24, 1969

IN THE PRIVY COUNCIL (24) No. .....of 1967

ON APPEAL

53 OF 1967

Territory : **Guyana.**

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

BETWEEN

HER MAJESTY'S ATTORNEY GENERAL FOR GUYANA

(*Defendant*) APPELLANT

AND

CECILE NOBREGA

(*Plaintiff*) RESPONDENT

RECORD OF PROCEEDINGS

IN THE PRIVY COUNCIL 33 OF 1967

No. of 1967

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

Territory: Guyana

- BETWEEN -

HER MAJESTY'S ATTORNEY GENERAL FOR GUYANA

(Defendant) APPELLANT

and

CECILE NOBREGA

(Plaintiff) RESPONDENT

INDEX OF RECORD

E X H I B I T S

LIST OF DOCUMENTS OMITTED FROM THE RECORD

No.	Description of Document	Date of Document
	IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE	
1.	Entry of Appearance	12. 4.65
2.	Extension of time	30. 4.65
3.	Consent to Extension of time	24. 5.65
4.	Request for hearing	17. 6.65
	IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE	
5.	Application for Extension of time to file record	12. 5.66
6.	Affidavit in Support of application for extension of time to file record	12. 5.66
7.	Affidavit of Service	7. 6.66
8.	Order of Court for extension of time	6. 6.66
9.	Notice of intention to appeal to Her Majesty in Council	20. 4.67
10.	Petition for conditional leave to appeal to Her Majesty's Privy Council with affidavit in support	20. 4.67

1965 No. 605 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

BETWEEN:-

CECILE NOBREGA,

Plaintiff,

-and-

THE ATTORNEY GENERAL FOR BRITISH GUIANA,

Defendant.

ELIZABETH THE SECOND BY THE GRACE OF GOD, OF THE UNITED KINGDOM OF GREAT BRITAIN, NORTHERN IRELAND, AND OF HER OTHER REALMS AND TERRITORIES, QUEEN HEAD OF THE COMMONWEALTH, DEFENDER OF THE FAITH. 10

TO:- THE ATTORNEY GENERAL FOR BRITISH GUIANA
61 Main Street,
Georgetown,
Demerara.

WE COMMAND YOU, that within 10 (ten) 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 the suit of the abovenamed. 20

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

WITNESS, the Honourable Sir Joseph Alexander Luckhoo, Knight, Chief Justice of British Guiana, the day of April, in the year of Our Lord one thousand, nine hundred and sixty-five.

N.B. The defendant may appear hereto by entering an appearance either personally or by Solicitor at the Registry at Georgetown. 30

INDORSEMENT OF CLAIM

The Plaintiff's claim is for -

(a) a declaration that the Plaintiff is entitled to receive from the Government of British Guiana in respect of her services as a teacher at Lodge Government School salary at the rate of $251.00 (two hundred and fifty one dollars) per month.

(b) a declaration that the purported reduction of the Plaintiff's salary by the Government of British Guiana acting by or through their servants and/or agents from $251.00 (two hundred and fifty one dollars) per month in respect of such service to $92.00 (ninety two dollars) per month is ultra vires and of no effect;

(c) further or other relief;

(d) Costs.

Georgetown, Demerara,

Dated this 9th day of April, 1965.

A. Vanier
Solicitor for Plaintiff.

This Writ was issued by Abraham Vanier of 2 George & Bent Streets in the colony of British Guiana, of and whose address for service and place of business is at his office 215 South Road, Georgetown, Demerara, Solicitor for the Plaintiff who resides at 61 Croal Street, Brumell Place, Georgetown, Demerara.

Georgetown, Demerara,

Dated this 9th day of April, 1965.

A. Vanier
Solicitor for Plaintiff.

AUTHORITY TO SOLICITOR

I, CECILE NOBREGA, the abovenamed plaintiff do hereby authorise Mr. A. Vanier to act as my Solicitor in the above matter and to receive all monies recovered in execution and give receipts therefor.

(sgd.) Cecile E. Nobrega
Plaintiff.

Georgetown, Demerara.
Dated this 9th day of April, 1965.

1965 No. 605 DEMERARA.

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

BETWEEN:-

CECILE NOBREGA,

Plaintiff,

-and-

THE ATTORNEY GENERAL FOR BRITISH GUIANA,

Defendant.

STATEMENT OF CLAIM

1. The plaintiff was on the 11th day of December, 1964 duly appointed Grade 1 Class 1 Teacher at Lodge Government School in the service of the Government of British Guiana at the salary in the sum of $251.00 (two hundred and fifty one dollars) per month in scale $118 x 7 - $195/211 x 10 - $251 x 7 - $258 x 10 - $288.

2. On the 19th day of March, 1965 while still holding the said appointment the plaintiff was notified by the Chief Education Officer during acting for and on behalf of the Government of British Guiana that because of her failure to submit to the Ministry of Education her birth and academic certificates as was requested in a letter of the 17th day of March, 1965 her appointment as a Grade 1 Class 1 Teacher was rescinded as from the 19th day of March, 1965. The said documents were in fact submitted to the office of the Chief Education Officer on the 19th day of March, 1965.

3. The plaintiff has since the 19th March, 1965 been offered payment as an unqualified assistant Mistress with salary at the rate of $92.00 (ninety two dollars) per month at the said Lodge Government School, but has not accepted same.

4. The purported reduction of the plaintiff's salary and status was effected without lawful authority.

5. Wherefore the plaintiff claims:-

(a) a declaration that the purported recission of the plaintiff's appointment as a Grade 1, Class 1, Teacher is ultra vires and of no effect;

(b) a declaration that the Plaintiff is entitled to receive from the Government of British Guiana in respect of her services as a teacher at Lodge Government School salary at the rate of $251.00 (two hundred and fifty one dollars) per month.

(c) a declaration that the purported reduction of the Plaintiff's salary by the Government of British Guiana acting by or through their servants and/or agents from $251.00 (Two hundred and fifty one dollars) per month in respect of such service to $92.00 (ninety two dollars) or any other sum per month is ultra vires and of no effect.

(d) further or other relief;

(e) Costs.

Georgetown, Demerara,

Dated this day of May, 1965.

(sgd.) A. Vanier

Solicitor for Plaintiff.

(sgd.) W.R. Adams

Of Counsel.

1965 No. 605 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

BETWEEN:-

CECILE NOBREGA,

Plaintiff,

-and-

THE ATTORNEY GENERAL FOR BRITISH GUIANA,

Defendant.

DEFENCE

1. Save as is herein after expressly admitted the defendant denies each and every allegation of fact in the Statement of Claim as if the same were set forth herein and specifically traversed.

2. The defendant admits that the plaintiff was appointed a Grade 1, Class 1, mistress at Lodge Government School as alleged in paragraph 1 of the Statement of Claim.

3. With regards to paragraph 2 of the Statement of Claim the defendant says that the acting Chief Education Officer had requested the plaintiff by letter dated the 17th March, 1965, a copy of which is set out hereunder that she should submit her birth and academic certificates.

"PG

MINISTRY OF EDUCATION, YOUTH, RACE RELATIONS AND COMMUNITY DEVELOPMENT,
21 Brickdam, Georgetown.
17th March, 1965.

Dear Madam,

With reference to a letter dated 11th December, 1964 from this Ministry appointing you a Mistress at Lodge Government School with effect from 4th December, 1964, I am to request that you send to the Ministry your birth and academic certificates (if possible by the Ministry's Messenger or by return mail).

2. Your prompt attention to this request will be greatly appreciated.

Yours faithfully,
(sgd.) C.C. Blackman
for Chief Education Officer (ag.).

Mrs. Cecile Nobrega,
61 Croal Street,
Stabroek, Georgetown.

c.c. Miss Doris Fraser,
Manager, Lodge Govt. School,
E.C. Demerara. "

4. The plaintiff failed to submit the said certificates and on the 19th March, 1965, the acting Chief Education Officer wrote her as follows:-

"GOF:PG

MINISTRY OF EDUCATION, YOUTH, RACE RELATIONS AND COMMUNITY DEVELOPMENT,
21 Brickdam, Georgetown.
19th March, 1965.

Dear Madam,

Because of your failure to submit to this Ministry your birth and academic certificates as requested so to do in my letter dated 17th March, 1965, I have to inform you that your appointment as a Grade 1, Class 1 teacher has been rescinded as from today, 19th March, 1965.

2. The effect of such recission is that you will be paid as an unqualified assistant mistress pending the submission of the documents asked for by me. Upon receipt of those documents your status as a teacher will be determined, and a new letter of appointment issued to you.

Yours faithfully,
(Sgd.) G.O. Fox
Chief Education Officer (ag.)

Mrs. Cecile Nobrega,
61 Croal Street,
Stabroek, Georgetown.

c.c. Manager,
Lodge Government School. "

5. On the 19th day of March, 1965 the plaintiff delivered the following certificates to the acting Chief Education Officer:-

1 University of Cambridge School Certificate

1 Certificate certifying an award under the Teacher Training Nursery.

1 University of London, Institute of Education certificate certifying that I completed a full-time year course.

1 Statement of Evidence that I have been conducting a Private Kindergarten and Junior School.

1 Birth Certificate.

1 Marriage Certificate.

6. With regards to paragraph 3 of the Statement of Claim the defendant says that the plaintiff's said certificates were evaluated and on the 25th day of March, 1965, she was appointed as an unqualified assistant mistress at the Lodge Government School with effect from the 20th March, 1965 at a salary of $84.00 per month in the scale $72 x 4 - $104 x 6 - $116. She was also awarded two increments in the scale as a result of her one year overseas training and which increments were payable with effect from the said 20th March, 1965

7. The defendant denies paragraph 4 of the Statement of Claim.

8. The defendant will contend that the plaintiff is not entitled in law to the orders claimed in paragraph 5 of the Statement of Claim in that the questions of the plaintiff's appointment and/or reduction of salary are matters which are exclusively within the discretion of the Crown.

Dated at Georgetown, Demerara,
this 19th day of May, 1965.

(sgd.) Lindsay F. Collins
OF COUNSEL.

(sgd.) M.E. Clarke
Crown Solicitor.

To: The abovenamed Plaintiff

Solicitor for the Defendant.

-and-

To: Mr. Abraham Vanier,
her solicitor,
215 South Road,
Georgetown.

No. 605/65 12/1/66

NOTES OF EVIDENCE

Doctor Ramsahoye instructed by Mr. Sase Narain for the Plaintiff. Mr. Collins, Crown Counsel, instructed by the Crown Solicitor for the defendant.

CECILE NOBREGA Sworn States:-

I am the plaintiff. I am the daughter of the late Canon Burgan. I am a teacher of the Lodge Government School. I attended the Bishops High School at Georgetown. In 1936 I obtained my School Certificate of the University of Cambridge. After that I became a Civil Servant. I worked in several departments in the Government - The Lands and Mines, District Commissioner's Office, the Savings Bank, and the Attorney General's Chambers as Secretary to Mr. Prethero, the then Attorney General. I was seconded to the Medical Department to work on the Sir Rupert Briercliffe School Feeding Report. I left and went to Trinidad and filled a Secretarial Post at the Red House as Secretary to Mr. Milne, the Valuation Advisor Expert to the Government of Trinidad and Tobago. On return to the Colony I worked with Bookers Shipping Company and then left and was employed with the Convent of the Good Shepherd from 1956 to 1957. In 1957 I opened my own school called the "Children's Alma Mater". I managed that school from 1957 to 1963. I was on a panel of writers for School Broadcast for children. These programmes were stories for children - some were re-written stories, and some were originals. I did many short stories, poems, booklets, and a Children's Reader, which was submitted to the Publicity Committee, of the Ministry of Education. On that committee I served for two (2) years. The work on that Committee was evaluating and publishing in relation to the promotion of education. I got four or five awards for composing music - some instrumental and some set music to words. I taught music - singing and instrumental piano. I wrote a musical story for children. In 1963 I was awarded a Commonwealth Bursary. The Award was made by the Government of the United Kingdom on a submission by the Government of British Guiana. I spent one (1) year at the Institute of Education and the University of London doing a full time course for for the academic year 1963 to 1964. We had to learn to write a book, we had to learn the mechanical side as well as the professional side. We also had to learn the process of printing, and noting paper, selecting material, grading, and the entire process of assimilation of the written work by a child to enable them to grasp without forcing them. This is the syllabus at the Institute of Education, (tendered, and admitted by consent and marked Exhibit "A"). In paragraph 5 contains the reference - to the subjects. At the conclusion of the course I was awarded these two

certificates, (tendered, admitted and marked "B1" - "B2"). At the end of my course I got an offer from the Rose Bruford School of Speech and Drama. It was an offer to study Drama as a teaching aid but with special emphasis in writing plays for children. I was unable to take the offer because I decided to return to the country after receiving a letter dated the 15th October, 1964, from the Ministry of Education, British Guiana. This is the letter (tendered, admitted and marked Exhibit "C"). I returned to this country on the 4th December, 1964. I was given an appointment as a Class 1 Grade 1 Mistress at the Lodge Government School. This is my letter of appointment received from the Ministry of Education (tendered, admitted by consent and marked Exhibit "D"). The letter Exhibit "D" stated that my appointment dated from the 4th December, 1964. Upon my return I went to the Ministry of Education on the 5th December, 1964. I met the Minister responsible for Education and incidentally for the Administration of the Lodge Government School. I also met the Permanent Secretary and his Senior Education Officer. The Minister approved of the appointment. The letter of appointment was eventually issued on the 11th December, 1964. The Minister of Education was the Honourable C.V. Nunes. On the 10th December, 1964, I was given my assignment. Up to the 4th February, 1965, I continued in that assignment. That assignment was to collect folk tales of the country and thereafter to commence a series of charts for aiding reading readiness, also poems and songs. The poems and songs were to be used for children in schools. On the 4th February, 1965, I was directed to teach at the Lodge Government School as from the 8th February, 1965. I assumed my teaching duties on the 8th February, 1965 as ordered. I am performing those duties up to the present. On the 17th March, 1965, I obtained a letter from the Chief Education Officer. This is the letter (tendered, admitted and marked Exhibit "E"). On the 19th March, 1965, I received this further letter from the Chief Education Officer (tendered, admitted and marked Exhibit "F"). On the 19th March, 1965, I delivered to the Education Officer the documents referred to in paragraph 5 of the defence. This is the fourth document specified in paragraph 5 of the defence (tendered, admitted and marked Exhibit "G"). I received no letter after the 19th March, 1965. When I went to receive my salary the pay slip had one salary to the 19th March, 1965, at $251.00 per month and another salary at $92.00 per month calculated for the 20th March, 1965, to the end of the morth. I did not accept that salary. I did not agree to the reduction of my salary. I have brought this Claim for the relief set out in my Statement of Claim.

By Mr. Collins:-

I have no idea as to how the teachers in this country are trained. I suppose that Head-Teachers have to have a certificate that they have been trained as a teacher. I

submitted the documents after I received the letter on the 19th. Miss Fraser is the Manager of the Lodge Government School. She has never told me of the reduction of my pay. I did not speak to the Minister after I got my salary cut. In October, 1965, I accepted my short payment but I wrote a letter to them that it should not prejudice my case. I did not get a reply. I am not aware that I should have protested to anyone. I thought that I should have consulted a lawyer. From what was said in the letter on the 19th and because of the short payment I came to the conclusion that my status was reduced.

Re-examined by Doctor Ramsahoye:-

When I went for my appointment the Minister and his Adviser knew what training I had. I was never trained in this country, but I was trained, nevertheless. When I was running my school many of the teachers in training at the Government College had to come to my school for observation as to the practical insight at training in the teaching of infant children.

By the Court:-

I did comply with paragraph 2 of Exhibit "D".

CASE FOR PLAINTIFF

Mr. Collins says he does not propose to lead a defence.

Doctor Ramsahoye submits:-

Evidence is not disputed. With regard to the appropriate action **D'Aguiar -v- Attorney General 1962, 4 W.I.R. Report of p. 481.** The same procedure was followed in the case of **Kaye -v- Attorney General in Tasmania 1956,** 94 C.L.R. p. 193. There is a contract of service but the Crown can dismiss at pleasure. The right of the Crown to dismiss at pleasure is discussed in **Dunn -v- The Queen 1895 - 1899, A.E. Reports, p. 907.** There must be a dispensation of service for that rule to apply. **Powell -v- The Queen 1873, 4 A.J.R. p. 144, Volume 23 of the Australian Journal at p. 506. Fletcher -v- North 1938, 60 C.L.R. p. 55, p. 67**

Adjourned to 1.15 p.m.

Court resumed:

Doctor Ramsahoye:-

Rex and Fisher 1903, 88 Law Times p. 74. Lidderdale -v- Duke of Montrose and Lord Mulgrave, 1791, 100 English Report p. 100. **Carey and the Commonwealth 1921,** 30 Commonwealth Law Report p. 132. **New South Wales and Bardolph,** 52 C.L.R. p. 455, p. 462, p. 467, p. 468, p. 509. There was a contract of service.

Mr. Collins:-

It is not in dispute that the plaintiff is a Crown Servant. Education Ordinance, Chapter 91, as enacted in 1877, 32 (1) Amendment 1963 they are called Government Schools. Subsidiary Legislation Volume 8 Education Code. The Code applies only to Denominational Schools and Church Schools. Section 42 Chapter 91, Subsidiary Legislation, 43 (1).

A contract exists between Government and this Servant, but that the Crown can dismiss at Will, which is an implied term.

Professor Glanville Williams in the book Crown Proceedings at p. 62, 1948. It is better to reduce pay than to dismiss. **Worthington -v- Robinson, 1897, 75 Law Times, p. 446, p. 447.**

Zamir 1962 - The Declaratory Judgment p. 138, **Nixon -v- Attorney General Volume 1, Chancery Report 1930 p. 556 & 574.** Professor D. Smith "Judicial Review of Administrative Action 1st Edition 1959, p. 387". Professor Glanville Williams in Crown Proceedings - claim for a legal claim in arrears is good. The cases cited by Dr. Ramsahoye are in relation to where remuneration had already been earned and not whether Government can reduce the pay.

Doctor Ramsahoye:-

Worthington -v- Robinson was a case where there was a statute providing for reduction p. 509 & p. 510 of New South Wales -v- Bardolph 52 C.L.R. There could not be a dismissal if the person continues to perform the same job.

Keely -v- State of Victoria, 1964

Victoria Report - p. 344.

Decision Reserved.

Thursday 20th January, 1966.

Written decision reserved.

Doctor Ramsahoye:-

Cost should not be awarded - **Attorney General -v- The Corporation of London,** 47 E. Report p. 1572, p. 1585. **Gersham Life Assurance Society Ltd. -v- The Attorney General** 114 Law Times p. 399, **Johnson -v- King,** 91 Law Times p. 235.

Mr. Collins:-

When the Crown is in the position as an ordinary litigant cost could be claimed and paid by the Crown.

Continued: **27th January, 1966.**

Mr. Collins:-

It was the Common Law Rule in England that the Crown neither pays nor receives cost. The Common Law of England applies to this Colony, p. 132, Glanville Williams on the rules of the Court. Supreme Court Ordinance Section Chapter 7. Section 46 (1) Chapter 7. Section 62 Chapter 7. The action is a declaratory action and is not an action under 46 (2). D'Aguiar -v- Attorney General, Volume 4, West Indian Report p. 481. Cost was awarded. Supreme Court Ordinance 1929. A declaratory action became popular in the Colony in 1962, and said that costs has been awarded for and against the Crown. **Affleck -v- King** 3 C.L.R. p. 608, 630.

Doctor Ramsahoye:-

The Common Law was brought in, in 1917. In 1915 Chapter 7 (51) was brought into being.

Mr. Collins:-

The Common Law must be subject to the Statute Law.
Cost awarded against the plaintiff, to be taxed.

1965 No. 605 DEMERARA.

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

BETWEEN:-

CECILE NOBREGA,

Plaintiff,

-and-

THE ATTORNEY GENERAL FOR BRITISH GUIANA,

Defendant.

BEFORE CHUNG, J.

1966: January 12.

Dr. F.W.H. Ramsahoye for plaintiff.

L. Collins for defendant.

JUDGMENT.

In this case the plaintiff in her statement of claim states:

"1. The plaintiff was on the 11th day of December, 1964, duly appointed Grade 1 Class 1 Teacher at Lodge Government School in the service of the Government of British Guiana at the salary in the sum of $251.00 (two hundred and fifty-one dollars) per month in scale $118 x 7 - $195/211 x 10 - $251 x 7 - $258 x 10 - $288.

"2. On the 19th day of March, 1965, while still holding the said appointment the plaintiff was notified by the Chief Education Officer during acting for and on behalf of the Government of British Guiana that because of her failure to submit to the Ministry of Education her birth and academic certificates as was requested in a letter of the 17th day of March, 1965, her appointment as a Grade 1 Class 1 Teacher was rescinded as from the 19th day of March, 1965. The said documents were in fact submitted to the office of the Chief Education Officer on the 19th day of March, 1965.

3. The plaintiff has since the 19th March, 1965, been offered payment as an unqualified assistant mistress

with salary at the rate of $92 (ninety-two dollars) per month at the said Lodge Government School, but has not accepted same.

4. The purported reduction of the plaintiff's salary and status was effected without lawful authority.

5. Wherefore the plaintiff claims:

(a) a declaration that the purported rescission of the plaintiff's appointment as a Grade 1 Class 1 teacher is ultra vires and of no effect.

(b) a declaration that the plaintiff is entitled to receive from the Government of British Guiana in respect of her services as a teacher at Lodge Government School salary at the rate of $251 (two hundred and fifty-one dollars) per month;

(c) a declaration that the purported reduction of the plaintiff's salary by the Government of British Guiana acting by or through their servants and/or agents from $251.00 (two hundred and fifty-one dollars) or any other sum per month is ultra vires and of no effect;

(d) further or other relief;

(e) costs. "

The facts of the case are not in dispute. The plaintiff led evidence to show that in 1936 she obtained the School Certificate of the University of Cambridge. After that she worked at several places in the Colony and abroad. In 1957 she opened her own school and she managed that school from 1957 to 1963. In 1963 she was awarded a Commonwealth Bursary and she spent one year at the Institute of Education at the University of London doing a full-time course for the academic year 1963-1964 where she went through certain training.

After receiving a letter dated 15th October, 1964, from the Ministry of Education she decided to return to the Colony, and she returned on the 4th December, 1964. On the 11th December she received a letter of appointment appointing her a Grade 1 Class 1 mistress as from 4th December, 1964, at a salary of $251 in the scale $118 x 7 - $195/211 x 10 - $251 x 7 - $258 x 10 - $288.

On the 17th March, 1965, she received a letter from the Chief Education Officer dated 17th March, 1965, Exhibit "A" which reads as follows:

17th March, 1965.

Dear Madam,

With reference to letter dated 11th December, 1964, from this Ministry appointing you a Mistress at Lodge Government School with effect from 4th December, 1964, I am to request that you send to the Ministry your birth and academic certificates (if possible by the Ministry's messenger or by return mail).

2. Your prompt attention to this request will be greatly appreciated.

Yours faithfully,

(sgd.) C. Chris Blackman,
for Chief Education Officer (ag.)"

On the 19th March, 1965, she received another letter- Exhibit "F" - which reads as follows:

19th March, 1965.

Dear Madam,

Because of your failure to submit to this Ministry your birth and academic certificates as requested so to do in my letter dated 17th March, 1965, I have to inform you that your appointment as a Grade 1 Class 1 teacher has been rescinded as from today, 19th March, 1965.

2. The effect of such rescission is that you will be paid as an unqualified assistant mistress pending the submission of the documents asked for by me. Upon receipt of those documents your status as a teacher will be determined, and a new letter of appointment issued to you.

Yours faithfully,

(sgd.) G.O. Fox

Chief Education Officer (ag.)"

She continued to teach after receiving the letter of the 19th March, 1965, and later when she went for her salary the payslip showed that she was receiving a lesser sum as from the 19th March, 1965. She did not accept her salary but continued teaching. In October, 1965 she accepted the new salary, subject to her rights not being prejudiced.

Both Counsel for the plaintiff and Counsel for the Crown agree that there was a contract of service and the Crown could dismiss at pleasure. The only issue, then, in the

present case is whether or not the Crown can, without dismissal, reduce the salary of its servant.

Counsel for the plaintiff submitted that even though the Crown could dismiss at pleasure, yet the Crown could not retain and at the same time reduce the terms of the contract. He cited the case of **Plowell -v- The Queen** (1873) 4 A.J.R. Vol. 23 of the Australian Journal at Page 506, which held expressly that a Police Sergeant irregularly reduced to the ranks was entitled under section 13 of the Police Regulations Act, 1928, to receive the difference, but in this case Legislation made provision for that.

It is stated in the Crown Proceedings by Glanville N. Williams under the heading "Reduction of Pay", p. 68:

> "The Crown has a right to reduce its servant's pay. In the case of Civil Servants that right follows as a logical consequence from the right to dismiss at will. If the Crown can dismiss at will it can offer to mitigate the exercise of its legal right by continuing the contract of service at a lower rate of pay. It seems on principle that the offer could be refused and that the servant could quit the service without rendering himself liable to an action for breach of contract, even if otherwise he would be liable. "

This view was also expressly adopted by Rigby, L.J., in **Worthington -v- Robinson,** (1897) 75 L.T. p. 446. The learned Judge said:

> "I have never heard of such a thing as a civil servant holding office at pleasure having a right to question the acts of those civil servants who have dismissed him from his office. I treat what has happened as a dismissal because though in effect he has been reduced to a lower position, his new appointment is in fact a re-appointment. "

It is true that in that particular case the Inland Revenue Regulations Act, 1890, give the Commissioners power to reduce or discharge any officer, but Rigby, L.J., in that case did not base his decision on the Inland Revenue Regulations Act, 1890.

In the present case Exhibit "F" clearly communicated that the plaintiff's appointment as a Grade 1 Class 1 teacher has been rescinded as from 19th March, 1965, and a new appointment was offered to her. She could have exercised her right in leaving the service, but having not done so it must be taken that she accepted that new appointment, subject to her rights being determined by the Court. She can still refuse to serve if she wishes.

As has already been stated by Glanville Williams,

> "The Crown has a right to reduce its servant's pay. In the case of civil servants this right follows as a logical consequence from the right to dismiss at will."

And in the present case the Crown mitigated the exercise of its legal right of dismissal by rescinding the plaintiff's appointment as a Grade 1 Class 1 Teacher and continuing her service as an unqualified assistant mistress at a lower rate of pay. In the circumstances, the declaration sought is refused. **Costs to the defendant** to be taxed. 10

(sgd.) A. Chung
Puisne Judge.

Dated this 20th day of

January, 1966.

Solicitors:

A. Vanier for the plaintiff.

Crown Solicitor for the defendant.

1965 No. 605 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

BETWEEN:-

CECILE NOBREGA,

Plaintiff,

-and-

THE ATTORNEY GENERAL FOR BRITISH GUIANA,

Defendant.

BEFORE THE HONOURABLE MR. JUSTICE CHUNG.

THURSDAY THE 20TH DAY OF JANUARY, 1966.

ENTERED THE 16TH DAY OF APRIL, 1966.

This action having come on for hearing on this 12th day of January, 1966 and on this day AND UPON HEARING Counsel for the plaintiff and for the defendant and the evidence adduced and the Court having ordered that the plaintiff's claim be dismissed and that judgment be entered for the defendant and that the question of costs be adjourned to the 27th day of January, 1966 for further argument THEREFORE IT IS THIS DAY ADJUDGED that the plaintiff do recover nothing against the defendant and that the question of costs be adjourned to the 27th day of January, 1966 for further argument.

BY THE COURT

Kenneth W. Barnwell

DEPUTY REGISTRAR.

IN THE BRITISH CARIBBEAN COURT OF APPEAL

APPELLATE JURISDICTION

NOTICE OF APPEAL

BRITISH GUIANA

CIVIL APPEAL No. 12 of 1966

BETWEEN:-

CECILE NOBREGA,

Appellant (Plaintiff)

-and-

THE ATTORNEY GENERAL FOR BRITISH GUIANA

Respondent (Defendant)

NOTICE OF APPEAL

TAKE NOTICE that the (Plaintiff) Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the Supreme Court of British Guiana contained in the judgment of the Honourable Mr. Justice Chung dated the 27th January, 1966 doth hereby appeal to the British Caribbean Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses including her own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole decision dismissing with costs the claim by the plaintiff in Action No. 605 of 1965 Demerara.

3. **GROUNDS OF APPEAL**

1. The Supreme Court having held that there was a contract of service between the appellant and the Crown ought to have held that the Crown was bound by the said contract in the same way as an ordinary employer would be for the reason that the honour required of the Crown by law in relation to service contracts was not less than that required of a private individual.

2. The Supreme Court ought to have held that the appellant was never dismissed and that the purported reduction to $91.00 (ninety one dollars) of the agreed monthly salary of $251.00 (two hundred and fifty one dollars) under the contract of service could not be justified in terms of the contract itself because the right to dismiss at pleasure connoted a right to dispense with services at pleasure and was not related to the payment of salary under the contract of service while the services continued or were permitted to continue.

3. The Supreme Court ought to have held expressly that the Crown is bound by a valid contract to pay money whether the contract be a mercantile contract or a contract of service and that the Crown could not dishonour the term of the appellant's contract providing for salary at the rate of $251.00 (two hundred and fifty one dollars) per month while retaining the services of the appellant.

4. The Supreme Court ought to have held that there could be no concept of implied dismissal in relation to a service contract and that the one dictum existing in the English law reports to that effect was ill-considered and erroneous.

5. The Supreme Court ought to have held that there was a clear distinction between the concepts of dismissal on the one hand and reduction of pay or rank on the other and that the opinion of a living professional writer to the effect that the power to dismiss logically involved the power to reduce salary was ill-considered and erroneous and that his expression of opinion became confused because of considerations concerning the discipline of public servants when the award of the punishment of dismissal or the lesser punishment of reduction in pay or rank could be made under authority in accordance with the merits of any given case.

6. The Supreme Court erred in failing to recognise that the only authorities concerning the power of the crown to reduce pay or rank were cases in which reduction was provided for under statutory or other express authority thereby leading to the implication that the power to dismiss at pleasure which had existed in those cases did not imply the said powers of reduction of pay or rank and for that reason the power to dismiss was not held out in argument in any of the cases to support a reduction in pay or rank.

7. The Supreme Court erred in taking the view that a Crown contract of service which was created by and under a statute was in nature different from a Crown contract of service created by or under other authority and that whereas a reduction in pay could be irregular in the former case it could not be in the latter because of the scope of the power to dismiss at pleasure.

10 8. The Supreme Court erred in holding that the reduction in pay of the appellant was effected by lawful authority.

9. The Supreme Court erred in holding the reduction of the appellant's pay or right to pay valid because such reduction amounted to a taking or acquisition of property without right or authority and was a violation of Article 12 of the Constitution of British Guiana.

20 10. The Supreme Court erred in law in awarding costs to the respondent.

4. The relief sought is that judgment be entered for the plaintiff in the Supreme Court of British Guiana and in the British Caribbean Court of Appeal and that costs be awarded in favour of the Appellant in both Courts.

5. **PERSONS DIRECTLY AFFECTED BY THE APPEAL**

NAME	ADDRESS
Cecile Nobrega	61, Croal Street, Stabroek.
The Honourable Attorney 30 General for British Guiana	61, Main Street, Georgetown.

Dated the 1st day of March, 1966.

(sgd.) Sase Narain
Solicitor for Appellant.

(sgd.) F.W.H. Ramsahoye
OF COUNSEL.

SUBMISSIONS BY COUNSEL FOR THE APPELLANT

QUESTIONS PRESENTED

The appellant was appointed a teacher at the Lodge Government School and was classified as Grade 1 Class 1 on the 11th day of December, 1964. Her appointment was made with the concurrence of the Minister charged with responsibility for education, including responsibility for the administration of the School. Her salary was expressed to be $251.00 (two hundred and fifty one dollars) per month in a scale $118 x 7 - $195/211 x 10 - $251 x 7 - $258 x 10 - $288 in her letter of appointment. There was no statutory provision regulating directly the appellant's appointment. The appellant served as a teacher in the said school and received salary at the rate of $251.00 (two hundred and fifty one dollars) per month from the 4th December, 1964 to the 19th March 1965 when a letter was written by the Chief Education Officer to the appellant stating that her appointment as a Grade 1 Class 1 teacher was rescinded and purporting to give the effect of the rescission by stating the effect to be that the appellant was to be paid as an unqualified assistant mistress pending her submission of her birth and academic certificates which on the 17th March, 1965 she had been requested to submit to the Ministry of Education. The appellant refused to accept the reduced salary of $91.00 (ninety one dollars) per month which she was offered and instituted a declaratory action in the Supreme Court on the 9th April, 1965. In October 1965 while the action was still pending she accepted payment after notifying the Ministry by letter that she did so without prejudice to her rights. The appellant remained in the same teaching position and held it at the time judgment in the action was given.

The questions presented are:-

1. Whether there was a contract of service between the appellant and the Crown when she was appointed a teacher at Lodge Government School and if so whether the Crown was bound by the terms of the contract as any ordinary employer would be.

2. Whether the appellant could be dismissed at pleasure in pursuance of a term of her contract express or implied and whether the letter of the 19th March, 1965 purporting to rescind her appointment and informing her of payment of a reduced salary amounted to a dismissal even though the services of the appellant were not dispensed with by the Crown.

3. Whether the right of the crown to dismiss at pleasure included the right to reduce salary at pleasure and without dispensing with the services rendered under the contract of service.

4. Whether the crown unilaterally dishonoured the term of the appellant's contract of service by refusing to pay the agreed salary and whether such dishonour was in the power and authority of the crown.

STATUTES INVOLVED

There is no statute or statutory provision directly involved in the case. The Education Code being subsidiary legislation made in pursuance of the Education Ordinance, chapter 91 applies to Denominational and Church Schools and the Lodge Government School is not and was not at the material times such a school. The Constitution of British Guiana as it then was did provide for ministerial responsibility and there was at all material times a minister charged with responsibility for education which responsibility included the administration of Lodge Government School. (S.I. 1961 No. 1188 as amended). The amendments to the Constitution do not affect the case.

SUMMARY OF ARGUMENT

I

When the appellant's appointment was made with the concurrence of the Minister charged with responsibility for education of the Lodge Government School there were mutual obligations created between the Government of British Guiana (hereinafter referred to as "the Crown") and the appellant whereby the Crown agreed to pay to the appellant a certain salary in return for her services as a teacher at the school. A contract of service was created by the mutual acceptance of these obligations the contract being governed by the common law which imports into all contracts of service with the Crown a term that the Crown may dismiss the servant at pleasure except where the Crown binds itself to dismiss only for cause.

II

The Crown and its servants are bound by contracts of service according to their tenor in the same way as private employers and private employees are bound and the Crown is further bound to honour its service contracts in the same way as it is bound to honour mercantile contracts.

III

The right of the Crown to dismiss the appellant was not exercised and the purported rescission of the appellant's appointment by unilateral action on the part of the Crown was illegal and of no effect. The contract of service with the Crown could only have been rescinded for a reason which would have been sufficient to enable the rescission of any other contract and no such ground e.g.

fraud or misrepresentation in the formation of the contract was alleged and/or proved .

IV

The act of the Crown was in effect to vary unilaterally one term of the contract, that is, the term with respect to the salary payable to the appellant by reducing it and the appellant was not obliged to accept and did not accept the variation with the result that the Crown is and was at all material times bound to pay the contractual salary to the appellant.

V

The appellant's right to the contractual salary is a right of property which was protected by Article 12 of the Constitution of British Guiana and the unilateral action of the Crown in depriving the appellant of the contractual salary except in accordance with a term of the contract express or implied was a violation of the said article rendering the deprivation unconstitutional and illegal.

VI

The appellant is entitled to relief by way of declaration if the Court is of the opinion that her rights under the contract of service have been violated by the Crown.

ARGUMENT

I

THERE WAS A CONTRACT OF SERVICE BETWEEN THE CROWN AND THE APPELLANT WHICH CONTRACT INCLUDED AN IMPLIED TERM THAT THE CROWN COULD DISMISS THE APPELLANT AT PLEASURE.

Where there is an agreement to serve the Crown and an arrangement exists whereby the Crown in consideration for such service undertakes to pay remuneration which is certain there is a contract of service. The appointment of the servant is not merely placing him in a condition of service. That the relation between the Crown and its servants involves a contract is clear on the authorities and in particular having regard to ***R. V. FISHER*** (1903) A.C. 158 (postmaster considered by Privy Council to be engaged under contract) ***WILLIAMS v HOWARTH*** (1905) A.C. 551; (1905) 93 L.T.R. 115 (soldier engaged at agreed rate of pay considered by Privy Council to be serving under contract) ***CAREY v THE COMMONWEALTH*** (1921) 30 C.L.R. 132 (Director of Northern

Territory Commonwealth of Australia held by High Court of Australia to serve under contract) See page 137 of judgment. See also ***RIORDAN v THE WAR OFFICE*** (1959) 3 A.E.R. 552 and the authorities referred to. In the Court below there was no dispute on this point both the Crown and the Appellant having maintained that there was a contract of service (see page 25 and 26 of the Record).

The Crown's right to dismiss at pleasure has been surrounded by conflicting dicta as to the circumstances in which the right is modified but the right is otherwise clear and its existence is implied in contracts of service. The Crown may according to the view of Denning J. in ***ROBERTSON v MINISTER OF PENSIONS*** (1948) 2 A.E.R. 767,770 abrogate or vary the right by an express promise made to the subject. For this view Denning J. relied upon ***REILLY v R.*** (1934) A.C. 176; 150 L.T. 384; 50 L.T.R. 212 ("If the terms of the appointment definitely prescribe a term and expressly provide for a power to determine "for cause" it appears necessarily to follow that any implication of a power to dismiss at pleasure is excluded". per Lord Atkin). Another view which was expressed by Diplock J. in ***RIORDAN v THE WAR OFFICE*** (1959) 3 A.E.R. 552 was that the right to dismiss at pleasure could only be varied by statute reliance having been placed for that view on the opinion in ***GOULD v STUART*** (1896) A.C. 575; 75 L.T. 110. ("It is the law in New South Wales as well as in this country that in a contract for service under the Crown, civil as well as military, there is, except in certain cases where it is otherwise provided by law, imported into the contract a condition that the Crown has the power to dismiss at its pleasure per Sir Richard Couch delivering the judgment of the Board). ***GOULD v STUART*** was considered in ***REILLY v R.*** and yet in the later case the Board expressed a view which was in deep conflict with the opinion that the right to dismiss at pleasure could only be taken away by law. In the case under appeal there was no statute applicable to the relationship between the appellant and the Crown because the Education Code applied only to Denominational and Church Schools and not to schools wholly owned by the Government. This was not disputed. The right of the Crown to dismiss at pleasure was therefore implied in the appellant's contract of service, (see page 25 and 26 of the Record). No express term to the contrary was included in the contract of service.

II

THE CROWN WAS BOUND TO HONOUR THE TERMS OF THE CONTRACT WITH THE APPELLANT.

REILLY v R. is clear authority from the Privy Council to the effect that the Crown must honour the terms of the contract of service and *ROBERTSON v MINISTER OF PENSIONS* further supports this view that the Crown is obliged to honour the promises expressly made to the subject and acted upon as in the appellant's case. The view that the Sovereign could bind himself and his successors by contract was already developed in the middle ages as appears from the work of Gierke, Political Theories of the Middle Ages (E. Maitland 1922) referred to in Corwin, the "Higher Law" Background of American Constitutional Law, p. 21 where he wrote:-

"In the words of von Gierke: "Property had its roots ..... in Law which flowed out of the pure Law of Nature without the aid of the State and in Law which was when as yet the State was not. Thence it followed that particular rights which had been acquired by virtue of this Institution in no wise owed their existence exclusively to the State." Likewise, the binding force of contracts was traced from natural law, "so that the Sovereign, though he could not bind himself or his successors by Statute, could bind himself and his successors by Contract." It followed thence "that every right which the State had conferred by way of Contract was unassailable by the State," exception alone being made in the case of "interferences proceeding ex justa causa."

In *NEW SOUTH WALES v BARDOLPH* (1933-4) 52 C.L.R. 455, 509 Dixon J. referred to the following passage in *AUSTRALIAN RAILWAYS UNION v VICTORIAN RAILWAYS COMMISSIONERS* (1930) 44 C.L.R. 353 which in his opinion contained a clear statement of the law by Isaacs C.J.

"It is true that every contract with any responsible Government of His Majesty, whether it be one of a mercantile character or one of service, is subject to the condition that before payment is made out of the Public Consolidated Fund Parliament must appropriate the necessary sum. But subject to that condition, unless some competent statute properly construed makes the appropriation a condition precedent, contract by the Government otherwise within its authority is binding."

In the appellant's case the appropriation of salaries for teachers in Government Schools was not disputed or in issue and it was neither contended nor proved that the contract made with the appellant was beyond the authority

of the Crown. The Crown was on the authorities referred to bound by the contract (*FLETCHER v NOTT* (1938) 60 C.L.R. 55, 68).

III

THE APPELLANT WAS NOT DISMISSED. THE CROWN PURPORTED TO VARY UNILATERALLY A TERM OF THE CONTRACT.

"Dismiss" within the meaning of the expression "the right to dismiss at pleasure" connotes a dispensation with service. This is so because the reason why this right of the Crown exists is to prevent the Crown from being obliged to retain the services of those whom it does not wish. This question was argued before the trial judge in the Court below as appears from his notes on page 25 of the Record, lines 5 - 6, but the trial judge expressed no opinion on the argument even though it was vital to the question whether the right to dismiss at pleasure could conceivably have embraced a right to reduce salary while retaining the same services which the servant is required to give under the contract of service. The necessity for dispensation with services arises out of the nature of the right and appears from the the decision in *FLETCHER v NOTT* in which reference was made at page 67 to the following passage from the judgment of Rowlatt J. in *REDERIAKTIEBOLAGET AMPHITRITE v THE KING* (1921) 3 K.B. 500, 503-4:-

"The government cannot by contract hamper its freedom of action in matters which concern the welfare of the State. Thus in the case of the employment of public servants, which is a less strong case than the present, it has been laid down that, except under an Act of Parliament, no one acting on behalf of the Crown has authority to employ any person except upon the terms that he is dismissable at the Crown's pleasure; the reason being that it is in the interests of the Community that the Ministers for the time being advising the Crown should be able to dispense with the services of its employees if they think it desirable". See also the observations of Griffith C.J. in *RYDER v FOLEY* 4 C.L.R. and *KAYE v ATTORNEY GENERAL OF TASMANIA* 94 C.L.R. 193,

There is no reported case in which it has been held that there could be a dismissal without a dispensation with services. On this premise there can be no concept of implied dismissal in relation to the right of the Crown to dismiss at pleasure. The obiter dictum of Rigby L.J. in *WORTHINGTON v ROBINSON* (1897) 75 L.T. 446 to the effect that the plaintiff in that case was impliedly dismissed

when he was reduced to a lower position in the service was wrong. Dismissal implies a removal from a position and relief from the duties attached thereto. If by reducing the plaintiff in that case to a lower rank there was a dismissal from the higher rank such dismissal was actual and not implied. The view that there was a dismissal at all was wrong. There was no re-appointment to a lower rank as Rigby L.J. thought:-

("I treat what has happened as a dismissal, because, though in effect he has been reduced to a lower position, his new appointment is in fact a re-appointment") There was merely a reduction in rank of a person holding an appointment. There was no break in service which would have necessitated re-appointment, and the correct opinions were those expressed by Sir Robert Finlay, Q.C. for the Crown and Smith L.J. both of whom relied upon section 4 (3) of the Inland Revenue Regulation Act 1890 (53 and 54 Vict. C. 21) to support the reduction.

Section 4 (1) and (3) provided:-

"4 (1) The commissioners shall, unless the Treasury otherwise direct, appoint such collectors, officers and other persons for collecting, receiving, managing and accounting for inland revenue as are not required by law to be appointed by any other authority.

"4 (3) The commissioners may suspend, reduce, discharge or restore, as they see cause, any such collector officer or other person.

The appellant was not dismissed. She continued her employment. The Crown did not expressly or impliedly determine her employment. She continued in the same service after 19th March, 1965 but the Crown decided to pay only $91.00 per month. The grades referred to by the Crown were irrelevant to the issue. They were not statutory and no explanation was given by the Crown in evidence for the reduction of grade or salary. The letter of the 19th March, 1965 (Exhibit "F") on page 54 of the Record purports to explain rescission of appointment to mean that salary of $251.00 would not be paid but that $91.00 would be. By whatever name called - rescission, reduction, variation or else the effect of the letter was to alter unilaterally and to the appellant's detriment the term of her contract which provided for her salary.

If the term rescission was used as it is used in the law of contract there was no ground such as fraud or misrepresentation proved by the Crown or shown upon the evidence led to base rescission of the contract of service.

The letter of March, 19th did not however purport to rescind the service contract as such. It assumed that the contract of service would have subsisted except for the varied term in respect of salary. The Crown did not argue that the appellant was dismissed. The trial judge held (see page 35 of the Record, lines 20 to line 3 on page 36) that the appellant's appointment was rescinded and a new appointment was offered the appellant which new appointment she accepted subject to her rights being determined by the Court. The view of the trial judge in this respect is erroneous because the appellant was under no obligation to leave the service but was free to hold the Crown to the payment of the contracted salary as she could if the Crown were a private employer. The appellant's refusal to leave the service and to seek redress in the Courts could not be considered an acceptance of the reduced salary or of an appointment on different terms.

IV

THE CROWN COULD NOT FORCE APPELLANT TO QUIT BY REDUCING SALARY.

The decisions in ***REILLY v R.*** and ***ROBERTSON v MINISTRY OF PENSIONS*** are authority for the opinion that the Crown is bound to pay the contractual salary in respect of which the Crown made an express promise to pay. There is no authority for saying that the Crown is in any different position from a private employer in honouring a service contract. The Crown must honour its contracts although in Crown contracts of service there is usually implied a term enabling dismissal at pleasure. In the case of a private employer he could not by reducing salary force an employee to leave. In this respect the opinion of J. K. MACKAY J.A. in the Ontario Court of Appeal in ***HILL v PETER GORMAN LTD.*** (1957) 9 D.L.R. (2d) 124, 131-2 is a correct statement of the law:-

> "I am respectfully of opinion that it cannot be said, as a matter of law, that an employee accepts an attempted variation simply by the fact alone of continuing his employment. Where an employer attempts to vary the contractual terms, the position of the employee is this: He may accept the variation expressly or impliedly in which case there is a new contract. He may refuse to accept it and if the employer persists in the attempted variation the employee may treat this persistence as a breach of contract and sue the employer for damages, or while refusing to accept it he may continue in his employment

and if the employer permits him to discharge his obligations and the employee makes it plain that he is not accepting the variation, then the employee is entitled to insist on the original terms.

I cannot agree that an employer has any unilateral right to change a contract or that by attempting to make such a change he can force an employee to either accept it or quit.

If the plaintiff made it clear to Gorman that he did not agree to the change made in September, 1954, the proper course for the defendant to pursue was to terminate the contract by proper notice and to offer employment on the new terms. Until it was so terminated, the plaintiff was entitled to insist on performance of the original contract."

See also 56 Corpus Juris Secundum at page 545 article 110. The Court below relied upon a professional opinion of Dr. Glanville Williams that the right of the Crown to dismiss at pleasure included a right to reduce pay at will. This view is erroneous and the passage from which it is taken reveals faulty reasoning and confusion of thought. The passage appears in the judgment of trial judge between lines 14 of page 34 and line 3 of page 35. The passage begins with a categorical statement that the right to reduce pay follows from the right to dismiss at will. The writer then observes that the Crown may offer to mitigate the exercise of the right by continuing the contract of service at a lower rate of pay. If the Crown has the right to reduce it does not have to make any offer. It will simply reduce and the servant has no remedy. He could not leave the service without breaking the contract. The writer is of the opinion that the servant need not accept on principle and may quit without breach. This latter view is untenable if the Crown has the right of unilateral reduction. It was argued before the trial judge that the passage was without authority and the views expressed in it were illogical but the trial judge purported to base his decision on it by assuming its correctness without analysis.

There is no doubt that the position of the Crown in relation to contracts of service is that the contracts while they subsist must be honoured. In the absence of an express term to enable reduction of salary the Crown must pay the agreed salary under the contract. See D. W. Logan, A Civil Servant and his pay (1945) 61 L.Q.R. 240, 262 et seq. *WORTHINGTON v ROBINSON* was a case in which reduction in rank was authorised by Statute. The only other reported case in the English speaking Commonwealth concerning reduc-

tion of pay and/or rank is *FAIRTHORN v TERRITORY OF PAPUA* 60 C.L.R. 772, in which the employment of an assistant resident magistrate was regulated by the Papua Act 1905 - 1934 and the Public Service Ordinance 1907. The plaintiff was reduced in rank by the Lieutenant Governor purporting to act under statutory provisions and was required to act as a patrol officer at a reduced salary. He brought an action for a declaration that the order reducing him in rank was invalid and before trial the order was cancelled on the 22nd April, 1938. On the following day the plaintiff's appointment was terminated and the plaintiff was appointed a patrol officer at a lower salary. The plaintiff then claimed in a second action a declaration that he still held the office of assistant magistrate and that his dismissal was invalid. All the members of the High Court on appeal from a dismissal of the actions held that there could be no complaint about the termination of the employment. A majority held that the reduction was not in accordance with the relevant statutory provisions and the plaintiff was given the costs of the first action which was considered to have been properly brought. The significant points about Fairthorn's case are:-

(1) The power to dismiss at pleasure was not relied upon in support of the reduction of rank and pay.

(2) The power of termination was actually exercised after the reduction order was cancelled.

(3) The case was decided on the basis that dismissal and reduction were different concepts.

In a note in 23 Australian Law Journal 505, the question of a crown servant's right to sue for wages is discussed. In *BERTRAND v R.* (1949) V.L.R. 49 Herring C.J. examined the alleged rule that a civil servant could not sue for pay and thought upon inquiry that a petition of right would lie. Reference was made to *POWELL v THE QUEEN* (1873) 4 A.J.R. 144 where it was held that a police sergeant irregularly reduced to the ranks could sue for the difference of pay. The trial judge thought that there was a distinction between that case and the case of the appellant because in that case statute had provided that by the taking of the oath a person was deemed to have entered into a written agreement to serve at the pay assigned his rank and that there was no similarity with the appellant's case presumably because no statutory provision was involved. The reasoning of the trial judge on this point is erroneous because whether the contract to pay arises at common law or by statute the legal result is the same for there is no difference in legal character between the two types of creation. The Australian legislation merely dispensed with the necessity for

formal agreement by providing that the taking of the oath was sufficient. In Powell's case and in Bertrand's case there was no support for the view that the right to dismiss at pleasure could be relied upon to justify the reduction in rank or non-payment of salary even though the nature of the argument for the Crown suggested that such a view was being put forward on the Crown's behalf.

V

THE CONSTITUTIONAL GUARANTEE OF THE RIGHT TO PROPERTY WAS VIOLATED BY THE CROWN

REILLY v R. is sufficient support for the argument that unless there is legal justification for reducing the Appellant's pay there is a violation of the constitutional guarantee of the right to property described in article 12 of the Constitution of British Guiana now article 8 of the Constitution of Guyana.

VI

THE PLAINTIFF WAS RIGHT IN SEEKING DECLARATORY RELIEF AGAINST THE ATTORNEY GENERAL

The appellant's right to declaratory relief is upheld by the opinion of Rich, Dixon and McTiernan JJ. in ***FAIRTHORN v TERRITORY OF PAPUA*** where those judges were of the opinion that a declaratory action was the right way to complain against an improper reduction and awarded costs to the plaintiff whom the Lieutenant-Governor purported to reduce. That the declaratory action may be brought in Guyana appears from *D'Aguiar v Attorney General* (1962) 4 W.I.R. 481, The same procedure was followed in ***KAYE v ATTORNEY GENERAL FOR TASMANIA*** (1955-6) 94 C.L.R. 193.

Dated this 14th September, 1966

F. W. H. RAMSAHOYE
OF COUNSEL.

SUMMARY OF REFERENCES

TEXTS

CORWIN, The "Higher Law" Background of American Constitutional Law, 23 Australian Law Journal.

GLANVILLE WILLIAMS: Crown Proceedings
61 Law Quarterly Review 240 - Logan,
A Civil Servant and his pay

32 CORPUS JURIS SECUNDUM, p. 545 article 110..

STATUTES

Constitution of British Guiana S.I. 1961 No. 1188

Constitution of Guyana

Education Ordinance, Chapter 91

Education Code, Chapter 91, Subsidiary Legislation

Inland Revenue Regulation Act 1890 (53 & 54 Vict. 21)

The Papua Act 1905 - 34

The Public Service Ordinance (Papua) 1907

CASES:

(1) UNITED KINGDOM

R v FISHER (1903) A.C. 158

WILLIAMS v HOWARTH (1905) A.C. 551; 93 L.T.R. 115

RIORDAN v THE WAR OFFICE (1959) 3 A.E.R. 552

ROBERTSON v MINISTER OF PENSIONS (1948) 2 A.E.R. 767

REILLY v R. (1934) A.C. 176; 150 L.T. 384; 50 L.T.R. 212

GOULD v STUART (1896) A.C. 575; 75 L.T. 110

REDERIAKTIEBOLAGET AMPHITRITE v THE KING (1921) 3K.B.500

WORTHINGTON v ROBINSON (1897) 75 L.T. 446

(II) CANADA

HILL v PETER GORMAN LTD. (1957) 9 D.L.R. (2d) 124

(III) GUYANA

D'AGUIAR v ATTORNEY GENERAL (1962) 4 W.I.R. 481

(IV) AUSTRALIA

CAREY v THE COMMONWEALTH (1921) 30 C.L.R. 132

NEW SOUTH WALES v BARDOLPH (1933 - 4) 52 C.L.R. 455

10 AUSTRALIAN RAILWAYS UNION v VICTORIAN RAILWAYS COMMISSIONERS (1930) 44 C.L.R. 353

FLETCHER v NOTT (1938) 60 C.L.R. 55

RYDER v FOLEY 4 C.L.R. 422

KAYE v ATTORNEY GENERAL FOR TASMANIA 94 C.L.R. 193

FAIRTHORN v TERRITORY OF PAPUA 60 C.L.R. 772

BERTRAND v R. (1949) V.L.R. 49

POWELL v THE QUEEN (1873) 4 A.J.R. 144

IN THE COURT OF APPEAL OF THE SUPREME COURT
OF JUDICATURE

CIVIL APPEAL No. 12 of 1966

BETWEEN:

CECILE NOBREGA,

Appellant,

-and-

THE ATTORNEY GENERAL FOR BRITISH GUIANA,

Respondent.

BEFORE: Sir Kenneth Stoby - President
Hon. E.V. Luckhoo, Q.C. - Justice of Appeal
Hon. P.A. Cummings - Justice of Appeal

1966: September 16.

1967: April 3.

Dr. F.H.W. Ramsahoye for the appellant.

L.F. Collins, Crown Counsel, for the respondent.

CHANCELLOR **J U D G M E N T**

During the year 1963 the appellant was awarded a Commonwealth Bursary. She proceeded to the United Kingdom where she spent one year at the Institute of Education and the University of London. At the conclusion of the course she was given two certificates, one of which stated that she had satisfactorily completed the full time course in writing Production and Distribution of Textbooks provided in the Department of Education in Tropical Areas with the co-operation of members of the Publishers Association during the session 1963-4.

On the 15th October, 1964, the Ministry of Education of British Guiana wrote to her offering employment should she return. This she did and was given an appointment as a Grade 1 Class 1 Mistress at the Lodge Government School at a salary of $251.00 a month. Although her appointment was as a teacher at the Lodge Government School she was seconded to the Ministry of Education from the 11th December, 1964 until the 4th

February, 1965, when she was directed to perform her substantive duties as a teacher. On the 8th February, 1965, she began teaching at Lodge Government School.

On the 17th March, 1965, she received the following letter signed on behalf of the Chief Education Officer:

" MINISTRY OF EDUCATION, YOUTH, RACE RELATIONS AND COMMUNITY DEVELOPMENT,
21 Brickdam, Georgetown.
BRITISH GUIANA
17th March, 1965.

Dear Madam,

With reference to a letter dated 11th December, 1964, from this Ministry appointing you a Mistress at Lodge Government School with effect from 4th December, 1964, I am to request that you send to this Ministry your birth and academic certificates (if possible by the Ministry's Messenger or by return mail).

2. Your prompt attention to this request will be greatly appreciated.

Yours faithfully,

? Blackman
for Chief Education Officer (ag.).

Mrs. Cecile Nobrega,
61 Croal Street,
Stabroek, Georgetown.

c.c. Miss Doris Fraser,
Manager, Lodge Govt.
School, E.C. Demerara. "

The appellant did not immediately comply with the Education Officer's request, and on the 19th March, 1965, the following letter was received:

" MINISTRY OF EDUCATION, YOUTH, RACE RELATIONS AND COMMUNITY DEVELOPMENT,
21 Brickdam, Georgetown.
BRITISH GUIANA.
19th March, 1965.

Dear Madam,

Because of your failure to submit to this Ministry your birth and academic certificates as requested so to do in my letter dated 17th March, 1965, I have to inform you that your appointment as a Grade 1 Class 1 teacher has been rescinded as from today, 19th March, 1965.

2. The effect of such recission is that you will be paid as an unqualified assistant mistress pending the submission of the documents asked for by me. Upon receipt of those documents your status as a teacher will be determined, and a new letter of appointment issued to you.

Yours faithfully,
G.O. Fox
Chief Education Officer (ag.).

Mrs. Cecile Nobrega,
61 Croal Street,
Stabroek, Georgetown.

c.c. Manager,
Lodge Govt. School. "

Upon receipt of the letter of 19th March, the appellant, the same day, submitted the relevant documents. No further information was given to her nor was there any other communication, but when she received her salary, it had been reduced to $92 per month from the 20th March, 1965. At first she did not accept the reduced salary but subsequently took it without prejudice to her case. She is performing the same duties assigned to her on the 8th February, 1965.

The appellant brought an action for:-

" (a) a declaration that the Plaintiff is entitled to receive from the Government of British Guiana in respect of her services as a teacher at Lodge Government School salary at the rate of $251.00 (two hundred and fifty one dollars) per month.

" (b) a declaration that the purported reduction of the Plaintiff's salary by the Government of British Guiana acting by or through their servants and/or agents from $251.00 (two hundred and fifty one dollars) per month in respect of such service to $92.00 (ninety two dollars) per month is ultra vires and of no effect; "

No evidence was offered by the respondent, but before the trial judge, counsel submitted that since the Crown could dismiss at pleasure the right to reduce salary was within the discretion of the Crown. This view was accepted by the trial judge and the declarations asked for were not made.

On appeal counsel for the appellant did not contest the right of the Crown to dismiss at pleasure unless the Crown's right was restricted by statute. His only argument was that the Crown could not unilaterally vary a contract. He submitted there was a variation in this case in that without dismissing the appellant the Crown reduced her salary although she was performing the same duties.

Counsel for the Crown did not contend that the Crown had dismissed the appellant and entered into a new contract. He specifically rejected the Court's suggestion, or at least did not adopt it, that the letter of the 19th March could be treated as a dismissal. He relied on the submission that the Crown had a right to reduce salary without the consent of an employee. This was the issue we were asked to decide.

It can be appreciated why counsel for the Crown took the stand he did. The letter of the 19th March said "your appointment..... has been rescinded as from today". It also went on to say that "upon receipt of those documents your status as a teacher will be determined and a new letter of appointment issued." No new letter of appointment was issued. No one was informed whether her status as a teacher has been determined and if determined no one has been allowed to know what her status is. Making full allowance for the use of the word rescission by a layman: assuming he intended to dismiss her or cancel her appointment his course of conduct shows there was no dismissal and no re-employment. If she was dismissed and not re-employed then why has she been teaching in the school and receiving a salary? If she has been re-employed then why was a letter not sent to her stating the terms of her employment and the duties expected of her? The appellant at all times made it clear she was not accepting a variation of her contract.

On the other hand if rescission was used in its legal connotation there was no rescission of the contract. There was no legal ground on which the contract could be rescinded; no fraud, no mistake or any of the other legal grounds on which a contract could be legally rescinded. The tenor of the correspondence does suggest that the appellant's academical qualifications were being questioned. No doubt if the teaching position was obtained by presenting false certificates, if the appellant had represented to the Crown, even innocently, that her certificates entitled her to a degree and such misrepresentation was acted upon, then the contract could have been rescinded. Although the concept of rescission involves restoring parties to their original position (which was impossible in this case) this contract if properly rescinded would have been valid until rescinded. But after a rescission there is no longer an existing contract, and since reduction of an employee's salary presupposes the existence of a higher contractual salary it is clear the contract was never rescinded. Notification to one party to a contract by the other party that the failure to perform a duty not required by the contract has resulted in rescission, is not a rescission; it would be an alarming state of the law if a party to a contract can rescind it without assigning any reason. All these factors must have been present in the respondent's mind when in the Court

below and at the Appeal the case was presented to the respective courts on the basis that the Crown had a legal right to vary contracts with its employees unilaterally. I think it would be wrong for an Appellate Court to say that rescind means dismissed when the employer says it does not, when he has not pleaded it and neither side has argued it.

I turn now to the case as argued.

Counsel for the appellant conceded that Crown servants can be dismissed at pleasure. In a newly independent country with a Constitution designed to protect the liberty of citizens I think it would be wrong for an Appellate Court to remain silent and not offer a few observations on the position at law of Crown Servants.

In Canada, s. 319 of the Civil Service Act specifically sets out the right of the Crown to dismiss at pleasure. Despite this statutory provision it was held by Thorson P., in Zamulinski v. The Queen (1957) 10 D.L.R. 685 that damages would lie not for wrongful dismissal but for failure to follow statutory procedure prior to dismissal. In Zamulinski's case Regulation 118 made by virtue of the authority given by s. 5 of the Civil Service Act, provided that "no employee shall be dismissed without having been given an opportunity to present his side of the case to a senior officer of the department nominated by the deputy head". Zamulinski was dismissed without being given the opportunity to present his case. His claim for wrongful dismissal was not allowed on the ground that despite regulation 118 he could be dismissed at pleasure, but his claim for damages was successful on the ground that had the proper procedure been followed his dismissal must have been delayed.

In India, s. 96B of the Government of India Act provides that "subject to the provisions of this Act and of rules made thereunder every person in the civil service of the Crown in India holds office during His Majesty's pleasure". In R. Venkata Rao v. The Secretary of State for India in Council (1937) A C. 248 the Privy Council held that the terms of s. 96B assure that the tenure of office though at pleasure will not be subject to capricious or arbitrary action but will be regulated by the rules, but there was no right in the appellant enforceable by action to hold his office in accordance with those rules and an employee could therefore be dismissed notwithstanding the failure to observe the procedure prescribed by them.

In those common law countries where there is no statutory provision regarding dismissal the law was stated by Rowlatt, J. in Rederiaktiebolaget Amphitrite v. R. (1921) All E.R. Reprints 542 to be -

"..... in the case of the employment of public servants, ...it has been laid down that, except under an Act of Parliament, no one acting on behalf of the Crown has authority to employ any person except on the terms that he is dismissible at the Crown's pleasure; the reason being that it is in the interests of the community that the ministers for the time being advising the Crown should be able to dispense with the services of its employees if they think it desirable."

Diplock, J. took the same view in Riordan v. The War Office (1959) 3 All E.R. 552 when he expressed agreement with a passage in Stuart Robertson's Civil Proceedings By and Against the Crown (1908) at p. 357 where it is said -

" The Crown's absolute power of dismissal can only be restricted by statute, and anything, short of a statute, which purports to restrict it, is void as contrary to public policy."

The Privy Council in Shenton v. Smith 1895 A.C. 229 stated the law thus:

"Their Lordships consider that, unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law-suit, but by an appeal of an official or political kind."

In the light of these positive statements and because Shenton v. Smith is binding on this Court it is not open to us in a case occurring before the grant of Independence to express a different view. Suffice it to say that in a case occurring after the 26th May, 1966, having regard to Article 96 (1) of the Constitution of Guyana the position of Crown servants may have to be re-examined and determined afresh. The reasons which impelled the U.K. Government to arbitrarily dismiss her servants on grounds of public policy no longer represent modern thinking and may not be valid in those countries with a written Constitution. It is recognised that different considerations will always apply to the armed forces. In Dickson v. Combermere (1863) 3 F. & F. 527 Cockburn, C.J. said:

"The Sovereign has the power of dismissing any officer. He receives his commission from his Sovereign and holds it at his pleasure, and it is the will of the Sovereign to withdraw it."

I have already said that I must accept the law as it stands as clear that the Crown can dismiss at pleasure except

in certain circumstances not relevant to this case. I accept too that unless there is a clause to the contrary there will be an implied term in the contract that dismissal may be at pleasure. But there is very little authority on the subject of a Crown servant's legal position who has not been dismissed but has had her salary reduced.

The proposition is elementary that if a contract exists (as admitted in this case) then until the contract is determined, the rights and liabilities under the contract remain. The appellant had a right under her existing contract to receive a specific salary for specific work. Apart from dismissal, where a contract exists the Crown is in no different position from a private employer. Lord Atkin in Reilly v. The king (1934) 150 L.T. pointed out that it is important to bear in mind that a power to determine a contract at will is not inconsistent with the existence of a contract until so determined. This proposition is self-evident, but the law of landlord and tenant affords a good illustration. In the case of a tenancy created by express contract at a specific rental, the contract must be determined by notice to quit in order to vary the rental. The offer of a new tenancy at a higher rental may be included in the notice to quit, but there can be no variation without a determination.

The trial judge relied on a passage by Glanville Williams in his work on Crown Proceedings:

> " The Crown has a right to reduce its servant's pay. In the case of Civil Servants that right follows as a logical consequence from the right to dismiss at will. If the Crown can dismiss at will it can offer to mitigate the exercise of its legal right by continuing the contract of service at a lower rate of pay. It seems on principle that the offer could be refused and that the servant could quit the service without rendering himself liable to an action for breach of contract, even if otherwise he would be liable."

There is nothing objectionable in that statement if the important qualification it contains is fully appreciated. "If the Crown can dismiss at will it can offer to mitigate the exercise of its legal right". To my mind this suggests that what the writer is postulating is that the Crown can inform its servant that it is proposed to dismiss him but instead of so doing a new contract at a reduced salary is being offered. The employee may accept the new contract or refuse it. If he adopts the former course the matter is at an end; if the latter, then he is dismissed. Looked at in that way the statement of the law is correct, but that is not how the judge interpreted it.

Counsel for the Crown interpreted the passage in Glanville

Williams as an unequivocal right in the Crown to vary an existing contract by unilateral action. He submitted that Rigby, L.J's judgment in Worthington v. Robinson et al (1897) 75 L.T. 446 supported the view that there was a right to reduce unilaterally. Rigby, L.J. did say -

> "I have never heard of such a thing as a civil servant, holding office at pleasure, having a right to question the acts of those civil servants who have dismissed him from his office. I treat what has happened as a dismissal, because, though in effect he has been reduced to a lower position, his new appointment is in fact a re-appointment."

But in Worthington v. Robinson (supra), the Crown never contended that the servant was dismissed. The facts were that a Supervisor of Inland Revenue accepted appointment under an Act which provided that he could be reduced in status by the Commissioner of Inland Revenue. He was given certain duties to perform inconsistent with his position as a Supervisor. He refused to perform the duties and was reduced in status. He brought an action for damages. The Solicitor General for the Crown relied on the Act as justifying the reduction. Smith, L.J. upheld the reduction on the ground argued by the Solicitor General. With respect, the reasons given by Rigby, L.J. were inconsistent. The revenue officer was never dismissed. The Act of Parliament gave the Commissioner of Inland Revenue power to "suspend, reduce, discharge or restore as they see cause". They reduced, they did not discharge. Normally in the civil service dismissal involves total loss of pension rights, reduction does not. I do not regard this case as authority for the proposition that the Crown can alter a contract without the consent of the other party to the contract.

In Hill v. Peter Gorman Ltd. (1957) 9 D.L.R. 131 Mackay, J.A. said -

> "Where an employer attempts to vary the contractual terms, the position of the employee is this: He may accept the variation expressly or impliedly in which case there is a new contract. He may refuse to accept it and if the employer persists in the attempted variation the employee may treat this persistence as a breach of contract and sue the employer for damages, or while refusing to accept it he may continue in his employment and if the employer permits him to discharge his obligations and the employee makes it plain that he is not accepting the variation, then the employee is entitled to insist on the original terms.
>
> I cannot agree that an employer has any unilateral right to change a contract or that by attempting to make such a change he can force an employee to either

"accept it or quit."

This is a correct statement of the law.

Although no case has been cited us and I have found none, there are two cases which tend to lend support to the view that while the Crown can under certain circumstances dismiss at pleasure and while no action will lie for wrongful dismissal, the Crown cannot unilaterally alter the terms of a contract.

Cameron v. Lord Advocate is a Scottish case (1952) S.C. 165, and unfortunately not available in Guyana. This was a case where the plaintiff accepted an offer of civil employment by the Crown in Nigeria but on his arrival there the contract was repudiated. Lord Mackay said "For that breach of contract I know of no law that immunises the Government and its responsible officials from paying damages".

In the present case if the Crown had repudiated the appellant's contract shortly after her return to Guyana, she would have been entitled to damages. I can see no sound reason why she should not be entitled to some form of relief when instead of repudiating it on arrival, it was repudiated a year after.

The other case is Faithorn v. The Territory of Papua (1938) 60 C.L.R. 772. The headnote reads:

> " The plaintiff was an assistant resident magistrate in the Public Service of the Territory of Papua. He was suspended by the Lieutenant-Governor, but his suspension was not approved by the Governor-General under sec. 18 (2) of the Papua Act. The Lieutenant-Governor then reduced him in office, purporting to act under reg. 53(14) of the Public Service Regulations 1926, and he was required to act as a patrol officer at a reduced salary. The plaintiff brought an action against the Territory of Papua, claiming a declaration that the Order in Council reducing him in rank was invalid and that he was still entitled to the office and salary of assistant resident magistrate. Before the trial of the action a notification was inserted in the Government Gazette that the order which reduced the plaintiff to the position of patrol officer was cancelled. On 23rd April 1938 the Administrator (acting for the Governor-General) terminated the plaintiff's appointment, and on the same day the Lieutenant-Governor appointed the plaintiff as a patrol officer at the reduced salary. The plaintiff was paid arrears of salary as assistant resident magistrate up to the date of his dismissal. The plaintiff then brought a second action, claiming a declaration that he was still holder of the office of assistant resident magistrate and that the dismissal was invalid.

Held, by Rich, Dixon and McTiernan JJ. (Latham C.J. dissenting), that after the suspension of the plaintiff had been disapproved no power remained in the Lieutenant-Governor under reg. 53(14) of the Public Service Regulations to reduce the plaintiff in rank and, up to the time of his dismissal on 23rd April 1938, he was entitled under reg. 53(8) to salary on the basis that his suspension had not been approved and no other punishment had been awarded; but, by the whole court, that the plaintiff was lawfully dismissed on 23rd April 1938, inasmuch as he held office during the pleasure of the Governor-General under sec. 17(1) of the Papua Act: the regulations governing the Lieutenant-Governor's power of suspending officers did not 'otherwise provide' within the meaning of that section.

Held, further, by Rich, Dixon and McTiernan JJ., as to the first action, that the Territory of Papua was the proper defendant and that a declaration of right, as sought by the plaintiff, was the appropriate relief; the plaintiff was accordingly entitled to his costs of that action."

The importance of this decision is that when the plaintiff filed his action for a declaration that he was still a magistrate the Government restored him to his original position and then dismissed him. The judgments of three of the four judges indicate that the original action for a declaration of right establishing he was still a resident magistrate would have succeeded. The decision in this case, although admittedly based on local legislation, is some authority for the proposition that a right to dismiss does not include a right to reduce. If the Crown instead of dismissing can reduce salary there is no limit to which contractual terms may be changed. The doctor who has contracted to be employed on the condition that he has a right of private practice may suddenly be deprived of it; the headmaster in receipt of $500 may suddenly be paid $100, and so on. The Crown must accept its mistakes like any other person. It would have been simple, if the Crown did not wish to be accused of acting arbitrarily by dismissing without cause, to give the appellant reasonable notice of the termination of contract. This obvious course was not followed, and the result must be that the declarations asked for will be granted. I would allow the appeal with costs.

Dated this 3rd day of April, 1967.

KENNETH S. STOBY,
Chancellor.

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

(CIVIL JURISDICTION)

GUYANA

CIVIL APPEAL NO. 21 OF 1966

BETWEEN:

CECILE NOBREGA,

Appellant
(Plaintiff)

- and -

THE ATTORNEY GENERAL
FOR GUYANA,

Respondent
(Defendant)

BEFORE:

SIR KENNETH STOBY, CHANCELLOR

MR. E. V. LUCKHOO, JUSTICE OF APPEAL

MR. P. A. CUMMINGS, JUSTICE OF APPEAL

1966: September 16

1967: April 3

Mr. F. W. H. Ramsahoye for the Appellant.

Mr. L. Collins, Senior Crown Counsel for the Respondent.

D E C I S I O N

CUMMINGS, J. A.

As the learned trial Judge stated in his judgthe facts of this case were in short compass and not disputed.

The appellant, a married woman, from the time of leaving school up to the time she opened her own school, the "Children's Alma Mater", filled several important secretarial posts both in and out of the local Civil Service and in Trinidad. She has written and published

many short stories, poems, booklets and a Children's Reader. She served on the Publicity Committee of the Ministry of Education for two years. The work of that Committee was evaluating and publishing in relation to the promotion of education. She was a teacher of music and singing, and held several awards for her musical compositions. She wrote a musical story for children.

In 1963 on a submission by the Government of British Guiana she was awarded a Commonwealth Bursary by the United Kingdom Government. She spent one year at the Institute of Education and the University of London doing a full-time course for the academic year 1963 - 1964. She said:-

> "We had to learn to write a book, we had to learn mechanical side as well as the professional side. We also had to learn the process of printing, and noting paper, selecting material, grading, and the entire process of assimilation of the written work by a child to enable them to grasp without forcing them. This is the syllabus at the Institute of Education (tendered, and admitted by consent and marked Exhibit "A"). In paragraph 5 contains the reference to the subjects. At the conclusion of the course I was awarded these two certificates (tendered, admitted and marked "B1" "B2"). At the end of my course I got an offer from the Rose Bruford School of Speech and Drama. It was an offer to study Drama as a teaching aid but with special emphasis in writing plays for children. I was unable to take the offer because I decided to return to the country after receiving a letter dated the 15th October, 1961, from the Ministry of Education, British Guiana."

That letter is in the following terms:-

> "Ministry of Education,
> Co-Operatives & Social Security,
> 21, Brickdam, Georgetown,
> British Guiana,
> 15th October, 1964.
>
> Dear Madam,
>
> **Mrs. Cecile Nobrega - Employment.**
>
> I am directed to refer to previous correspondence on this subject and to inform you that the Ministry had wished to offer you a position on its staff. The constitutional machinery which must be involved in this process is not now functioning and, regretfully, arrange-

ments to create this new post had to be deferred to 1965.

2. In the meantime however, the Ministry is prepared to offer you, on your return to the country, a temporary appointment as a primary school teacher at the salary of about $250.00 per month pending the creation of a suitable post.

3. Meanwhile, the Ministry will utilise your services in the field in which you have been trained.

Yours faithfully,

(Sgd.) B. Hinds
for Permanent Secretary.

Mrs. Cecile Nobrega,
1, Lancaster Avenue,
Wimbledon, S.W. 19."

The appellant was by another letter dated 11th December, 1964, this time addressed to The Manager of The Lodge Government School appointed by the Chief Education Officer, acting on behalf of the Ministry of Education of the Government of Guyana (then British Guiana) as a Grade I Class I mistress at the Lodge Government School with effect from 4th December, 1964. The terms of this letter were as follows:-

"Ministry of Education,
Co-Operatives & Social Security,
P.O. Box 63,
Georgetown, British Guiana.
11th December, 1964.

Dear Sir,

Lodge Government School - Staffing

The appointment of Mrs. Cecile Nobrega as Grade I Class I mistress is approved with effect from 4th December, 1964, subject to medical examination by a Government Medical Officer. Mrs. Nobrega will be informed later about the date of her medical examination by the Ministry of Health.

2. Details of age, qualifications etc., should be entered on the attached 'Statement of Particulars' and returned to this office as early as possible.

Salary at the rate of $251.00 p.m. in the scale $118 x 7 - $195/211 x 10 - 251 x 7 - 258 x 10 - $288. Mrs. Nobrega is seconded to the Ministry of Education.

Yours faithfully,

(Sgd.) S. K. Singh,
for Chief Education Officer.

The Manager,
Lodge Government School."

She was duly informed, took up her appointment and served as a teacher in the said school. She received salary at the rate of $251 per month from 4th December, 1964. In March 1965, she received the following letters:

"Ministry of Education, Youth,
Race Relations and Community
Development,
21 Brickdam, Georgetown,
British Guiana.

17th March, 1965.

Dear Madam,

With reference to a letter dated 11th December, 1964, from this Ministry appointing you a Mistress at Lodge Government School with effect from 4th December, 1964, I am to request that you send to this Ministry your birth and academic certificates (if possibly by the Ministry's Messenger or by return mail).

2. Your prompt attention to this request will be greatly appreciated.

Yours faithfully,

? Blackman
for Chief Education Officer (Ag.).

Mrs. Cecile Nobrega,
61 Croal Street,
Georgetown.

cc. Miss Doris Fraser,
Manager, Lodge Govt. School
E.C. Demerara."

"Ministry of Education, Youth,
Race Relations and Community
Development,
21, Brickdam, Georgetown,
British Guiana,
19th March, 1965.

Dear Madam,

Because of your failure to submit to this Ministry your birth and academic certificates as requested so to do in my letter dated 17th March, 1965, I have to inform you that your appointment as Grade I Class I teacher has been rescinded as from today, 19th March, 1965.

2. The effect of such recission is that you will be paid as an unqualified assistant mistress pending the submission of the documents asked for by me. Upon receipt of those documents your status as a teacher will be determined, and a new letter of appointment issued to you.

Yours faithfully,

G. O. Fox,
Chief Education Officer (Ag.)

c.c Manager,
Lodge Govt. School."

Mrs. Cecile Nobrega,
61, Croal Street,
Stabroek, Georgetown.

She continued to perform the same duties but refused to accept the reduced salary. On the 9th April, 1965, she instituted this action in the then Supreme Court (now High Court of Justice) and claimed for -

"(a) a declaration that the plaintiff is entitled to receive from the Government of British Guiana in respect of her services as a teacher at Lodge Government School salary at the rate of $251.00 (two hundred and fifty-one dollars) per month;

"(b) a declaration that the purported reduction of the plaintiff's salary by the Government of British Guiana acting by or through their servants and/or

agents from $251.00 (two hundred and fifty-one dollars) per month in respect of such service to $92.00 (ninety-two dollars) per month is ultra vires and of no effect;

"(c) further or other relief;

"(d) costs."

In October 1965 while the action was still pending, she accepted payment after notifying the Ministry by letter that she did so without prejudice to her rights. She remained in the same teaching position and held it at the time judgment in the action was given in the Court below.

The learned trial judge dismissed the action and gave judgment with costs in favour of the defendant.

From this judgment the appellant now appeals to this Court. She does so on several grounds, but these can be conveniently merged into two questions:

(a) Did a contract of employment subsist between the Crown and the appellant?

(b) If so, could the Crown rescind the contract, or unilaterally vary it so as to effect a reduction of her pay?

The evidence does not disclose neither was it pleaded nor urged, that the appellant induced the contract by any false representation of fact with the intention that such fact should have been acted upon. If therefore the Chief Education Officer by his letter of 19th March, 1965, purported to rescind the Crown's contract with the appellant, such purported rescission was illegal and of no effect.

I agree with the submission of Counsel for the appellant that "dismiss" within the meaning of the expression "the right to dismiss at pleasure" connotes a dispensation with services. It is a sending away, a removal from office or employment. Moreover, it seems that Counsel for the Crown conceded that the Crown had not exercised its right to dismiss, but that the effect of the letter of March 1965 was a continuance in her employment but at a reduced pay. Indeed the learned trial Judge in the course of his judgment said:-

> "Both Counsel for the plaintiff and Counsel for the Crown agree that there was a contract of service and the Crown could dismiss at pleasure. The only issue is whether or not the Crown can, without dismissal, reduce the salary of its servant."

It seems to me that implicit in that statement is a finding that there was no dismissal. Nevertheless the learned trial Judge went on to find that -

> "In the present case Exhibit 'F' clearly communicated that the plaintiff's appointment as a Grade I Class I teacher has been rescinded as from 19th March, 1965, and a new appointment was offered to her. She could have exercised her right in leaving the service, but having not done so it must be taken that she accepted that new appointment, subject to her rights being determined by the Court. She can still refuse to serve if she wishes."

The evidence does not in my view support the finding that a new appointment was offered to the appellant. The letter purported to rescind the appointment - an aspect with which I have already dealt in this judgment. - and then went on to state that she "would be paid as an unqualified assistant mistress." Its effect was merely to reduce her pay. It stated nothing about the nature of her duties. Even if the letter could be interpreted as an offer of a new appointment she was under no obligation either to accept it or to leave the service. I agree with Mr. Ramsahoye's submission that she was perfectly free to hold the Crown to the payment of the contracted salary while continuing to perform the same duties, and that her refusal to leave the service and to seek redress in the Courts could not be considered an acceptance of the reduced salary or of an appointment on different terms.

It was also conceded that the Education Code enacted in accordance with the provisions of the Education Ordinance, Cap. 91 applies only to Denominational Schools and Church Schools and not the Government Schools. Consequently, no statutory provisions applied to this appointment.

There are numerous authorities which establish that in the circumstances of this case there subsisted a binding contract between the Crown and the appellant, subject to the Crown's right - in the absence of statutory provision to the contrary - to terminate the service and consequently the right to salary, at pleasure. *R v. Fisher*, (1903) A.C. p. 158: *Williams v. Howarth*, (1905) A.C. p. 551; *Riordan v. The War Office*, (1959) 3 A.E.R. p. 552; *Reilly v. R.* (1934) A.C. 176; *Gould v. Stuart*, (1896) A.C. 575.

In *Riordan v. The War Office*, (1959) 3 A.E.R. p. 552, Diplock, J., said:

> "These regulations seem to me to purport to lay down mutually binding terms of employment between the Crown and the employee, to which the assent of the employee has to be obtained on his entering into the service of the Crown. Whether this involves what is strictly a contractual relationship between the Crown and persons who have assented to serve subject to the regulations (as the Judicial Committee of the Privy Council appears to have thought it might in *Reilly v. R.* or not, it seems to me that it is at least sufficiently analogous to a contractual relationship to make it proper for me to construe the regulations in the same way as I would the terms of a contract of employment. Applying these canons of construction, it seems clear that reg. 437, by providing for a specified period of notice of termination of employment to be given to an employee by the Crown except in the specific case of casual employees, purports to exclude the Crown's right to terminate the employee's service at pleasure, that is to say, at any time and without any previous notice, but in so far as the regulations do purport to take away the Crown's right to dismiss the plaintiff summarily, whether by way of contract or otherwise, they are in my view void: per Lord Halsbury, L.C. (obiter) in *De Dohse v. R.*; Tucker, J., in *Rodwell v. Thomas*; and Lord Goddard, C.J., in *Terrell v. Secretary of State for the Colonies*. These cases were based on contract, as was *Dunn v. R.*, which is a direct authority binding on me, and such a provision purporting to exclude the Crown's power to terminate services at pleasure, if purporting to be made by way of contract as distinct from statute, was ruled against as ultra vires and so void: *Gould v. Stuart*."

In the High Court of Australia in *Carey v. The Commonwealth* (1921) 30 C.L.R. p. 132, Higgins, J. in the course of his judgment said at p. 137:

> "But it is said that there is no *contract* with the plaintiff - that the plaintiff was merely appointed, placed in a condition of service; and that certain corres-

> pondence between the Department and the plaintiff which took place before the Gazette notice is not evidence. This correspondence (13th to 16th June) 1919 shows an offer to the plaintiff and an acceptance by him before the Gazette notice of appointment; and the defendant argues that this correspondence is not admissible, and that because it is not admissible, there is no contract proved. The Crown, it is said, does not contract with its servants. In my opinion, both these arguments are wrong. The relation between the Crown and its servants involves a contract (cf. *Williams v. Howarth*).

In view of Crown Counsel's concession of this point in the Court below and in this Court it is unnecessary to dilate upon it any further. The only question for determination now is whether the Crown could unilaterally vary the contract so as to effect a reduction of the appellant's pay.

In coming to the conclusion that the crown could legally do this, the learned trial Judge relied on the following statement of Professor Glanville Williams in "Crown Proceedings":

> "The Crown has a right to reduce its servant's pay. In the case of Civil Servants that right follows as a logical consequence from the right to dismiss at will. If the Crown can dismiss at will it can offer to mitigate the exercise of its legal right by continuing the contract of service at a lower rate of pay. It seems on principle that the offer could be refused and that the servant could quit the service without rendering himself liable to an action for breach of contract, even if otherwise he would be liable."

Professor Williams cites the judgment of Rigby, L.J. in *Worthington v. Robinson*, (1897) 75 L.T. p. 446, as authority for that proposition. The latter said at p.

> "I have never heard of such a thing as a Civil servant holding office at pleasure having a right to question the acts of those civil servants who have dismissed him from his office. I treat what has happened as a dismissal because though in effect he has been reduced to a lower position, his new appointment is in fact a re-appointment.

In that case, however, there was statutory provision for the reduction or discharge of any officer and the other judge based his judgment on that. In those circumstances the statement of Rigby, L.J., is no more than *obiter;* with which I respectfully disagree. Also with great respect, I do not agree with Professor Glanville Williams that the Crown's "right" to reduce its servant's pay "follows" as a logical consequence from the right to dismiss at will". The reason for the Crown's overriding right to dismiss a civil servant at will, in spite of a term to the contrary in his contract, is stated in *Rederiaktiebolaget Amphitrite v. The King* (1921) 3 K.B. 500 at pp. 503-4:-

> "The government cannot by contract hamper its freedom of action in matters which concern the welfare of the State. Thus in the case of the employment of public servants, which is a less strong case than the present, it has been laid down that, except under an Act of Parliament, no one acting on behalf of the Crown has authority to employ any person except upon the terms that he is dismissible at the Crown's pleasure; the reason being that it is in the interests of the Community that the Ministers for the time being advising the Crown should be able to dispense with the services of its employees if they think it desirable."

This reason cannot in my opinion be advanced for a reduction in pay. To say, therefore, that the right to reduce pay logically follows the right to dismiss is a "non sequitur".

In my view in order to justify a reduction in pay - well intended compromise though it may be on the part of the Crown - there must be an enabling term in the contract or provision in a relevant statute; failing either of these, any variation of the contract must be mutual.

In *Hill v. Peter Gorman, Ltd.* (1957) 9 D.L.R. p. 124 the headnote reads as follows:-

> "Indefinite hiring on commission basis - Subsequent withholding by employer of percentage of earned commissions as reserve for bad debts Protests by employee but continuance in employment - Whether original contract properly varied - Plaintiff was employed by defendant as a salesman under a contract providing for an indefinite employment terminable on two weeks' notice and which fixed his remuneration as a stipulated rate of commission on nett sales. The contract included a restrictive-covenant appli-

cable for one year in respect of the area of employment should plaintiff's employment be terminated for any cause. Defendant was concerned about delinquent customers' accounts and, although plaintiff's contract did not so provide, defendant subsequently began to deduct (withhold) 10% of commissions, earned by plaintiff and by other salesmen as a reserve for bad debts. Plaintiff complained periodically about the deductions but remained in defendant's employ for over a year after they were initiated. In an action to recover the withheld commission, the trial Judge found that plaintiff had never agreed to have his commissions reduced by a reserve for bad debts and he preferred plaintiff's evidence to that of defendant's president. **Held,** on appeal by a majority, the trial Judge's findings of fact must be supported, and the judgment for plaintiff affirmed. *Per* J.K. Mackay, J.A.: Mere continuance in employment does not amount, in law, to an acceptance by an employee of unilateral variation by his employer of his contract of employment. Plaintiff was entitled, as he did, to insist on the original terms and defendant was bound thereby on its failure (in view of plaintiff's position) to terminate plaintiff's contract and offer him employment on new terms. *Per* Gibson J.A. dissenting: Plaintiff was at liberty to accept or reject the new terms of employment offered the salesmen and, on his own evidence, he said he accepted 'because he had no alternative', that is, he chose to remain in defendant's employ and must be taken to have done so under the new terms. Defendant had given reasonable notice of its intention to set up the reserve for bad debts, and thus terminated the existing contract of employment."

Mackay, J.A. in the Ontario Court of Appeal said at p. 131 et seq:-

> "I am respectfully of opinion that it cannot be said, as a matter of law, that an employee accepts an attempted variation simply by the fact alone of continuing his employment. Where an employer attempts to vary the contractual terms, the position of

> the employee is this: He may accept the variation expressly or impliedly in which case there is a new contract. He may refuse to accept it and if the employer persists in the attempted variation the employee may treat this persistence as a breach of contract and sue the employer for damages, or while refusing to accept it he may continue in his employment and if the employer permits him to discharge his obligations and the employee makes it plain that he is not accepting the variation, then the employee is entitled to insist on the original terms.
>
> "I cannot agree that an employer has any unilateral right to change a contract or that by attempting to make such a change he can force an employee to either accept it or quit.
>
> "If the plaintiff made it clear to Gorman that he did not agree to the change made in September, 1954, the proper course for the defendant to pursue was to terminate the contract by proper notice and to offer employment on the new terms. Until it was so terminated, the plaintiff was entitled to insist on performance of the original contract."

In *Fairthorn v. Territory of Papua*, 60 C.L.R. 772 the employment of an assistant resident magistrate was regulated by the Papua Act 1905-1934 and the Public Service Ordinance 1907. The plaintiff was reduced in rank by the Lieutenant Governor purporting to act under statutory provisions and was required to act as a patrol officer at a reduced salary. He brought an action for a declaration that the order reducing him in rank was invalid. Before trial the order was cancelled. On the day following the cancellation his appointment was terminated and he was appointed a patrol officer at a lower salary. He then claimed in a second action a declaration that he still held the office of assistant magistrate and that his dismissal was invalid. All the members of the High Court on appeal from a dismissal of the actions held that there could be no complaint about the termination of the employment. A majority held that the reduction was not in accordance with the relevant statutory provisions and the plaintiff was given the costs of the first action which was considered to have been properly brought.

In *Powell v. The Queen*, (1873) 4 A.J.R. 144, it was held that a police sergeant irregularly reduced to the ranks could sue for the difference of pay. It is true that in that case

the employment was governed by a statute which provided that "Every person who has taken and subscribed such oath" (the policeman's oath of office) "shall be taken to have extended into a written agreement with and shall be thereby bound to serve His Majesty as a member of the Force at the regular rate of pay of his rank." In my view, once a contract of service is established, the result is the same.

Neither principle nor binding authority, therefore, supports the view that a contract between the Crown and its servants - except with regard to the implied term of dismissal at pleasure - must be construed in a manner different from the ordinary contract of Master and Servant.

In the circumstances I conclude that the reduction of the appellant's pay was in breach of her contract with the Crown, and therefore illegal.

Article 12 of the Constitution of British Guiana (now Article 8 of the Constitution of Guyana) provides:-

> "12. (1) No interest in or right over property of any description shall be compulsorily acquired, and no such property shall be compulsorily taken possession of, except by or under the authority of written law and where provision applying to that acquisition or taking of possession is made by such a law -
>
> (a) requiring the prompt payment of adequate compensation;
>
> (b) giving to any person claiming such compensation a right of access, for the determination of his interest in or right over the property and the amount of compensation, to the Supreme Court; and
>
> (c) giving to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a Court of original jurisdiction.
>
> (2) Nothing in this article shall affect the operation of any law of the Legislature in force immediately before the date when this Constitution comes into force, or the making after that date and operation of any law which amends or replaces any such law as aforesaid and does not -

(i) add to the interests, rights or property that may be acquired or taken possession of;

(ii) add to the purposes for which or circumstances in which any interest, right or property may be acquired or taken possession of;

(iii) make the conditions governing entitlement to any compensation or the amount thereof less favourable to any person having any interest in or right over any property· or

(iv) deprive any person of any right such as is mentioned in sub-paragraph (b) or sub-paragraph (c) of paragraph (1) of this article

(3) Subject to the provisions of paragraph (5) of this article, nothing in this article shall be construed as affecting the making or operation of any law so far as it provides for the acquisition or taking of possession of property -

(a) in satisfaction of any tax, rate or due;

(b) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence;

(c) as an incident of a lease, tenancy, mortgage, charge, bill of sale or contract;

(d) of the Amerindians of British Guiana for the purpose of its care, protection and management;

(e) by way of the vesting and administration of trust property, enemy property, or the property of persons adjudged or otherwise declared bankrupt, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up;

(f) in the execution of judgments or orders of courts;

(g) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;

(h) in consequence of any provision with respect to the limitation of actions; and or

(i) for so long as may be necessary for the purposes, of any examination, investigation, trial or inquiry, or, in the case of land, the carrying out of work thereon for the purpose of soil conservation.

(4) Nothing in this article shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any property, or the compulsory acquisition interest in or right over property where that property interest or right is held by a body corporate which is established directly by any law in force in British Guiana and in which no moneys having been vested other than moneys provided by any Legislature established for British Guiana.

(5) The resumption of possession by or on behalf of the Crown of any property expressed (in whatever manner) to be held by any person during Her Majesty's pleasure otherwise than by reason of a breach of any condition of defeasance subject to which such property was held as aforesaid shall be deemed to be a compulsory taking of possession of such property for the purposes of this article:

Provided that such resumption of possession shall not be required to be authorised by a written law.

The illegal reduction of the appellant's pay resulted in an unauthorised compulsory taking of the appellant's property in violation of this provision and is consequently void and of no effect.

In *Dyson v. Attorney General* (1912) 158 where a similar declaration was sought Fletcher Molton, L.J., said at p. 168:-

"I think that an action thus framed is the most convenient method of enabling the subject to test the justifiability of proceedings on the part of permanent officials purporting to act under statutory provisions. Such questions are growing more and more important, and I think of no more suitable or adequate proced

for challenging the legality of such proceedings.

This procedure is also in my view most suitable and adequate in the instant case. See also *Lillyman et al v. Attorney General & Commissioner of Inland Revenue*, No. 1905 of 1962, Supreme Court of British Guiana (UNREPORTED) affirmed by the British Caribbean Court of Appeal, 1964, W.I.R. p. 496, in which I expressed the same view.

Accordingly, I would allow the appeal, set aside the judgment and order of the learned trial judge, enter judgment for the appellant and declare that -

(a) The appellant's contract of service with the Government of British Guiana (now Guyana) as a teacher at the Lodge Government School - as evidenced in the letters from the Ministry of Education - (i) No. 1/54/6/482 dated 15th October, 1964, addressed to Mrs. Cecile Nobrega; (ii) No. 2/82/83/340 dated 11th December, 1964, addressed to the Manager, Lodge Government School, subsists.

(b) The purported reduction of the appellant's salary effected a compulsory taking in violation of Article 12 of the Constitution of British Guiana, now Article 8 of the Constitution of Guyana and was therefore void and of no effect.

(c) The appellant is entitled to receive from the Government of Guyana in respect of her services as a teacher at Lodge Government School including her period of secondment to the Ministry of Education, salary at the rate of $251: (two hundred and fifty-one dollars) per month as from 4th December, 1964.

The appellant should have her costs in this Court and in the Court below certified fit for Counsel.

P.A CUMMINGS
Justice of Appeal.

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

(CIVIL JURISDICTION)

GUYANA

CIVIL APPEAL No. 21 of 1966.

BETWEEN:-

CECILE NOBREGA

Appellant (Plaintiff)

-and-

THE ATTORNEY GENERAL FOR GUYANA

Respondent (Defendant).

BEFORE:

SIR KENNETH STOBY, CHANCELLOR.

MR. E.V. LUCKHOO, JUSTICE OF APPEAL.

MR. P.A. CUMMINGS, JUSTICE OF APPEAL.

1966: September 16

1967: April 3.

Mr. F.W.H. Ramsahoye for the Appellant.

Mr. L. Collins, Senior Crown Counsel for the Respondent.

DECISION

LUCKHOO, J.A.

There does not appear to be any dispute on the facts; the issues are matters of Law.

The Ministry of Education (which will be referred to as 'the Ministry') for the main part governs and regulates the affairs of Government owned schools, of which the Lodge Government School is one. The Appellant was on the 11th day of December, 1964, appointed a teacher of this school with effect from the 4th December of that year. Notification of that fact was contained in a letter from 'the Ministry' to the Manager of the school.

It is as follows:-

"The appointment of Mrs. Cecile Nobrega as Grade 1 Class 1 Mistress is approved with effect from 4th December, 1964, subject to Medical examination by a Government Medical Officer. Mrs. Nobrega will be informed later about the date of her medical examination by the Ministry of Health.

2. Details of age, qualifications etc., should be entered on the attached 'Statement of Particulars' and returned to this office as early as possible. Salary at the rate of $251.00 p.m. in the scale $118 x 7 - $195/211 x 10 - 251 x 7 - 258 x 10 - $288, Mrs. Nobrega is seconded to the Ministry of Education."

The appellant served in that capacity from the 4th December, 1964, to the 19th March, 1965, at the stipulated salary of $251 per month.

On the 17th March she was urgently requested by 'the Ministry' in a written communication to send them her birth and academic certificates,

"if possible by the Ministry's messenger or by return mail."

This she did not do; and on the 19th March, 1965, the following letter of that date (referred to as 'the letter') was delivered to her from 'the Ministry':-

"Dear Madam,

Because of your failure to submit to this Ministry your birth and academic certificates as requested so to do in my letter dated 17th March, 1965, I have to inform you that your appointment as a Grade 1 Class 1 Teacher has been rescinded as from today, 19th March, 1965.

2. The effect of such rescission is that you will be paid as an unqualified assistant mistress pending the submission of the documents asked for by me. Upon receipt of those documents your status as a teacher will be determined, and a new letter of appointment issued to you.

Yours faithfully,

G.O. Fox
Chief Education Officer (Ag.)

Mrs. Cecile Nobrega,
61 Croal Street,
Stabroek, Georgetown.

c.c. Manager
Lodge Govt. School."

On that very day, after receiving the same, the appellant delivered to the Education Officer at 'the Ministry' certain certificates and documents; she did not withdraw, but continued, and is still continuing, to give of her services. At the end of March, her pay slip indicated that she was to have been paid Salary to the 19th March, 1965, at $251:- per month, and from the 20th March, to the end of the month at $92:- per month (the pay of an unqualified assistant mistress); she did not accept that payment, but brought suit in April, 1965; and in October, 1965, accepted that amount and further payments at $92:- per month as an unqualified assistant teacher, without prejudice to her case.

Her claim is for -

(a) a declaration that the purported rescission of her appointment as a Grade 1 Class 1 teacher was ultra vires and of no effect;

(b) a declaration that she is entitled to receive from the Government in respect of her services as a teacher at the school salary at the rate of $251:- per month;

(c) a declaration that the purported reduction of her salary from $251:- per month to $92:- per month is ultra vires and of no effect.

The learned trial Judge refused the declarations sought with costs to the defendant to be taxed.

It may be useful here to look at the pleadings to see what the parties said took place after 'the letter' was received. It was the Appellant's case that since the 19th March, 1965, she was offered payment as an unqualified assistant mistress with salary at the rate of $92:-, and that the purported reduction of her salary and status was effected without lawful authority. The Defence said: that after her certificates were evaluated, she was on the 25th March, 1965, appointed as an unqualified assistant mistress with effect from the 20th March, 1965, at a salary of $84:- per month in the scale $72 x 4 - $104 x 6 - $116, and that she was awarded two increments on the scale as a result of her one-year overseas training, which were made payable with effect from the 20th March; and that she was not entitled in law to the Orders claimed as (according to the particular pending) "the questions of her appointment and/or reduction of salary are matters which are exclusively within the discretion of the Crown".

Although inelegantly expressed I have no doubt the intention was to notify the opposite party that the defence would contend that there was a right, at the discretion of the Crown, to terminate the Plaintiff's appointment; alternatively to reduce her salary.

In her evidence the Appellant said:

> "When I went to receive my salary (that is for the month of March) the pay slip had one salary to the 19th March, 1965, at $251:- per month and another salary at $92:- per month calculated from the 20th March, 1965, to the end of the month ... From what was said in the letter on the 19th and because of the short payment I came to the conclusion that my status was reduced."

No evidence was led for the Defence. Although the Apellant did not expressly deny that on the 25th March she was appointed as an unqualified assistant mistress at a certain salary, the inference to be drawn from her evidence is that she received no such communication, and the matter must be examined in that light. Perhaps, (in language not unfamiliar to Government departments) 'the matter is still under consideration', or 'a reply will be sent in due course'.

It is the appellant's case that, in law, she is entitled to payment of salary at the rate of at least $251:- per month from the 20th March, 1965, onwards, and that, the payment of $92:- per month cannot be justified.

To test the validity of the arguments presented on her behalf, I intend to consider the following questions:-

(1) Does the Crown have the right to dismiss the Apellant at pleasure?

If the answer to (1) is in the affirmative,

(2) Was she in fact dismissed?

If the answer to (2) is in the affirmative,

(3) Did she in any way suffer any infringement of any legal rights?

It is well to observe here that the Appellant's appointment was not for any fixed term; nor did it contain any provision purporting to limit dismissal on the part of the Crown; and no statute was applicable to the relationship between herself and the Crown.

Counsel for the Appellant conceded that the right of the Crown to dismiss at pleasure was to be implied in the Appellant's contract of service (this he also did at the trial). However, I propose to examine briefly the state of the law.

In the absence of special statutory provisions, all contracts of service under the Crown are terminable without

notice on the part of the Crown. This is so, even though there be an express term to the contrary in the contract: for the Crown cannot deprive itself of the power of dismissing a servant at will, and that power cannot be taken away by any contractual arrangement made by an Executive Officer or Department of State (See Halsbury 3rd Ed. Vol. 7, pg. 252, para 547).

The principle first emerged in the case of Military servants (See **Re Poe** (1833) 5 B & Ad. 681, 688; **Grant -v- Sec. of State for India** (1877) 2 C P D 445, **De Dohse -v- R** (1866) 3 T L R 114); then later for civil servants (See **Shenton -v- Smith** (1895) A.C. 229; **Dunn -v- R** (1896) - Q.B. 116; **Gould -v- Stuart** (1896) A.C. 575).

In **Shenton -v- Smith** the Privy Council considered that:-

> "unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagements, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law-suit, but an appeal of an official or political kind".

In the Court of Appeal in **Dunn -v- The Queen** it was held that there was no remedy for a public servant who was appointed for the fixed term of 3 years, but who was dismissed within that period. Lord Esher M.R. at pg. 118 quoted with approval the following opinion of Lord Watson in the House of Lords in **De Dohse -v- Reg.** (supra).

> "Such a concluded contract, if it had been made, must have been held to have imported into it the condition that the Crown has the power to dismiss ..... if any authority representing the Crown were to exclude such a power by express stipulation, that would be a violation of the public policy of the country and could not derogate from the power of the Crown."

He then went on to say; that the case of **Shenton -v- Smith**, appeared to him, to be "really conclusive of the matter".

Lord Herschell at pg. 119 was of a similar opinion that -

> "there must be imported into the contract for the employment of the petitioner the term which is applicable to civil servants in general, namely, that the Crown may put an end to the employment at its pleasure."

and Kay, L.J., at pg. 120 and 121, said:

> "It seems to me that the continued employment of a civil servant might in many cases be as detrimental to the interests of the State as the continued employment of a Military Officer ..... In my opinion Sir Claude Mc Donald had no power to appoint a subordinate officer for a definite time, so as to bind the Crown not to dismiss him before that time expired."

In Rodwell -v- Thomas 1944 K.B. pg. 596 at pg. 602 Tucker J., treated the rule as clearly settled and said:-

> "The authorities show not only that, prima facie, an established civil servant can be dismissed at pleasure, but that the Court will disregard any term of his contract expressly providing for employment for a specified time or that his employment can only be terminated in specific ways. The Court regards such a provision in a contract as a clog on the right of the Crown to dismiss at pleasure at any time."

At common Law the trend of Judicial decisions and dicta seems to be that on grounds of Public policy, there is an implied term in such contracts of service, that servants are dismissable at the pleasure of the Crown; and that this right is unfettered, except limited by Law itself.

Since **Rodwell -v- Thomas** support for this rule has been forthcoming from a number of cases including **Terrell -v- Sec. of State for Colonies** (1953) 2 Q.B. pg. 482; **Inland Revenue Commissioner -v- Hambrook** (1956) 1 A.E.R. 807 and **Roidan -v- War Office** (1959) 3 A.E.R. 553, affirmed on appeal (see 1960 3 A.E.R. 774).

The last mentioned case amply illustrates the wide application of the rule. There Diplock J., said

> "It is well established law that the Sovereign, through her officers (in this case the Commanding Officer) can terminate at pleasure the employment of any person in the public service except in special cases where it is otherwise provided by law: (per Lord Goddard C.J. in Inland Revenue Commissioners -v- Hanbrook 1956 1 A.E.R. 807 affirmed (1956) 3 A.E.R. 338). Therefore unless the plaintiff can show that his is a special case where it is otherwise provided by law, he can have no cause of action. Even if his employment was determined summarily by the Commanding Officer on behalf of the Crown without the plaintiff's consent.....; but in so far as the regulations, do purport to take away the Crown's right to dismiss the plaintiff summarily, whether by way of contract or otherwise, they are in my view void; per Halsbury L.C. (obiter) in **De Dohse -v- R**; Tucker J. in **Rodwell -v- Thomas** and Lord Goddard C.J. in **Terrell -v- Secretary**

of State for the Colonies. These cases were based upon contract, as was **Dunn -v- R.**, which is a direct authority binding upon me, that such a provision purporting to exclude the Crown's power to terminate services at pleasure, if purporting to be made by way of contract as distinct from statute, is ultra vires and so void: see also **Gould -v- Stuart** ..... In my view the law is correctly stated by Mr. George Stuart Robertson at pg. 359 of his book (Civil proceedings by and against the Crown), where he says:

"The Crown's absolute power of dismissal can only be restricted by statute and anything, short of a statute, which purports to restrict it, is void as contrary to public policy. I hold therefore that the plaintiff can have no cause of action arising out of termination of his employment."

In the absence of any statutory limitation (and there was none in this case) to take away, abridge, or affect the right, one sees that it could even be used arbitrarily, so that where it is desired to provide safeguards against the possibility of abuse, legislation must so enact to achieve this end.

The answer to the first question then must be in the affirmative.

It will now be necessary to consider the second question, that is, whether in fact the Appellant was dismissed. The submission of Counsel for the Appellant was: that the right of the Crown to dismiss the Appellant was not exercised; that the purported rescission of the Appellant's appointment as a Grade 1 Class 1 teacher was ultra vires and of no effect; because the contract of service with the Crown could only have been rescinded for such a reason as would have permitted the rescission of any other contract, and no so such ground as for example, fraud or misrepresentation or the like, in the formation of the contract was alleged and/or proved.

The arguments of counsel on both sides before the trial Judge, and in this Court proceeded on the basis that there was a contract of service between the Appellant and the Crown. Without pausing to enquire whether this be strictly so or not, I propose to assume in favour of the proposition, and deal with all questions as though a contract did exist.

Such a contract could only be found in the letter of appointment which contained the terms which the Appellant accepted. Put shortly, it could only have been: on the part of the promisor, "I will employ you as a Grade 1 Class 1 teacher at a certain salary, on a certain scale": on the part of the promisee: "I will serve you as such on those terms and conditions"; this (of course) subject to the promisor's right at law to dismiss at pleasure.

If for any reason this appointment should cease to subsist, the contract must necessarily cease to exist. This, could occur by repudiation, which may be lawful and justified, or wrongful and unjustified. Whichever it be, it will determine the contract, and will entitle the other party to treat the contract as at an end. (See Modern law of Employment by Fridman at 479). Repudiation may take the form of acts and conduct, or may arise from words, or a combination of both. Where it comes from some documents, the question whether the writing amounts to a repudiation is one of law.

In this case therefore, apart from the acts and conduct of the parties, the construction of 'the letter' must be of considerable importance together with its implications. However, before coming to that, it may not be amiss to see what the right to rescind really means.

This right to rescind is a right which a party to a transaction sometimes has to set that transaction aside, and by entirely rejecting and repudiating it, no longer makes himself bound thereby.

That right arises in different ways and not always with the same consequences.

Bowen L.J., in his judgment in **Boston Deep Sea Fishing and Ice Co. -v- Ansell** (1888) 39 Ch D. 339 refers to three distinct senses in which it is used and occurs when he said:

> "Some confusion always arises, as it seems to me, from treating these cases between master and servant as instances of a rescission of the original contract in the sense in which the term ordinarily is used - namely, that you relegate the parties to the original position they were in before the contract was made. That cannot be, because half the contract has been performed. It really is only a rescission in this sense, that an act occurs which determines the relation of master and servant for the future, and you may regard that determination in two ways; it is either a determination in conformity with the rights of the master which arise under the contract itself, there being, as I have said, in every contract of service an implied condition that if faithful service is not rendered the master may elect to determine the contract, and the determination takes place on that implied condition; .... or you may regard it under the more general law, which is not applicable to contracts of service alone - you may treat it as the wrongful repudiation of the contract by one party, being accepted by the other, and operating as a determination of the contract from that time - that is, from the time the party who is sinned against elects to treat the wrongful act of the other as a breach of the contract, which election on his part emancipates the injured party

It is not a recission of the contract

from continuing it further."

Counsel for the Appellant in making his above submission undoubtedly had in mind the sense in which the term ordinarily is used, which is adequately explained by Lord Atkinson in **Westville Shipping Co. -v- Abram Steamship Co. Ltd., 1923 A.C. 773** as follows:-

> "Where one party to a contract expresses by word or act in an unequivocal manner that by reason of fraud or essential error of a material kind inducing him to enter into the contract he has resolved to rescind it, and refuses to be bound by it, the expression of his election, if justified by the facts, terminates the contract, puts the parties in statu quo ante and restores things, as between them, to the position in which they stood before the contract was entered into. It may be that the facts impose upon the party desiring to rescind the duty of making restitution in inte-grum. If so, he must discharge this duty before the rescission is, in effect, accomplished: but if the other party to the contract questions the right of the first to rescind, thus obliging the latter to bring an action at law to enforce the right he has secured for himself by his election, and gets a verdict, it is an entire mistake, I think, to suppose that it is this verdict which by itself terminates the contract and restores the antecedent status. The verdict is merely the judicial determination of the fact that the expression by the plaintiff, of his election to rescind was justified was effective, and put an end to the contract."

No question of fraud, misrepresentation or the like having arisen the use of the term in this sense obviously could not apply. If it were the only sense recognised by law Counsel's argument would merit serious consideration, but, this is neither by authority, or, common sense, so as Bowen L.J. has pointed out in **Boston Deep Sea Fishing Co. -v- Ansell**, it has another sense in which there is a determination of the relation of master and servant for the future, in conformity with the rights of the master which arise under the contract itself.

The right to rescind in this case does not spring from any arbitrary or fanciful assertion; it is the logical consequence of the right to dismiss at will given by law to the Crown and which is said to be implied in such a contract of service with the Crown; it is the instrument to achieve a purpose, or bring about a result, countenanced by law and must be given the same recognition and acknowledgement as if it were an express term of the contract.

In rescinding, the determination takes place on that implied condition in the same way as a master may elect to determine a contract of service when a servant is in breach

of an implied condition to give faithful service.

Was there then any rescission of the Appellant's appointment which brought about her dismissal? The answer to this question will be forthcoming from a construction of 'the letter' already herein set out at length. The crucial intimation there was:

> "I have to inform you that your appointment as a Grade 1 Class 1 teacher has been rescinded as from today 19th March, 1965."

The language here is unequivocal. There could be no doubt as to the meaning of the words employed. They told the Appellant bluntly that her appointment was brought to an end. The annulment was unconditional; a reason was, but need not have been given. As from the 19th March, then, the Appellant ceased, to be a Grade 1 Class 1 teacher. The salary which belonged to that appointment became lost to her; and its scale in applicable. This meant that the further performance of the contract under her original appointment was no longer possible; that contract was discharged; and end was put to it; and she stood dismissed from that post.

And when once a contract is rescinded in any way provided or permitted by law it is completely discharged and cannot be revived (see **R. -v- Inhabitants of Gresham** (1786) 1 Term Rep. 101).

So that she would have had to vacate her office immediately after the extinguishment of that appointment, unless a new opportunity of service was offered and accepted which would result in continuity. This offer was made in the second paragraph of 'the letter'; she accepted and resumed employment upon the terms and conditions there stated. She was under no obligation to do so since whatever contract there was originally was swept away after rescission. In effect she was really being told:

> " we will have you as an unqualified assistant mistress pending the submission of the documents asked for" - "If you submit these documents then your status as a teacher will be determined; after which a new letter of appointment will be issued to you."

The intention was that she should continue on a temporary basis, if she wished to do so, at a certain rate of pay until (a) she had complied with the demand to submit documents and (b) those documents were evaluated to determine her future position. If she did not wish in the first instance to give of any further service then that would have been the end of the matter; but if, however, she was minded to serve temporarily and submit the documents requested, then the door was left open for the offer of a new appointment, which, again,

she would have the option of refusing, if it did not suit her.

It may well be that the language in the second paragraph could have been more relaxed and less imperious; but I do not consider that this has in any way jeopardised the meaning which arises so naturally. In essence there was a proposal on terms, so that when the Appellant resumed duties albeit the same duties, it was certainly not on the same conditions as had hitherfore prevailed.

When she did so, she knew:-

(a) That her original appointment had been rescinded as from the 19th March; that she was no longer a Grade 1 Class 1 teacher, with the pay pertaining thereto;

(b) That if she continued to work thereafter it would be as an unqualified assistant mistress, with payment on that basis;

(c) That if she submitted her documents review of her position with the offer of a new appointment.

When therefore, with the knowledge which she had as set out at (a), (b), and (c), she served further after the rescission of the original appointment was communicated to her, and then, without reservation, and proceed to submit her birth and academic certificates, this conduct could only be interpreted as an unqualified acceptance of the proposals contained in the second paragraph of the letter. I am coerced to conclude that she accepted a new appointment from the 19th March; and by complying with, and acting upon, the request to submit the documents asked for, she was seeking to be considered for yet another. She had made a deliberate choice and elected to continue on a new basis. Her only entitlement then would be to have what is specifically stated in 'the letter'.

I cannot agree that rescission was there used to mean less that it does; it has a precise meaning.

In considering whether there was repudiation, the test laid down by Lord Coleridge C.J. in **Freeth -v- Burr** (1874) L.R. 9 CP 208 and approved in **Themersey Steel & Iron Co. -v- Naylor, Benzon & Co.** (1884) 9 A.C. 434 is -

" Whether the acts and conduct of the party evince an intention no longer to be bound by the contract."

In this case this intention was evinced by an express declaration by the employer that the particular appointment was determined which meant that services under that appointment could no longer subsist. Also. at the end of that

month the Appellant's pay slip clearly confirmed this declaration by providing for payment as a Grade 1 Class 1 teacher only up to the time of the rescission of that appointment. There was no necessity to have said in 'the letter': "You have been or are **dismissed** as a Grade 1 Class 1 teacher". The words used sufficiently indicate this. In **Vos -v- Rubel Bronze & Metal Co. Ltd.** (1918) 118, L.T. pg. 348 an employer suspended his servant from the position which he held as a general manager and thereafter prevented him from exercising his duties or giving orders, the ground alleged being inefficiency, with a view to carrying out a full investigation. Mc Cardie J. there said -

> "Dismissal may be effected by conduct as well as words. A man, in my opinion, dismisses his servant if he refuses by word or conduct to allow the servant to fulfil his contract of employment ..... I see no distinction in such a case as the present between a wrongful repudiation by the defendants of their contractual obligations and a wrongful dismissal in the ordinary sense of the phrase".

Rescission does not vary, it dissolves. Any contract rooted in an appointment must be dissolved with the dissolution of the appointment, and any new agreement which follows on the original cannot revive it.

As Lord Mansfield C.J. said in **R -v- Inhabitants of Gresham** (1786) 1 Term Report 101):

> "If it appear the contract has been once dissolved, it cannot be set up by a new agreement."

There is nothing to prevent the Crown from dismissing and re-employing subsequently, or, immediately afterwards, that is, dismissing to dispense with services pertaining to a particular status, which carries a particular rate of pay, with or without reasons for so doing, in order to re-employ at another level, and, another rate of pay; as for example, to dismiss a Grade 1 Class 1 teacher at $251:- per month in order to re-employ the same person immediately as an unqualified assistant mistress at $92:- per month. Just as it could be for good reason, so also it could be malicious and vindictive; but, as long as this absolute right to dismiss remains, to probe the motivation would be useless, except some statutory provision exists to ground dismissals in a legal way for cause only.

The learned trial Judge in his Judgment at first approached the issue somewhat illogically when he said:-

> "Both counsel for the Plaintiff and counsel for the Crown agree that there was a contract of service and the Crown could dismiss at pleasure. **The only issue, then, in the present case is whether or not the Crown**

can, without dismissal, reduce the salary of it's servant'.

The question posed does not follow from what both counsel were able to agree upon.

Later the learned Judge went on to say -

> "In the present case Exhibit "F" ('the letter') clearly communicated that the plaintiff's appointment as a Grade 1 Class 1 teacher has been rescinded as from the 19th March, 1965, and a new appointment was offered to her. **She could have exercised her right in leaving the service, but having not done so it must be taken that she accepted the new appointment**, subject to her rights being determined by the Court. She can still refuse to serve if she wishes."

Although it was appreciated that there was a 'rescission' and acceptance of a 'new appointment', yet the consequence of this was not fully explored. If the Appellant (as the learned Judge held) could have exercised the right to leave the service, was it not because of the 'rescission' of her original appointment, which constituted a dismissal therefrom? And also was it not because there were no subsisting ties which bound her to the Crown?

Was not the offer of 'A new appointment' and acceptance thereof, confirmatory of a termination of the 'first appointment' which it is claimed, still exists? If the rescission was not ultra vires, then what else could it have effected, but a dismissal? Any re-employment after dismissal, even if it follows immediately afterwards creates and establishes a fresh relationship distinct from and independent of that which originally existed, and under these circumstances there could be no question of 'reducing" the former salary. The device of dismissal and re-employment could be legitimately used to bring about a reduction in status and salary, provided the servant agrees to serve again. It is within his province to say: "I do not wish to serve you any longer - I will not accept a lesser status or salary than I had before." In this case when the Appellant served after rescission (as was pointed out before) she did so with full knowledge of the conditions applicable, set out in paragraph 2 of the letter. If the termination was not ultra vires and was effective then the fact that she did not uplift her salary at the end of the month, or did so without prejudice months after, cannot affect the situation; she could not have been forced to serve, but she did.

In **Worthington -v- Robinson** (an unsuccessful action for damages for loss of salary against a superior officer who had reduced the plaintiff in rank), Rigby L.J. said:-

> "I have never heard of such a thing as a Civil Servant, holding office at pleasure, having the right to question the acts of those Civil Servants who had dismissed him from his office. I treat what has happened as a dismissal, because, though in effect he has been reduced to a lower position, his new appointment is in fact a re-appointment."

There, the learned Judge was treating the reduction in rank as a re-appointment at a lower salary following on an implied dismissal. Although this statement was unnecessary, for the purpose of the decision, since the Inland Revenue Regulations made express provisions for a reduction in rank, yet, it seeks to ascertain whether in the absence of express language which amounts to a dismissal, 'what has happened' could be treated as 'a dismissal', and whether what purports to be the continuation of the original employment, is not in reality a 'new appointment'. I find this to be a very useful form of approach.

The second question as to whether the Appellant was in fact dismissed must be answered in the affirmative.

On the remaining question Counsel argued that the Appellant's right to the contractual salary is a right of property which was protected by Article 12 of the then Constitution of British Guiana (now article 8 of the Constitution of Guyana) and the unilateral action of the Crown in depriving the Appellant of the contractual salary except in accordance with a term of the contract expressor implied was a violation of the said article rendering the deprivation unconstitutional and illegal.

Assuming the contractual salary is a right of property, so protected, the significant words in this submission are 'except in accordance with a term of the contract express or implied'. Since in this case there exists the right to dismiss at will, ex hypothesi, there could be no unconstitutional deprivation of any right of property; this right to have will cease as a result of the exercise of that right of dismissal.

In **Reilly -v- The King** (1933) 150 The Law Times at page 384, the appellant was in 1928 appointed a member of the Federal Appeal Board which had been constituted by an Act to amend the Pensions Act (Cap. 62 of the Status of Canada, 1923) for a term of five years. By an Act to amend the Pensions Act passed in 1930 the Federal Appeal Board was superseded by a Pensions Tribunal and a Pensions Appeal Court. Neither the appellant nor any of the members of the old Board were appointed to the new tribunal or Court, nor was any compensation paid to them. The appellant accordingly presented a petition of right alleging that in breach of contract he had been dismissed and claimed damages. It was held:

That so far as the rights and obligations of the Crown and the appellant rested on statute, the office held by the appellant was abolished and there was no statutory provision made for holders of the office so abolished. So far as the rights and obligations rested on contract, further performance of the contract had been made by statute impossible, and the contract was put an end to. In the result, therefore, the appellant had failed to show a breach of contract upon which to found damages.

Lord Atkin said at page 386:-

> "Finally, and almost inevitably in such a case, an appeal was made to the British North American Act, and it was said that legislation abolishing the office without compensation was an interference with "property and civil rights". But, as before, if the right was in itself determinable by statute, there was no interference with it.
>
> It would be strange that the Dominion should have power to create an office, but not power to abolish it except on the terms of awarding compensation apparently for the full term of the original office. The case on this point may be put in two ways. Either the Act of 1930 did not interfere with any civil right, or, if it did, its interference was necessarily incident to the undoubted power of the dominion to abolish the old and create the new office. For the reasons above given the former seems preferable, but neither will suffice."

I fail to see in this case what property or right over property was compulsorily taken possession of by the Crown, or how it could be said that there was interference with property rights, when by a justifiable step in law, the original entitlement became lost.

In the result therefore I hold that the Crown had the right in this case to dismiss at pleasure; that such a dismissal did take place and that consequent upon this dismissal there was no infringement of any legal right which the Appellant had under the Constitution or otherwise.

I would dismiss the appeal with Costs.

EDWARD V. LUCKHOO,
Justice of Appeal.

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE.

CIVIL APPEAL No. 12 of 1966.

BETWEEN:-

CECILE NOBREGA,

Appellant (Plaintiff),

- and -

THE ATTORNEY GENERAL FOR BRITISH GUIANA.

Respondent (Defendant).

BEFORE:

THE HONOURABLE SIR KENNETH STOBY, CHANCELLOR

THE HONOURABLE MR. E. V. LUCKHOO, JUSTICE OF APPEAL

THE HONOURABLE MR. P. A. CUMMINGS, JUSTICE OF APPEAL

DATED THE 3RD DAY OF APRIL, 1967

ENTERED THE 25TH DAY OF APRIL, 1967.

UPON READING the Notice of Appeal on behalf of the abovenamed Appellant (Plaintiff) dated the 1st day of March, 1966,and the record of appeal filed herein on the 7th day of June, 1966.

AND UPON HEARING Dr. F. H. W. Ramsahoye of Counsel for the Appellant (Plaintiff) and Mr. L. Collins, Senior Crown Counsel of Counsel for the Respondent (Defendant).

AND MATURE DELIBERATION THEREUPON HAD.

IT IS ORDERED that this appeal be allowed AND THAT the Judgment of the Hon. Mr. Justice Chung dated the 20th day of January 1966 whereby it was adjudged that Judgment be entered for the res-

pondent (defendant) with costs be wholly set aside and in lieu thereof that judgment be entered for the Appellant (Plaintiff).

THEREFORE THIS COURT DOTH DECLARE that the purported rescission of the Appellant's (Plaintiff's) appointment as a Grade I, Class I teacher is ultra vires and of no effect AND THAT the Appellant (Plaintiff) is entitled to receive from the Government of British Guiana now Guyana in respect of her services as a teacher at Lodge Government School, Salary at the rate of $251.00 (two hundred and fifty-one dollars) per month as from the 4th December, 1964. AND THIS COURT DOTH FURTHER DECLARE that the reduction of the Appellant's (Plaintiff's) salary by the Government of British Guiana now Guyana acting by or through their servant and/or agents from $251.00 (two hundred and fifty-one dollars) per month in respect of her services as a teacher to $92.00 (Ninety-two dollars) or any other sum per month is ultra vires and of no effect.

AND IT IS FUFTHER ORDERED that the costs of this appeal together with the costs of the action in the High Court be taxed certified fit for counsel and paid by the Respondent (Defendant) to the Appellant (Plaintiff).

BY THE COURT

H. MARAJ

SWORN CLERK & NOTARY PUBLIC
FOR REGISTRAR.

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

CIVIL APPEAL No. 12 of 1967

BETWEEN:

CECILE NOBREGA,

Appellant
(Plaintiff)

- and -

THE ATTORNEY GENERAL
OF BRITISH GUIANA

Respondent
(Defendant)

BEFORE THE HONOURABLE MR. E. V. LUCKHOO, JUSTICE OF APPEAL (IN CHAMBERS)

SATURDAY THE 29th DAY OF APRIL, 1967.

ENTERED THE 10TH DAY OF MAY, 1967.

UPON the Petition of the abovenamed respondent dated the 20th day of April, 1967 for leave to appeal to Her Majesty in Council against the judgment of the Court comprising the Honourable Sir Kenneth Stoby, Chancellor, the Honourable Mr. E. V. Luckhoo, Justice of Appeal and the Honourable Mr. P. A. Cummings, Justice of Appeal, delivered herein on the 3rd day of April, 1967:

AND UPON READING the said Petition and the affidavit of the Crown Solicitor in support thereof sworn to on the 20th day of April, 1967 and filed herein:

AND UPON HEARING Mr. L. F. Collins, Senior Crown Counsel, of counsel for the respondent and Dr. F. H. W. Ramsahoye, of counsel for the appellant:

THE COURT DOTH ORDER that subject to the performance by the said respondent of the conditions hereinafter mentioned and subject also to the final order of this Honourable Court upon due compliance with such conditions leave to appeal to Her Majesty in Council against the said judgment of the Court of Appeal of the Supreme Court of Judicature be and the same is hereby granted to the respondent:

AND THIS COURT DOTH FURTHER ORDER that the respondent do within six (6) weeks from the date hereof enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of $2,400: (two thousand four hundred dollars) with one or more sureties or deposit into Court the said sum of $2,400.00 for the due prosecution of the said appeal and for the payment of all such costs as may become payable to the appellant in the event of the respondent not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or for the part of such costs as may be awarded by the Judicial Committee of the Privy Council to the respondent on such appeal:

AND THIS COURT DOTH FURTHER ORDER that all costs of and occassioned by the said appeal shall abide the event of the said appeal to Her Majesty in Council if the said appeal shall be allowed or dismissed or shall abide the result of the said appeal in case the said appeal shall stand dismissed for want of prosecution:

AND THIS COURT DOTH FURTHER ORDER that the respondent do within four (4) months from the date of this order in due course take out all appointments that may be necessary for settling the record in such appeal to enable the Registrar of this Court to certify that the said record has been settled and that the provisions of this order on the part of the respondent have been complied with:

AND THIS COURT DOTH FURTHER ORDER that the respondent be at liberty to apply at any time within five (5) months from the date of this order for final leave to appeal as aforesaid on the production of a Certificate under the hand of the Registrar of this Court of due compliance on his part with the conditions of this order.

AND THIS COURT DOTH FURTHER ORDER that there be a stay of execution of the order for costs made by this Court on the determination of the appeal on the 3rd day of April, 1967 and that the costs of and incidental to this application be the costs in the cause.

LIBERTY TO APPLY.

BY THE COURT

H. MAHRAJ
SWORN CLERK AND NOTARY PUBLIC
FOR REGISTRAR.

Exhibit "A"

L.E.H.

A.S.C.

12/1/66

COMMONWEALTH EDUCATIONAL COOPERATION

The writing, production and distribution of textbooks - Notes of guidance for applicants for training bursaries tenable in Britain 1963 / 1964.

Introductory:

1. At the second Commonwealth Education Conference held at New Delhi in January, 1962, the growing need for suitable textbooks for developing countries of the Commonwealth and for training in the writing, preparation and production of textbooks was underlined. At the conference, it was announced that Britain hoped to provide a number of bursaries annually for a new course of training in this field. Arrangements for this have now been completed.

A new special course:

2. From Autumn, 1963, a new course in the theory and practice of textbook writing, production and distribution will be provided in the University of London Institute of Education.

Qualifications for admission:

3. The course is intended for persons from overseas who are employed in literature bureaux, textbook units or similar establishment, or are earmarked for such employment. They must have suitable academic qualifications and normally should have had at least five (5) years relevant experience in education or publishing.

Content of Course:

4. The course will extend over one academic year of full-time study from October to June, and is designed to give specialist knowledge of the problems and technique of textbook design, production and the related publishing and distribution activities, with provision for related practical work, experience in publishing houses in Britain and the discussion of problems in the country where the student works.

5. The formal work of the course will include:

(a) the purpose and use of textbooks;

(b) the making of a book; a course of lectures, demonstrations and seminars on the design and technique of book production;

(c) the problems of grading of content, vocabulary, sentence structure, exercises, text and illustrative material; and the integration of teachers' materials, work books and ancillary aids;

(d) the analysis of selected specimen materials;

(e) an exercise in the design and writing or a piece of textbook material;

(f) a course of lectures and demonstrations on the publishing, printing, and distribution, of textbooks, and publicity methods;

(g) a period of observation and practical work in a publishing house, including visits to printers, distributors and sales agencies;

(h) cooperation between publishing and educational authorities; and

(i) the economics of textbook publishing.

Certificate of attendance:

6. There will be no formal examination or award of a qualification, but students who pursue the course to the satisfaction of the Institute will be provided with a certificate. In addition they will receive a certificate from the British Government to show that they have held a Commonwealth Bursary.

Number of places and bursaries:

7. For 1963/64 Britain offers up to twelve (12) bursaries for this new course. The notes which follow describe the rate of grant payable and include a brief description of the selection procedure which will be carried out in conjunction with the London University Institute of Education, as it is intended that only candidates awarded Commonwealth Bursaries shall be admitted to the course. Candidates should read these notes carefully before completing their application forms.

Rates of Grant:

8. Bursaries will cover all tuition and essential incidental travel costs and maintenance grants at the following rates. These rates are calculated to be sufficient for a bursar only; **no grants are paid by the British Government in respect of persons (relatives or dependants) other than the bursar.**

(a) **Residential** (in hostel)

Full board and lodging, plus pocket money at the rate of 12s.6d. a day in London, during term-time. When the bursar is not in residence, vacation payments are made on the scale described in (b) below.

(b) **Non-residential** (in lodging)

£44.0s. per month.

(c) **Other Grants**

Books and Apparatus One Payment of £25
Warm clothing allowance One payment of £40

9. The British Government do not undertake, unless in exceptional circumstances to pay the fares of bursars to and from Britain. This charge is the responsibility of the bursar's own Government.

10. The British Council, 65 Davies Street, London, W.1. (Telephone: GROsvenor 8011), will be responsible for making the payments mentioned in paragraph 8 above.

SELECTION

11. Candidates for bursaries have to be officially sponsored by their Governments. No application can be considered from candidates who do not have this sponsorship. The notes at the head of the application form, Form C.W.B. 11, shows how the applications, together with the medical and knowledge of English forms (Forms C.W.B. 2 and 3), should be completed and returned to the appropriate Department of the candidate's Government in time to be endorsed and despatched to London to reach the Commonwealth Bursary Unit by the 30th November, 1962. Applications are transmitted through Students Branch of the Department of Technical Cooperation to the Commonwealth Bursary Unit in the Ministry of Education.

12. Once an application has been received by the Commonwealth Bursary Unit, the candidate's qualifications and the recommendations made by his Government will be carefully considered by a Selection Committee which will meet in December, 1962, or January, 1963. Each successful candidate will

be allotted a provisional place and a Letter of Award will be sent to him through his own Government as soon thereafter as possible.

GENERAL INFORMATION

13. **Married** applicants are asked to complete paragraph 17 of Part A of Form C.W.B. 11 as precisely as possible and to notify the Commonwealth Bursary Unit immediately of any change of their plans for bringing their families to Britain. This information is essential in view of the shortage of suitable accommodation in London. **Women** applicants are asked to note that they should not take up a bursary if they are pregnant; and that if they are subsequently found to have been pregnant on arrival they are liable to have the bursary withdrawn.

14. Each successful applicant will receive with the Letter of award a handbook prepared by the British Council who are in charge of reception, welfare, and payments of grants. This handbook gives some guidance to bursars about travel to Britain and explains the arrangements for receiving bursars and the conditions under which awards are held. It also gives other general information calculated to be helpful to Commonwealth students in Britain.

Exhibit "B1"

L.E.H.

A.S.C.

12/1/66.

UNIVERSITY OF LONDON

INSTITUTE OF EDUCATION

THIS IS TO CERTIFY THAT

Mrs. Cecile Nobrega

satisfactorily completed the full-time course in Writing, Production and Distribution of Textbooks provided in the Department of Education in Tropical Areas with the co-operation of members of the Publishers Association during the session 1963 - 64.

sgd. ?

Head of Department

Education in Tropical Areas.

H.L. Elvis
Director.

Exhibit "B2"

L.E.H.

A.S.C.

12/1/66.

COMMONWEALTH TEACHER

TRAINING BURSARY SCHEME

THIS IS TO CERTIFY THAT

Mrs. Cecile Nobrega of British Guiana was awarded a Commonwealth Bursary by the Government of the United Kingdom for the academic year (s) 1963/64 and followed a course of study at **UNIVERSITY OF LONDON, INSTITUTE OF EDUCATION.**

Herbert Andrew

JOINT PERMANENT UNDER SECRETARY OF STATE

Department of Education and Science.

Date JUNE, 1964.

Exhibit "C"

L.E.H.

A.S.C.

12/1/66.

emc.

No. 1/54/6/482

MINISTRY OF EDUCATION, CO-OPERATIVES,
& SOCIAL SECURITY,
21, Brickdam, Georgetown,
BRITISH GUIANA,
15th October, 1964.

Dear Madam,

Mrs. Cecile Nobrega - Employment.

I am directed to refer to previous correspondence on this subject and to inform you that the Ministry had wished to offer you a position on its staff. The constitutional machinery which must be invloved in this process is not now functioning and, regretfully, arrangements to create this new post had to be deferred to 1965.

2. In the meantime however, the Ministry is prepared to offer you, on your return to the country, a temporary appointment as a primary school teacher at the salary of about $250.00 per month pending the creation of a suitable post.

3. Meanwhile, the Ministry will utilise your services in the field in which you have been trained.

Yours faithfully,

B. Hinds
for Permanent Secretary.

Mrs. Cecile Nobrega,
1, Lancaster Avenue,
Wimbledon, S.W.19.

Exhibit "D"

L.E.H.

A.S.C.

12/1/66.

No. 2/82/83/340

MINISTRY OF EDUCATION, CO-OPERATIVES
& SOCIAL SECURITY,
P.O. Box 63,
Georgetown, British Guiana.
11th December, 1964.

Dear Sir,

Lodge Government School

Staffing.

The appointment of Mrs. Cecile Nobrega as Grade 1 Class 1 mistress is approved with effect from 4th December, 1964, subject to medical examination by a Government Medical Officer. Mrs. Nobrega will be informed later about the date of her medical examination by the Ministry of Health.

2. Details of age, qualifications etc. should be entered on the attached Statement of Particulars' and returned to this office as early as possible.

Salary at the rate of $251.00 p.m. in the scale $118 x 7 - $195 / 211 x 10 - 251 x 7 - 258 x 10 - $288. Mrs. Nobrega is seconded to the Ministry of Education.

Yours faithfully,
(sgd.) S.K. Singh
for Chief Education Officer.

The Manager,
Lodge Government School.

Salaries pl. note

Mr. " "

IN REPLYING QUOTE DATE
HEREOF AND NO.

EXHIBIT "E"

L.E.H.

A.S.C.

12.1.66.

MINISTRY OF EDUCATION, YOUTH, RACE RELATIONS AND COMMUNITY DEVELOPMENT,

21 Brickdam, Georgetown.
British Guiana
17th March, 1965.

Dear Madam,

With reference to a letter dated 11th December, 1964, from this Ministry appointing you a Mistress at Lodge Government School with effect from 4th December, 1964, I am to request that you send to this Ministry your birth and academic certificates (if possible by the Ministry's Messenger or by return mail).

2. Your prompt attention to this request will be greatly appreciated.

Yours faithfully,

? Blackman
for Chief Education Officer (ag.)

Mrs. Cecile Nobrega,
61 Croal Street,
Stabroek, Georgetown.

c.c. Miss Doris Fraser,
Manager, Lodge Govt. School,
E.C. Demerara.

GOF:PG

IN REPLYING QUOTE DATE
HEREOF AND NO.

Exhibit "F"

L.E.H.

A.S.C.

12/1/66.

MINISTRY OF EDUCATION, YOUTH, RACE
RELATIONS AND COMMUNITY DEVELOPMENT,
21 Brickdam, Georgetown.
BRITISH GUIANA

19th March, 1965.

Dear Madam,

Because of your failure to submit to this Ministry your birth and academic certificates as requested so to do in my letter dated 17th March, 1965, I have to inform you that your appointment as a Grade 1 Class 1 teacher has been rescinded as from today, 19th March, 1965.

2. The effect of such recission is that you will be paid as an unqualified assistant mistress pending the submission of the documents asked for by me. Upon receipt of those documents your status as a teacher will be determined, and a new letter of appointment issued to you.

Yours faithfully,

G.O. Fox
Chief Education Officer (ag.)

Mrs. Cecile Nobrega,
61 Croal Street,
Stabroek, Georgetown.

c.c. Manager,
Lodge Govt. School.

Exhibit "G"

L.E.H.

A.S.C.

12.1.66.

4891

TEL: C.

Government Training School,
Kingston,
Georgetown,
British Guiana.
24th August, 1964.

TO WHOM IT MAY CONCERN

This is to certify that Mrs. Cecile E. Nobrega has been conducting a private Kindergarten and Junior School known as 'Alma Mater' in Georgetown, British Guiana. We have been sending students of the College there for observations purposes and have found it satisfying reasonable educational standards.

(sgd.) F.A. Vaughn-Cooke, B.A.(Lond.),
Dip. Ed. (Lond.)
Principal,
Government Training College.