, you have been

assimilated on the scale:-

Class III Grade I(g): (ii) \$230x15-275,  
(iii) \$290x20-410, (iv) \$430x20-490

at the point of \$330/- per month with effect from the 1st January, 1962.

2. You will receive annual increments on 1st January each year until the maximum of the scale is reached.

10 3. If you consider that your grading is incorrect, the Director of Education should be notified, in writing, within one calendar month of receipt of this notification, stating the grounds of your complaint, accompanied by any supporting evidence. The Director shall consider the evidence and give a ruling and if you are then still dissatisfied with your grading, you have the right of appeal to the Special Committee of the Board of Education.

I am, Sir,  
Your obedient servant,  
(Sgd) W. Millar  
(W. Millar)  
Accountant,  
for Director of Education.

c.c. The Supervisor, Sandakan Chinese Secondary,  
S'kan.

Plaintiff's  
Exhibits  
3A.

Letter  
Education  
Department  
Jesselton to  
Plaintiff

30th November,  
1961  
- continued.

N.B. When corresponding with this Department in future, please quote full name and personal reference number.

Plaintiff's  
Exhibits

3B.

Letter,  
Education  
Department  
Jesselton to  
Plaintiff

2nd January,  
1962.

54.

3B.

COLONY OF NORTH BORNEO

REF.ED/AID/823

OFFICE OF  
Director of Education,  
Jesselton.

2nd January, 1962.

Mr. Tio Chee Chuan,  
Sandakan Chinese Secondary School,  
P.O. Box No.407,  
SANDAKAN.

10

Unified Teachers' Salary Scales

I refer to your letter dated 26th December,  
1961.

2. Your assessment has been checked and found  
correct according to the information in the Record  
of Service form signed by you on 26th November  
1959 and the regulations of the Board of Education.

3. If you have any documentary proof of passing  
a higher recognised examination the Director will  
be pleased to review your assessment.

20

(Sgd) ....?.....

Accountant  
for Director of Education.

VM/TNY

c.c. The Supervisor, S'kan Chinese Secondary  
School, P.O. Box 407, S'kan.

55.

4.

Ex.4. Civil Suit  
No.0/29/63

Sgd. D. Chong  
6.5.64.

Plaintiff's  
Exhibits

4.

Letter, Kwan  
Yui Ming to  
Plaintiff

8th October,  
1962.

(1) The text of the letter given to Teo Chee Chuan  
by the Chinese Chamber of Commerce on 8th  
October, 1962.

To: Mr. Teo Chee Chuan,

10 Dear Sir,

I have the honour to inform you that, accord-  
ing to the resolution of the sixth meeting of the  
Education Sub-Committee this year, the post that you  
hold as a teacher at Sandakan Chinese Secondary  
School will not be continued from 8th January,  
1963. Therefore, in pursuance of the term as set  
in the contract, between you and the Education  
Sub-Committee, we inform you this matter three  
months in advance, and, to your service to the  
20 school in the past, we sincerely express to you  
our gratitude.

Yours sincerely,  
Kwan Yi Ming,  
Acting Supervisor and  
Chairman of the Education  
Sub-Committee.

5.

Ex.5 - Civil  
Suit No.0/29/63.

Sgd. D. Chong  
6.5.64

5.

Letter Kwan  
Yi Ming to  
Plaintiff

10th October,  
1962.

30

(3) The text of the letter given by the  
Education Sub-Committee of the Chinese

Plaintiff's  
Exhibits

---

5.

Letter Kwan  
Yi Ming to  
Plaintiff

---

10th October,  
1962  
- continued.

Chamber of Commerce, in reply to the demand  
of the explanation of the annulment of  
contract.

To:

Mr. Teo Chee Chuan

Dear Sir,

In regard to the salary that you draw as a  
teacher at Sandakan Chinese Secondary School,  
except that part that is paid by the Education  
Department, the Education Sub-Committee has to  
pay additional subsidy to you every month. Under  
the Unified Teaching Scheme, the members of the  
Sub-Committee are of the opinion that the payment  
of this sum of additional subsidy should not be  
continued. Therefore, at the sixth meeting of  
the Education Sub-Committee on 29th September,  
it has been unanimously passed that the contract  
with you will not be continued; and in pursuance  
of the terms of the contract between the Education  
Sub-Committee and you that a notice should be  
given three months in advance, a letter has  
been written to inform you of this decision.

Furthermore, according to the notice of  
Education Office of Sandakan, your teaching  
permit is limited to teaching junior middle  
classes only. The Chinese of Senior One of  
Sandakan Chinese Secondary School has been  
taught by you for the past several months. The  
Education Department considers that this is a  
wrong arrangement. For this reason, Sandakan  
Chinese Secondary School has to find another  
teacher to teach Chinese in the senior Classes.  
And, as being limited by the quota of teachers,  
the annulment of your contract is therefore  
inevitable. The members of the Education Sub-  
Committee regret deeply that, without knowing the  
cause, you have unexpectedly published in the  
newspaper an open letter which is not correspondent  
to the facts. I will be greatly obliged if you  
appreciate this.

Yours truly,  
Kwan Yui Ming,  
Acting Supervisor and  
Chairman of Education Sub-Committee.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL      No. 3 of 1966

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

---

B E T W E E N:

TIO CHEE CHUAN

(Plaintiff)

Appellant

- and -

1. KHOO SIAK CHIEW
2. KWAN YUI MING
3. WONG CHUNG MAN
4. SEAH TEE SHU
5. TAN TZE SHU
6. CHOI WING
7. TAN SEI JOO
8. TAN TECK BAK
9. WU KWOK LIANG
10. CHAN YUEN YAN

(Defendants)

Respondents

---

R E C O R D      O F      P R O C E E D I N G S

---

COWARD, CHANCE & CO.,  
St. Swithin's House,  
Walbrook,  
LONDON, E.C.4.

Solicitors for the Appellant.

KINGSLEY WOOD & CO.,  
6 & 7, Queen Street,  
LONDON,  
E.C.4.

Solicitors for the Respondents.