

26, 1962

IN THE PRIVY COUNCIL

No.8 of 1961

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N:

JEROME FRANCIS (Plaintiff) Appellant

- and -

THE MUNICIPAL COUNCILLORS OF  
KUALA LUMPUR (Defendants) Respondents

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
30 MAR 1963  
25 RUSSELL SQUARE  
LONDON, W.C.1.

68217

GRAHAM PAGE & CO.,  
Whitehall House,  
41, Whitehall,  
London, S.W.1.

Solicitors for the Appellant.

C.GROBEL, SON & CO.,  
4, New Court,  
Lincoln's Inn,  
London, W.C.2.

Solicitors for the Respondents.

ON APPEALFROM THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPURB E T W E E N:JEROME FRANCIS (Plaintiff) Appellant

- and -

THE MUNICIPAL COUNCILLORS  
OF KUALA LUMPUR (Defendants) RespondentsRECORD OF PROCEEDINGSINDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT AT KUALA LUMPUR</u>		
1	Amended Statement of Plaint Appendix "A" thereto Letter, Municipal Treasurer to Appellant	20th April 1959	1
	Appendix "B" thereto	21st June 1957	5
	Notes of Enquiry	19th August 1957	6
	Appendix "B" thereto (continued) - Minutes of a Meeting	18th September 1957	10
2	Amended Statement of Defence Annexure thereto - Letter, Appellant to Municipal Treasurer	5th May 1959	11
		19th August 1957	14
3	Reply	12th May 1959	14
	<u>Plaintiff's Evidence</u>		
4	Jerome Francis	24th November 1959	
	Examination		15
	Cross-Examination		17
	Re-Examination		17
5	T. Sevapragasam	24th November 1959	
	Examination		18
	Cross-Examination		19
	Re-Examination		19

No.	Description of Document	Date	Page
6	Mohamed din bin Ali Examination Cross-Examination	24th November 1959	20 20
7	Goh Keng Swee Examination Cross-Examination Re-Examination	24th November 1959	20 20 21
<u>Defendants' Evidence</u>			
8	A.D.York Examination Cross-Examination Re-Examination	24th November 1959	21 21 22 22
9	Judge's Notes of Closing Speeches of Counsel	24th and 25th November 1959	23
10	Judgment	14th December 1959	27
11	Order	14th December 1959	33
<u>IN THE COURT OF APPEAL AT KUALA LUMPUR</u>			
12	Memorandum of Appeal	21st March 1960	34
13	Judgment of Thomson, C.J.	30th May 1960	38
14	Judgment of Hill, J.A.	21st May 1960	51
15	Judgment of Good, J.A.	25th May 1960	54
16	Order	30th May 1960	61
17	Order allowing Final Leave to Appeal to His Majesty the Yang di-Pertuan Agong	12th December 1960	62

DOCUMENTS TRANSMITTED BUT NOT PRINTED

Description of Document	Date
Notice of Appeal	14th December 1959
Order granting Conditional Leave to Appeal	2nd August 1960

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
P.1.	Letter, Municipal Treasurer to Jerome Francis (This is Appendix "A" to the Amended Statement of Plaint)	21st June 1957	63
P.2.	Letter, Town Superintendent to Jerome Francis	25th June 1957	63
P.3.	Letter, Municipal Treasurer to Jerome Francis	1st October 1957	66
P.4.	Letter, Jerome Francis to Municipal Treasurer	27th June 1957	63
P.5.	Letter, K.Chelvanayagan to Municipal Council	14th October 1957	67
P.6.	Letter, President Municipal Council to K.Chelvanayagan	28th October 1957	69
P.7.	Letter, President Municipal Council to Jerome Francis	28th October 1957	70
P.9.	Notes of Enquiry (This is the first part of Appendix "B" to the Amended Statement of Plaint).	19th August 1957	64
	Minutes of a Meeting (This is similar to the second part of Appendix "B" to the Amended Statement of Plaint)	18th September 1957	65
	Minutes of a Meeting	30th September 1957	65
D.8.	<u>Exhibit not printed</u> Pension Prospectus - Government Seconded Officers	Undated	

IN THE PRIVY COUNCIL

No.8 of 1961

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N:

JEROME FRANCIS (Plaintiff) Appellant

- and -

THE MUNICIPAL COUNCILLORS OF  
KUALA LUMPUR (Defendants) Respondents

10

RECORD OF PROCEEDINGS

No. 1.

AMENDED STATEMENT OF PLAINT

In the High Court

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

CIVIL SUIT NO. 395 of 1957

No. 1.

Amended  
Statement of  
Plaint.

BETWEEN:- Jerome Francis of Kuala Lumpur Plaintiff

- and -

20th April,  
1959.

The Kuala Lumpur Municipal  
Council c/o The Municipal  
Secretary, Kuala Lumpur

Defendants

20

The Plaintiff above-named states as follows :-

30

1. The Plaintiff was at material times a clerical staff in the Town Superintendent's Department of the Municipality of Kuala Lumpur and resides at 141, Abdul Samad Road, Brickfields Kuala Lumpur.

2. The Defendants are the Corporation of the Kuala Lumpur Municipal Council, Kuala Lumpur.

3. On or about the 1st day of July, 1950 the Plaintiff was employed by the Defendants on a month to month basis at the initial basic salary of \$108/- per mensem plus cost of living allowance. On the 1st day of June 1953 the Plaintiff was placed on the permanent staff at the basic salary of \$126/- per mensem plus cost of living allowance.

4. Thereafter the Plaintiff continued on time

In the  
High Court.

No. 1.

Amended  
Statement of  
Plaint.

20th April,  
1959  
- continued.

scale and received his regular annual increments of pay and allowance and was prior to July 1957 drawing a basic salary of ~~₹~~276/- plus cost of living allowance.

5. It was the practice in the Defendants department for members of the staff to cash their personal cheques from the Municipal fiscal funds.

6. Sometime on or about the 19th of June, 1957 the Plaintiff cashed 2 of his cheques for ~~₹~~300/- each from the Municipal Treasury. 10

7. Again on or about the 20th of June, 1957 the Plaintiff again cashed his personal cheque from the Municipal Treasury for the sum of ~~₹~~500/-.

8. Whilst the first two cheques in the sum of ~~₹~~300/- each were not met on presentation, the third cheque for ~~₹~~500/- was honoured.

9. On the 21st day of June, 1957 at about 4 p.m. the Plaintiff received a letter from the Acting Municipal Treasurer the contents of which are as contained in the copy attached hereto and marked "J.F.1". The Plaintiff avers that that part of the statement referring to the fact that the cheques were dishonoured is not true in relation to the cheque for ~~₹~~500/-. 20

10. On the 22nd day of June, 1957 the Plaintiff paid the Municipal Treasurer the sum of ~~₹~~600/-.

11. Thereafter the Plaintiff was purportedly suspended from duty by or on behalf of the Defendants with effect from the 25th day of June,

12. On or about the 18th day of July, 1957 the Establishment Committee of the Defendants resolved that a sub-Committee be appointed to inquire into the complaint against the Plaintiff upon the following terms of reference. 30

"To inquire into the misconduct of Mr. Jerome Francis of the Town Superintendent's Department (and the breach of regulations and discipline by Mr. P. B. Fernandes of the Municipal Treasurer's Department")

That part of the reference within brackets do not relate to the enquiry against the Plaintiff. 40

13. The enquiry was to have commenced on the 15th of August, 1957, but was postponed for a date time and place to be notified subsequently.

14. On the 16th of August 1957 a letter was circulated informing that the enquiry would take place

on the 19th of August 1957. This letter was not received by the Plaintiff until after midday the 19th of August, 1957.

In the  
High Court

15. The Sub-Committee aforesaid, notwithstanding the absence of the Plaintiff proceeded with the enquiry and a copy of the notes of the proceedings together with their recommendations are attached hereto and marked "J.F.2" and the Plaintiff will refer to the same.

No. 1.

Amended  
Statement of  
Plaint.

20th April,  
1959

- continued.

10 16. In the course of the proceedings the Sub-Committee examined the Confidential Report of the Plaintiff which the Plaintiff avers is against natural justice and equity and which in any event was outside the scope of the terms of reference to them and their recommendations thereto was (sic) ultra vires and void.

20 17. The Sub-Committee however found that the Plaintiff had no intention to defraud the Council and recommended that the Plaintiff's suspension should cease and that he should be reinstated into the office, but that further departmental enquiry should proceed quite apart from any action with the incident of the cashing of the cheques.

18. On or about the 18th of September, 1957 the Full Establishment (sic ? committee) accepted the recommendations of the Sub-Committee of Enquiry and notwithstanding the acceptance thereof:

- (i) Neither caused the suspension of the Plaintiff to be vacated;
- 30 (ii) Nor was the Plaintiff reinstated as recommended and accepted
- (iii) Nor was any departmental enquiry held,

but the said Committee proceeded to unlawfully terminate the Plaintiff's employment with effect from the 30th of September, 1957 contrary to good faith natural justice or equity and without any fair hearing and against the terms of employment.

40 18A. Further, if, in the alternative, the Plaintiff was dismissed, which is not admitted, by the President Municipal Council Kuala Lumpur whether on the basis of the Establishment Committee's decision or otherwise then the President Municipal Council Kuala Lumpur was acting contrary to the principles of natural justice, was biased and was wrong in law.

19. The Plaintiff avers that any reference by the aforesaid Sub-Committee to the records of the

In the  
High Court

No. 1.

Amended  
Statement of  
Plaint.

20th April,  
1959

- continued.

Plaintiff was improper prejudicial and ultra vires and the Full Establishment Committee's decision thereon was equally ultra vires or bad in law.

20. The Plaintiff further avers that his work and conduct could not have been unsatisfactory as he received his annual increments of pay regularly (save in one instance when it was deferred for 2 months). It is the practice prior to recommendations for increments of pay for the officer concerned to be certified by his superior that his work and conduct was satisfactory.

10

21. During the period of suspension from the 25th of June, 1957 to the 30th of September, 1957 the Plaintiff was paid only half salary and allowances.

22. And the Plaintiff has suffered damages.

And the Plaintiff prays:-

1. For a declaration that the decision of the Establishment Committee of the Municipal Council is ultra vires and/or null and void.

2. For a declaration that the act of the President Municipal Council Kuala Lumpur in terminating at his pleasure the Plaintiff's services is contrary to the principles of natural justice and is void.

20

~~2(A) For a Rule in the nature of a Writ of Mandamus that the Defendants do cause its Establishment Committee to carry out their acceptance of the recommendations of its Sub-Committee of Enquiry.~~

2(A) For a declaration that the termination of the Plaintiff was wrongful and void and that the Plaintiff has the right to continue his employment with the Defendants as from the 1st day of October, 1957.

30

2(B) Or alternatively that the Defendants do pay general damages for wrongful dismissal and in lieu of reasonable notice of termination of service.

3. For an order for balance of half pay from the 25th of June, 1957 to the 30th of September, 1957.

40

4. For further or other relief as to the Court seems fit and proper.

5. And for costs in this suit.

Dated this 14th day of November, 1957.

Dated this 20th day of April, 1959.

Sgd: K. Chelvanayagam

Sgd: J. Francis

.....  
Plaintiff's Solicitor.

.....  
Plaintiff's Signature.



I, Jerome Francis the above-named Plaintiff hereby declare that the above statement is true to my knowledge except as to matters stated on information and belief and as to those matters I believe the same to be true.

~~Dated this 14th day of November, 1957.~~

Dated this 20th day of April, 1959.

Sgd: J. Francis  
.....  
Plaintiff's Signature.

In the  
High Court.

No. 1.

Amended  
Statement of  
Plaint.

20th April,  
1959

- continued.

10

No. 1 (Continued)

Amended Statement of Plaintiff (continued)

Appendix "A" thereto - Letter, Municipal Treasurer to Appellant, 21st June, 1957.

Kuala Lumpur Municipal Council

Telephone 4205.

Treasurer's Department,  
Municipal Offices,  
P.O.Box 1022  
Kuala Lumpur.

Municipal Treasurer,  
C.A.J.Potter, F.I.M.T.A.,  
A.S.A.A.

21st June, 1957.

Amended  
Statement of  
Plaint  
(continued)

Appendix "A"  
thereto -

Letter,  
Municipal  
Treasurer to  
Appellant.

21st June,  
1957.

20

Mr. Jerome Francis,  
Town Superintendent's Department.

30

My attention has been drawn to the fact that on the 19th June, 1957 you have cashed two cheques bearing Nos.38947 and 38949 on Chung Kiaw Bank Ltd. for \$300/- each on the 20th June another cheque for \$500/- on the same Bank and you have assured that there were sufficient funds to meet these amounts on the cheques issued by you. However, on presentation of the cheques they were dishonoured due to the fact that there were no funds. It is clear therefore that you cashed these cheques knowing full well that there were no funds to meet the cheques.

40

2. You are hereby demanded to pay cash to these three cheques immediately failing which you will be liable for disciplinary action and report will be made to the President Municipal Council for immediate action.

3. This is further to warn you that you are seen during almost all the working hours in the Municipal Treasurer's Department roving about and this

In the  
High Court.  
            
No. 1.  
Amended State-  
ment of Plaint  
(Continued)  
Appendix "A"  
thereto -  
Letter,  
Municipal  
Treasurer to  
Appellant.  
21st June, 1957  
- continued.

habit will not be tolerated any more in my office. Your work is in the Town Superintendent's Department and you must confine your hours within that Department and in any case you will not be allowed to enter the Municipal Treasurer's Department without proper authority from the Town Superintendent.

Sgd: Illegible  
Ag. Municipal Treasurer,  
Kuala Lumpur.

KBS/AW

c.c. President Municipal Council (For information) 10  
Town Superintendent (for action)

This is the copy of letter marked "J.F.1" referred to in the Statement of Plaint of Jerome Francis filed on the            day of November, 1957 in Civil Suit No.395/57.

Senior Assistant Registrar  
High Court  
Kuala Lumpur.

NOTE: The above document was also Exhibit P.1.

Appendix "B"  
thereto -  
Notes of  
Enquiry.  
19th August,  
1957.

No.1 (Continued)

20

Amended Statement of Plaint (Continued)  
Appendix "B" thereto - Notes of Enquiry,  
19th August 1957

CONFIDENTIAL

Kuala Lumpur Municipal Council

Notes of an Enquiry made by the Councillors appointed by the Committee into the case concerning Mr. Jerome Francis on the cashing of Cheques.\*

The terms of reference read as follows :-

"To enquire into the misconduct of Mr. Jerome Francis of the Town Superintendent's Department and the breach of regulations and discipline by Mr.P.B.Fernandez of the Municipal Treasurer's Department". 30

2. Councillors The Hon'ble Raja Mohamed bin Raja Allang, J.P., Mr.A.Tharmalingam and Mr.T.Sivapragasam, M.B.E., O.St.J., enquired into the above matter at 11.00 a.m. on 19th August, 1957 in the Council Chambers.

\*This document is also the first part of Exhibit P.9. 40

3. Mr. Jerome Francis, who is the accused in this case was not present and enquiries as to the service on him showed that although he had acknowledged in writing the receipt of the notice of enquiry fixed for 15th August, there was nothing in writing as to the receipt to the notice of postponed meeting fixed for 19th August. Evidence brought out that the postponed notice was served on an inmate of the house in which Mr. Jerome Francis lived. Nothing further is known.

10

4. On the evidence we have heard at the enquiry we are of the opinion that :-

(a) The first cheque for \$300/- went through the proper channel laid down for cashing such cheques according to the Ag. Municipal Treasurer. The Ag. Asst. Treasurer (Income) did authorise the cashing of this cheque.

20

(b) The second cheque for \$300/- was authorised by the Ag. Paymaster without reference to the Ag. Asst. Treasurer (Income).

(c) The third cheque for \$500/- was cashed on the authority of the Ag. Paymaster without reference to the Ag. Asst. Treasurer (Income) based on the knowledge that the cheque for \$300/- each on the previous day had been cashed.

30

(d) The fact that Mr. Jerome Francis had not been available to give evidence has not enabled us to go into the background of his work and conduct and receive explanation from him to any opinion that we have formed from records and evidence heard, but the\* opinions we have formed as regards the incident of the cashing of cheques are as follows:-

(i) The cashing of the cheque for \$500/- does not involve any intention to defraud since the cheque was normally honoured and cashed by the bank. The point of internal discipline of the cashing of cheques will be referred to later.

40

(ii) The cashing of first cheque for dollars \$300/- with the proper sanction of the Ag. Asst. Treasurer (Income) who is legally authorised to sanction it raised the question of the internal efficiency of the Treasurer's Department where instructions are available, though not in Standing

---

\* The words "opinion that we have formed from records and evidence heard but the" do not appear in Exhibit P.9.

In the  
High Court.

No. 1.

Amended Statement of Plaintiff  
(Continued)

Appendix "B"  
thereto -  
Notes of  
Enquiry.

19th August,  
1957  
- continued.

In the High Court.

No. 1.

Amended Statement of Plaintiff (Continued)

Appendix "B" thereto - Notes of Enquiry.

19th August, 1957

- continued.

Orders, to the effect that no cheque above the amount of dollars \$250/- should be cashed and to the effect that the authority of the Asst. Treasurer (Income) should be obtained before cashing of any cheques of whatever amount.

(iii) The cashing of the second cheque for dollars \$300/- seems to us to have mostly depended on the example of the precedent set by the cashing of the first cheque. Here the instructions were broken not only by the fact that the amount had been more than the amount fixed but only\* the fact that the proper authority had not been obtained from the Asst. Treasurer.

10

(iv) The fact is clear that the bank had dishonoured these two cheques. On finding that the money was not recoverable from the bank Mr. Jerome Francis was informed in writing by the Ag. Municipal Treasurer demanding him to pay the cash to meet these cheques immediately failing which he will be liable for disciplinary action.

20

(v) Mr. Jerome Francis did on receipt of this letter go to the Ag. Municipal Treasurer with the amount involved and did pay the money to him.

(vi) The written explanation of Mr. Jerome Francis lays the blame for the dishonouring the cheques by the bank on his brother who was entrusted with banking enough money to meet these two cheques. However lame that excuse might be, there is a doubt whether this man had any intention to defraud or it is a mere coincidence in which the needs for funds after the banking time compelled him to seek the obligation of brother officers in the Municipality.

30

(vii) Sufficient evidence has come to us that there is a practice especially in the Treasurer's office that obligations involving breaches<sup>o</sup> of instructions have been going on in a large number of cases for a long time prior to this incident.

(viii) We recommend the tightening of the efficiency of the department for future. In the present case, we are of the opinion that the benefit of the doubt should be given to the accused and therefore we are not prepared to say definitely that there was intention to defraud the Council.

40

\* In Exhibit P.9 these words are "but also"

<sup>o</sup> In Exhibit P.9 the word is "breach"

(ix) We have to certain extent gone into the records of this officer from the time he was in the Municipal Engineer's office and then in the Town Superintendent's Office and we have also looked into the Annual Confidential Reports of this officer. He is rather very unsatisfactory<sup>(1)</sup> employee. In the absence of opportunity to question him we are unable to make any recommendations as to any disciplinary action<sup>(2)</sup> to be taken in his conduct of his duties but we have enough to recommend that the Administration should get full reports of this man's work and his capacity to work and his usefulness to the Council in the continuance of his duties. We therefore recommend that this man's suspension should cease and he should be reinstated into the office but that a further departmental enquiry should proceed quite apart from any action with the incident of the cashing of the cheques.

10

20

(x) As to the second part of the terms of reference regarding the breach of regulations and discipline by Mr.P.B.Fernandes we are unanimously of the opinion that no blame could be attached to him and his conduct to his particular case concerned<sup>(3)</sup> with the general practice that is prevalent in this office about which we have referred earlier.

30

(xi) Both the witnesses from the Treasury disclaimed any knowledge of instructions as regards the cashing of cheques from the staff. We admit they are both new to their jobs and in one case, the man was only one week in his office but we are of the opinion that people placed in positions of trust should be provided with all instructions pertaining to that office at the time of their taking over of that office.

(xii) We do not recommend any action to be taken against Mr.P.B.Fernandez.

Sgd: The Hon'ble Raja  
Mohamed bin Raja Allang.

Sgd: Councillor Mr.  
A.Tharmalingam.

40

Kuala Lumpur  
19th August, 1957.

Sgd: Councillor Mr.  
T.Sivapragasam.

In the  
High Court.

No. 1.

Amended Statement of Plaintiff  
(Continued)

Appendix "B"  
thereto -  
Notes of  
Enquiry.

19th August,  
1957

- continued.

- 
- (1) In Exhibit P.9 the words are "rather a very unsatisfactory"
- (2) In Exhibit P.9 the phrase is "to make any definite recommendations as to any definite disciplinary action"
- (3) In Exhibit P.9 the phrase is "in this particular case condoned".

In the  
High Court.

No. 1.

Amended State-  
ment of Plaint  
(Continued)

Appendix "B"  
thereto  
(Continued)

Minutes of a  
Meeting

18th September,  
1957.

No.1 (Continued)

Amended Statement of Plaint (Continued)

Appendix "B" thereto (Continued) -  
Minutes of a Meeting, 18th September, 1957.

Minutes of Meeting of the Establishment Committee held in the Municipal Council Chambers, Kuala Lumpur on Wednesday 18th September, 1957 at 2.30 p.m.

Present:

The President, Municipal Council A.D.York, M.C.S. 10  
Councillor Mr. Chong Soon Lee.  
Councillor Mr. Chong Shih Guan.  
Councillor Mr. A. Tharmalingam.  
Councillor Mr.T.Sivapragasam.

Page 4

CONFIDENTIAL

Sub-Committee of Enquiry-Misconduct of Mr. J. Francis.

A copy of the Notes of Enquiry by Councillors appointed by the Establishment Committee into the misconduct of Mr.Jerome Francis is attached whose recommendations are submitted for the consideration of Committee (Appendix "B"). 20

Decision -

The Committee accepted the recommendations of the Sub-Committee of Enquiry. In view of the adverse reports on Mr.J.Francis work, the Committee decided to terminate his service from 30th September 1957.

Councillor Mr.T.Sivapragasam dissented.

At this stage, Councillor Mr.Chong Soon Lee 30 attended and apologised for being late.

This is the copy of exhibit marked "J.F.2" referred to in the Statement of Plaint of Jerome Francis filed on the day of November 1957 in Civil Suit No. of 1957.

Senior Assistant Registrar,  
Supreme Court,  
Kuala Lumpur.

No. 2.

AMENDED STATEMENT OF DEFENCE

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
CIVIL SUIT NO.395 of 1957

In the  
High Court.

No. 2.

Amended State-  
ment of Defence.

5th May, 1959.

Between:- Jerome Francis Plaintiff

-- and --

The Municipal Councillors of  
Kuala Lumpur Defendants

10 The Defendants above-named state as follows:-

1. Except that the Defendants have no knowledge of the Plaintiff's present residence Paragraph 1 of the Statement of Claim is admitted.

2. The Defendants are The Municipal Councillors of Kuala Lumpur.

3. Paragraphs 3 and 4 of the Statement of Plaint are admitted.

20 4. With regard to Paragraph 5 of the Statement of Plaint it is denied that there was any practice as alleged except in accordance with standing orders. It is a standing order in the Municipal Treasurer's Department that no cheques will be cashed without the authority of the Municipal Treasurer or the Assistant Treasurer (Income) and in no circumstances will cheques in excess of \$250/-- be cashed.

30 5. With regard to Paragraphs 6, 7 and 8 of the Statement of Plaint it is admitted that the cheques were cashed as alleged and that the cheque for \$500/-- was in fact honoured on presentation to the Bank for payment.

6. Paragraphs 9, 10, 11, 12 and 13 are admitted.

40 7. With regard to Paragraph 14 the Defendants have no knowledge of the time when the said notice was received by the Plaintiff. The said notice was however on the 16th August acknowledged by a resident of the house in which the Plaintiff resided and was received by the Plaintiff at some time on or before the 19th August 1957. The document annexed hereto and marked "MCl" is a copy of a letter dated the 19th August 1957 from the Plaintiff to the Municipal Treasurer.

In the  
High Court.

No. 2.

Amended State-  
ment of Defence.

5th May, 1959  
- continued.

8. With regard to Paragraphs 15, 16 and 17 it is admitted that the Sub-Committee proceeded with their enquiry notwithstanding the absence of the Plaintiff. It is denied that such enquiry or the recommendations of the said Sub-Committee were contrary to natural justice and equity or ultra vires and void as alleged or at all and the Defendants will refer to the record of proceedings of the said enquiry for the findings of the said Sub-Committee.

10

9. Except that the Establishment Committee accepted the report of the Sub-Committee on the 18th September 1957 Paragraph 18 of the Statement of Plaintiff is denied. In particular it is denied that the Establishment Committee proceeded to terminate the Plaintiff's employment with effect from the 30th September 1957 as alleged or at all. The President of the Municipal Council was the Chairman of the meeting of the Establishment Committee held on the 18th September 1957 and in his capacity as President decided to terminate the Plaintiff's services with effect from the 30th September 1957. This decision was in fact approved by the Establishment Committee on the 18th September 1957 and by the Municipal Council at their meeting on the 30th September 1957 although such approval was in no way necessary to the valid determination of the Plaintiff's services by the President.

20

9A. With regard to Paragraph 18A it is denied that the President Municipal Council Kuala Lumpur in dismissing the Plaintiff acted in a manner contrary to the principles of natural justice and it is denied that the President in so acting was biased or was wrong in law. The President was acting in accordance with the powers conferred upon him by Section 16(5) of the Municipal Ordinance.

30

10. The allegations contained in Paragraph 19 of the Statement of Plaintiff are denied and in particular it is denied that any decision was made by the Establishment Committee other than to approve the decision of the President to terminate the services of the Plaintiff.

40

11. With regard to Paragraph 20 it is admitted that the Plaintiff received his salary increments as alleged but it is not admitted that the Plaintiff's work and conduct was satisfactory.

12. Paragraph 21 of the Statement of Plaintiff is admitted.



13. The Statement of Plaint discloses no cause of action against the Defendants in that the Plaintiff was not dismissed by reason of any decision made by the Establishment Committee but by the decision of the President of the Municipal Council who was empowered to dismiss the Plaintiff at pleasure without notice and without hearing and who in exercise of such powers in fact dismissed the Plaintiff.

In the  
High Court.

-----  
No. 2.

Amended State-  
ment of Defence.

5th May, 1959

-- continued.

10 14. In so far as the Plaintiff claims a rule in the nature of a writ of mandamus the proceedings are misconceived in that no writ of mandamus can issue and no application has been made under Section 44 of the Specific Relief (Malay States) Ordinance No.29 of 1950.

15. Except as hereinbefore appears each and every allegations contained in the Statement of Plaint is denied as if the same were set forth herein and traversed seriatim.

20 Sgd: Shearn Delamore & Co.,  
and Drew & Napier  
Defendants' Solicitors.

Sgd: G.S.Walker  
President  
Municipal Council  
Kuala Lumpur  
Defendants Signature.

I, Geoffrey Standridge Walker the President of the Municipal Council Kuala Lumpur the Defendant above-named do hereby declare that the foregoing statement is true to my knowledge, except as to matters stated on information and belief and as to those matters, I believe the same to be true.

~~Dated this 30th day of December 1957.~~

30 Sgd: G.S.Walker,  
Signature.

Amended this 5th day of May, 1959.

Sgd: Shearn Delamore & Co.  
Drew & Napier  
Defendant's Solicitors.

-----

In the  
High Court.

No. 2.

Amended State-  
ment of Defence  
(Continued)

Annexure  
thereto -  
Letter,  
Appellant to  
Municipal  
Treasurer.

19th August,  
1957.

No.2 (Continued)

Amended Statement of Defence (Continued)  
Annexure thereto - Letter, Appellant to  
Municipal Treasurer, 19th August 1957.

Ag.Municipal Treasurer,  
Municipality,  
Kuala Lumpur.

Sir,

Jerome Francis,  
c/o Town Superin-  
tendent office,  
Kuala Lumpur.  
19th August, 1957

10

Sub-Committee of Enquiry Meeting

With reference to your letter dated 16th Au-  
gust 1957 on the above subject, I have to inform  
you that I was away on 17th and 18th and returned  
today at 1 p.m. as such I could not attend the  
meeting at the specified time.

Regret inconvenience if any.

Yours faithfully,

Sgd: Jerome Francis.

This is the copy of Exhibit marked "MC1" re-  
ferred to in the Amended Statement of Defence of  
the Municipal Councillors and filed herein.

20

No. 3.

Reply.

12th May, 1959.

No. 3.

REPLY.

The Plaintiff will contend with reference to  
para.(9A) of the amended Statement of Defence that  
the President Municipal Council Kuala Lumpur never  
acted under Section 16(5) of the said Ordinance  
and in any event the same provision must be taken  
as modified abridged and qualified by law.

30

Dated this 12th day of May, 1959.

Sgd: K.Chelvanayagam

.....

Plaintiff's Solicitor.

PLAINTIFF'S EVIDENCE

No. 4.

EVIDENCE OF APPELLANT (PLAINTIFF: JEROME FRANCIS)  
NOTES RECORDED BY ONG, J.

Chelvanayagam for Plaintiff.

Rawson for Defendants.

Chelvanayagam: applies to amend para.11 of Amended S/Claim.

No objection by Rawson.

10 Word "purportedly" added and words "by or" struck out.

In substance issues are :-

- (1) Whether Plaintiff's service had been lawfully terminated or, in other words, that he had been lawfully dismissed,
- (2) Whether he was lawfully suspended,
- (3) If the Municipal President had ever acted within S.16(5) of the Municipal Ordinance,
- (4) If all above held in negative then Plaintiff had never been removed or dismissed from office, and Plaintiff asks for declaration etc. as prayed.

20

Re Declaratory Judgments - submit scope of the decision must be co-extensive with the power. (Counsel inform me no rules or bye-laws made under S.17 of Municipal Ordinance)

Chelvanayagam calls -

P.W.1. JEROME FRANCIS: affirmed states in English.

30

I was employed by the Municipality, K.L. until my suspension and dismissal. I am now unemployed. I am married and have 8 children. I am 35.

Prior to my employment in Kuala Lumpur Municipality I was employed by the P.W.D. I was taken on by the K.L.M. on 1.7.1950 when Municipality took over the functions of P.W.D. in respect of the Town Enquiries Office. I joined the Municipality as a temporary employee.

40

At my appointment the Municipal Commissioners interviewed me. I was confirmed in my appointment on 1.6.1953, for which I interviewed the Commissioners. On date of my suspension I was drawing

In the High Court.

Plaintiff's Evidence.

No. 4.

Jerome Francis.

24th November, 1959.

Examination.

In the  
High Court.

Plaintiff's  
Evidence.

No. 4.

Jerome Francis.

24th November,  
1959

Examination  
- continued.

Document No.1.  
Appendix "A" p.5

Exhibit P.2. p.63

Exhibit P.3. p.66

Exhibit P.4. p.63

Exhibit P.5. p.67

Exhibit P.6. p.69

Exhibit P.7. p.70

salary, with allowance, of \$465. I was also receiving Provident Fund Contribution by the Municipality of 10% of my basic salary of 276.

I occupied Municipal Quarters for which I paid \$8/- p.m. as rent. I was eligible also for free medical treatment for myself and family.

On 21.6.57 I received this letter (Ex.P1)

On or about 25.6.57 I received letter of suspension (Ex.P2).

On or about 1.10.57 I received letter of dismissal (Ex.P3). 10

On 27.6.57 I sent to K.L.M. a letter of which this is the true copy - (Rawson not objecting, admitted Ex.P4).

As a result of P.3, I consulted Solicitors and sent a letter on 14th October, 1957 of which this is a copy (Rawson consenting, admitted Ex.P5).

I received a reply of reply on 28.10.'57 (Ex. P.6). Also on same date another letter from President Municipal Council (Ex.P.7). 20

The practice in the Municipality as to cashing cheques is that members of the staff having private bank accounts could cash their cheques in the Municipal Treasury.

Besides the 3 cheques referred to in the Statement of Claim I had cashed other cheques. Other members of staff had also cashed their own cheques.

I was asked to attend an Inquiry before the Establishment Sub-Committee on 15.8.57. I attended, but the Treasurer informed me it had been postponed and that I would be notified of the date when fixed. I cannot remember what date of the week it was. 30

Document No.2.  
Annexure  
p.14

Subsequently on 19th August I received a letter at 12.40 p.m. handed me by my wife. If there was an inquiry in the forenoon of 19th August I was not there.

After the inquiry I received letter of dismissal. 40

I was never asked to explain anything after that.

I was never notified there was any inquiry or complaint against me with reference to any matter other than as to the cheques. I never attended any inquiry in re any matter not having to do with cheques.

I was aware the Establishment Staff Committee recommended my reinstatement. I was never reinstated.

During the relevant period Mr. A.D. York was President of K.L. Municipal Council. He had never sent for me and told me that he had dismissed me.

Ever since my confirmed appointment in the Municipality, I received year by year the usual annual increments. My increment in pay would be \$18 p.m. in 1957, and similarly in 1958.

I ask for relief as prayed in the Statement of Claim.

CROSS-EXAMINED -

When I received P.3 I went back to the Municipality, but was told my services had been terminated. I was left in no doubt on the point.

When first employed by the Municipality my basic salary was \$103 p.m. When placed on permanent establishment on 1.6.53, my basic salary was \$126.

There was one occasion my increment of salary was delayed for 2 months. On account of some misunderstanding between the Chief Clerk and myself. The chief clerk put in his word against me to Head of Department. I had not been warned that my work had been unsatisfactory.

For first six years in K.L.M. I was in K.L.M. I was in Municipal Engineer's Office (Mr. Todman was Municipal Engineer). Hoskin was Deputy Municipal Engineer. I deny I was frequently reprimanded by Mr. Todman. But I admit I was reprimanded once for overstaying my leave. Never for absenting myself from Office. I was not warned about my work.

I cannot remember that these minutes were typed by me. (Put in as Ex.D.8 for identification). Exhibit D.8.

RE-EXAMINED

On 22.6.57 I went to Municipal Doctor, bringing my child and mother-in-law. They had 'flu'.

In the  
High Court.

Plaintiff's  
Evidence.

No. 4.

Jerome Francis.

24th November,  
1959.

Examination  
- continued.

Cross-  
Examination.

Re-Examination.

In the  
High Court.  
Plaintiff's  
Evidence.  
No. 4.  
Jerome Francis.  
24th November,  
1959.  
Re-Examination  
- continued.

That same afternoon I saw my private doctor and got a certificate for leave for 2 days which was counter-signed by the Municipal Doctor. Thereafter I had 4 days vacation leave.

On the day I went to see the Doctor there was a complaint of my typing being bad in respect of the typing I did that day. I was feeling ill.

By Court:

The letter my wife handed me on 19th was dated 16th August. On 16th I was at home with my family. On 17th and 18th I was in Cheras in my cousin's place. I had gone on the Saturday morning the 17th - leaving my home about 10.30 a.m. after spending the weekend in Cheras I returned to Brickfields - arriving home between 12.30 and 1 p.m. The time fixed for the inquiry by the letter was 11 a.m. On seeing the letter I went straight to the Treasurer (he being the one who had sent me the notice). I saw him at about 1.10 p.m. before he left for lunch. The Treasurer was K.B. Subbiah. He asked why I had not attended the inquiry and I said I had just seen the letter. He said the inquiry had already concluded and nothing could be done and I could go home.

10

20

No. 5.  
T. Sivapragasam.  
24th November,  
1959.  
Examination.

No. 5.

EVIDENCE OF T.SIVAPRAGASAM

P.W.2.: T.SIVAPRAGASAM: affirmed states in English (T.Thambymuthu).

I live at 1 Lorong Abdullah, Kuala Lumpur. I was a Municipal Councillor in 1957-58. I was also in Establishment Committee.

30

I remember occasion when Plaintiff's matter came up before the Establishment Committee. I think the President of the Municipal Council Mr.A. D.York was present, as all meetings of the Committee were presided over by the President. It was decided to set up a sub-committee to go into the matter, composed of myself, Mr.Tharmalingam and Raja Mohamed bin Alang.

For reasons not clear to me Francis was not present - the charge related to his cashing of cheques. The sub-committee unanimously cleared him of any charge of fraud in respect of the cheques.

40

In course of inquiry, the Plaintiff was not present, but certain papers were put before us. The sub-committee unanimously recommended his reinstatement and that further enquiries be held as to his usefulness in the service.

In the  
High Court.

Plaintiff's  
Evidence.

No. 5.

T.Sivapragasam.

24th November,  
1959.

Examination  
- continued.

10 On 18.9.57 I was at the full Establishment Committee Meeting. Mr. York presided at the meeting. The other members present were M/S. Chong Soon Lee, Chong Shik Guan, Tharmalingam and myself. Chong Soon Lee came in late, after the decisions made. When decision was made only members were present, including the President. I voted against decision to dismiss the Plaintiff. I did so on the ground that the Committee was making a decision on the ground of Francis misconduct and inefficiency, as to which no inquiry had been held, I was only dissentient to the dismissal.

20 Subsequently I attended the full Council Meeting, and when the decision of the Sub-Committee was brought up for confirmation, I wanted to address the meeting on the point, in order to get the matter referred back, but I was outvoted. I cannot remember the President ever telling me that it was he who was dismissing Plaintiff - not at the meeting of the full Council.

CROSS-EXAMINED:

On the special sub-committee we came to the conclusion set out in para.(viii) of page 2 of Appendix B to S/Claim.

Cross-  
Examination.

30 The minutes were confidential. I have no idea how the Plaintiff obtained these minutes.

40 At meeting of Establishment Committee, President expresses his opinion. On 18.9.57 the decision was taken by majority of votes. I cannot remember if President recommended Plaintiff's dismissal. The Treasurer made the recommendation - but the latter was not present, of course, at the meeting. I agree the sub-committee by majority and subsequently the full Council by majority decided on dismissal.

I agree the suspension was with full approval of the Establishment Committee.

Decisions of Establishment Committee are confirmed in due course by the Council.

RE-EXAMINED:

Every decision of the Committee is put down in black and white in the Minutes. On 18th September the Establishment Committee decided to terminate Plaintiff's services from 30.9.57.

Re-Examination

In the High Court.

No. 6.

EVIDENCE OF MOHAMED DIN BIN ALI.

Plaintiff's Evidence.

P.W.3: MOHAMED DIN BIN ALI: affirmed states in English.

No. 6.

Municipal Secretary, K.L. Municipality.

Mohamed din bin Ali.

I have brought the minute books of Council and Committee. (Books collectively marked Ex. P.9).

24th November, 1959.

In Establishment Committee normally there were 8-10 members. In fact there were 10 in 1957 (11 with the President).

10

Examination.

Some of the staff matters were dealt with by a Joint Council. And certain papers would be available to such Council.

Exhibit P.9.

CROSS-EXAMINED:

Cross-Examination.

I have a confidential file in my normal custody relating to Francis including annual confidential reports on the employee.

(Chelvanayagam objects to Confidential Report being put in).

20

No. 7.

No. 7.

EVIDENCE OF GOH KENG SWEE

Goh Keng Swee.

P.W.4: GOH KENG SWEE: affirmed states in English:

24th November, 1959.

Town Superintendent, K.L.Municipality. Until Plaintiff's suspension he was working under me. Part of my duty is to recommend subordinate's annual pay increments. I took office of Town Supdt. on 1.11.56 on promotion.

Examination.

On 22.6.57 Plaintiff was on medical leave. Some days before the 22nd June some typescript was brought to my attention as unsatisfactory. I asked for explanation. The memo was subsequently missing. The matter was something for me to deal with myself. After the Medical leave I gave Plaintiff 4 days more vacation leave.

30

CROSS-EXAMINED:

Cross-Examination.

D.8 for identification now shown to me, is not the piece of type-writing complained of - I am certain



of this, as I had made my own note in my handwriting on the original paper. I queried the man who typed it - making 29 mistakes on a piece of paper. The red ink notes on D.8 are in the handwriting of my assistant, Menon.

I don't agree Plaintiff was unsatisfactory.

RE-EXAMINED:

As in any office there were probably some differences between the chief clerk and clerks.

(Case for Plaintiff)

10

DEFENDANTS' EVIDENCE

No. 8.

EVIDENCE OF A.D.YORK

Rawson; opens, calls --

D.W.I. ARTHUR DESMOND YORK: affirmed states in English -

I am President, Municipal Council, Kuala Lumpur. Also President in 1957.

20

I remember report to me of an employee whose cheque was dishonoured by the bank. It was Plaintiff.

First of all, as it appeared a serious matter, I ordered first his suspension and then a report of the matter to the Police.

There was in a normal course probably a report of the matter to the Establishment Committee. The suspension was approved by the Establishment Committee on 26.6.57 at a meeting held on that date.

I considered that what Plaintiff did was sufficient to merit a dismissal.

30

Usual procedure was, after I formed my opinion that the person should be dismissed, the grounds together with my opinion would be put before the Establishment Committee.

The concurrence of the Establishment Committee as a matter of law is not essential in a matter of

In the High Court.

Plaintiff's Evidence

No. 7.

Goh Keng Swee.  
24th November, 1959.

Cross-Examination  
- continued.  
Re-Examination.

Defendants' Evidence.

No. 8.

A.D. York.  
24th November, 1959.  
Examination.

In the  
High Court.  
-----  
Defendants'  
Evidence.  
-----  
No. 8.  
A.D. York.  
24th November,  
1959.  
Examination  
- continued.

appointment or dismissal of staff drawing under  
\$200 p.m. As regards Plaintiff, I did make a  
recommendation for his dismissal.

A sub-committee was appointed to consider the  
matter.

That sub-committee made its report - it is  
Appendix "B" dated 19.8.57.

There was a subsequent meeting of the Estab-  
lishment Committee on 18.9.57 when I made a recom-  
mendation in that I retained the opinion I pre-  
viously held. The matter was put to the vote.

10

From minutes of meeting of 18.9.57 the Com-  
mittee not only considered the report of the sub-  
committee but also the work and conduct of the  
Plaintiff. Its decision was confirmed by the full  
council on 30.9.57.

CROSS-EXAMINED:

Cross-  
Examination.  
Exhibit P.7.

In my capacity as President the only communi-  
cation by me to the Plaintiff was in Ex.P.7 dated  
28.10.57.

20

Till that date I did not dismiss the Plaintiff.

As far as I am concerned it was Council's de-  
cision that Plaintiff be dismissed. It never  
rested with me, but with the Establishment Commit-  
tee and the full council.

As to suspension, I made the order.

RE-EXAMINED:

Re-Examination

If my decision was not approved of by the Es-  
tablishment Committee I should waive my decision.

To Court: In the K.L.Municipality we have very  
similar rules and regulations relating to staff  
discipline, dismissal etc.

30

They are contained in standing orders.

Adjourned at 12.40 p.m. till 2.30 p.m.



No. 9.

JUDGE'S NOTES OF CLOSING SPEECHES OF COUNSEL

Resumed 2.30 p.m.

Rawson closes case for Defendants.

Plaintiff was given notice of dismissal on 30.9.57 by letter dated 1.10.57.

Written notice necessary.

Plaintiff admits he was prevented from continuing his work when he went to Municipality. That is tantamount to dismissal.

10

President made up his mind and made his recommendations to Establishment Committee. The Committee appointed sub-committee to inquire - latter duly made report. At a meeting of Committee decision was taken that Plaintiff be dismissed notwithstanding the terms of report. Confirmation by full Council meeting.

Therefore an act of the whole Municipal Council.

20

President has no authority to delegate his power of dismissal. But here obtaining approval of whole body is not delegation.

Clearly an inquiry was necessary as to the cheques - irrespective of question of disciplinary action to be taken in the circumstances.

Municipal Ord. (Cap.133 S.S.) - S.16(5).

Plaintiff had commencing salary of under £200 so approval of Commissioners not necessary.

Commentary: D.K. Walters at p.38.

30

Brown v. Dagenham Urban District Council (1929)  
1 K.B. 737, 739, 741.

Submit Municipal Ordinance gives right to dismiss at any time, without notice and without any right of hearing.

Short v. Poole Corpn. (1926) 1 Ch.66 p.85, 88, 90.

The President has in this case done more than he need have to.

Chelvanayagam

Refers to reply.

40

In S.16(5) "Secretary" replaces "President" (vide Ord.45/56).

In the  
High Court.

No. 9.

Judge's Notes  
of Closing  
Speeches of  
Counsel.

24th November,  
1959.

In the  
High Court.

No. 9.

Judge's Notes  
of Closing  
Speeches of  
Counsel.

24th November,  
1959

- continued.

F.H.Ord.3/48 and G.N.65 of 13.3.48 at p.9 of  
1948 Subsidiary Legislation (Selangor).

(Rawson: Ord.45/56 - Section 2 - no order  
made under that Section re: K.L.)

Refers S.17(2) M.Ord - vests power of suspen-  
sion only in Councillors.

The Councillors never exercised the power of  
suspension.

It being a judicial or quasi-judicial power,  
they could not delegate and never delegated  
it to anybody. 10

Submit - suspension ultra vires and invalid.

S.16(5): "The President may etc."

Submit President may fine if he was one who  
levied.

Submit no evidence that Plaintiff was one on  
the list.

S.42 - Establishment Committee.

S.36 - Quorum.

Had Establishment Committee right to delegate 20  
its function to a sub-committee?

Submit:

(1) the sub-committee had no status at all  
because under S.42 the Council can only  
create committees, but the Establishment  
Committee itself has no power to create  
further sub-committees.

(2) If they had right to delegate, if they go  
outside terms of reference they were act-  
ing ultra vires. 30

If inquiry re: cheques - they were  
acting within terms of ref: in so far as  
they went outside they were ultra vires.

(3) If sub-committee ultra vires confirmation  
by Establishment Committee would not ren-  
der them act ultra vires.

(4) Municipal Council merely approved the  
resolution of the Establishment Committee.  
That itself would be ultra vires.

Repeat, President himself never in fact dis- 40  
missed Plaintiff. Establishment Committee  
have no power to dismiss. Therefore full  
Council have no power under the Act to dis-  
miss.

Ordinance gave power of dismissal to President but not to the Corporation itself.

National Guarantee Manure Co., v. Donald 157  
E.R. 737 & 741.

(Parliamentary Corp'n. - ultra vires).

Short v. Poole Corp'n. (1926) 1 Ch. 66 @ 81  
(But power in S.16(5) is "circumscribed")  
p.90 (para.4). P.88 (para.3).

Submit: Discretion given to the President  
which he never in fact exercised.

Barnard v. National Dock Labour Board. (1953)  
1 A.E.R. 1113.

Adjourned at 4.20 p.m. to 10 a.m. on 25.11.59.

Wednesday, 25th November 1959: (Resumed at  
10 a.m.).

Chelvanayagam continues:

Hiring and firing powers of the Municipality  
or its officers come from Sections 16 & 17.

They could make rules under S.17. In fact no  
rules made. So if they make none, the Com-  
missioners retain those powers themselves.

Only other section enabling them to create  
Councillors is S.42 and the Commissioners  
never created validly the sub-committee of  
inquiry.

Whether in fact the President had personally  
dismissed the Plaintiff is a question of fact.  
According to President in his evidence, he  
never personally exercised the power given to  
him of dismissal, but left it to the Estab-  
lishment Committee.

Pleadings say Plaintiff was dismissed by  
President on 18.9.57 (para.9) but President's  
evidence is in conflict whether the letter of  
28.10 (P.7) could have dismissed Plaintiff.

Submit: It cannot, for 2 reasons -

(1) Plaintiff having been dismissed purport-  
edly by the Establishment Committee from  
30.9.57, the Ord. ceased to affect the  
Plaintiff thereafter and President had  
no powers at all after 30.9.

(2) The Defendants are estopped from saying  
that they had not dismissed him from  
30.9.57.

In the  
High Court.

No. 9.

Judge's Notes  
of Closing  
Speeches of  
Counsel.

24th November,  
1959

- continued.

25th November,  
1959.

In the  
High Court.  
No. 9.  
Judge's Notes  
of Closing  
Speeches of  
Counsel.  
25th November,  
1959  
- continued.

Refers: Cooper v. Wilson (1937) 2 A.E.R.726.

728 (Greer L.J.) 731-3  
737 (Scott L.J.) 741, 742-3 (bias)  
744 (last para.).

Barnard v. National Dock Labour Board  
(1953) 1 A.E.R.1113.

1121 (l.h.) - (no power of delegation)  
(Taylor's 1957 P.101 - Denning @ 111)

As to Court's power to make a declaratory order.

Andrews v. Mitchell (1905) A.C.78  
(want of jurisdiction).

10

Palliser v. Dale & Ors. (1897) 1 Q.B.257.  
P.261 - per Esher M.R.

Vine v. National Dock Labour Board (1957) A.C.  
488. (No delegation of powers).

Re: Right to dismiss at pleasure: Article 131.

Dismissal (30.9.57) was after Constitution came  
into force on Merdeka Day - Constitution supreme.

Employees of Municipal Corpn. are not servants  
of the State.

20

Rawson (with leave):

The Committee and sub-committees - refer S.45(2)  
S.114(e) of Evidence Ordinance.

Quorum: "ordinary" and not "special" meetings -  
no evidence otherwise.

S.16(5) should be read with 16(1).

Cooper v. Wilson - irrelevant - there case of  
disciplinary procedure laid down in acts and  
regulations.

(1937) 2 K.B. @ 339 - 10 lines from bottom -  
340-41. S.16 (5) not quasi-judicial decision -  
but purely an executive act.

30

As to Dismissal and Suspension:

If dismissal of Establishment Committee wrong  
or invalid because not act of President -  
President presided at these meetings of Commit-  
tee and of full Council.

Suspension: - President has emergency powers -  
See.S.40.

Brown v. Dagenham Urban District Council

40

(1929) 1 K.B. 737 -- a complete answer.  
C.A.V.

(Sgd.) H.T.Ong,  
Judge.  
25.11.59.

In the  
High Court.

No. 9.

Judge's Notes  
of Closing  
Speeches of  
Counsel.

25th November,  
1959

- continued.

No. 10.

JUDGMENT

No.10.

Judgment.

14th December,  
1959.

10 This is an action arising out of the suspension and dismissal of Plaintiff from his appointment as a clerk in the Town Superintendent's Department of the Municipality of Kuala Lumpur.

20 The material facts of this case are not in dispute. Plaintiff commenced his employment in the Municipality on July 1, 1950 as a temporary clerk, receiving an initial basic salary of \$108 per month with cost of living allowance. On June 1, 1953 he was confirmed in his appointment and placed on the permanent establishment at a basic salary of \$126 per month. Prior to July 1957 he was drawing a basic monthly salary of \$276, and allowances, which brought his total monthly emoluments to \$465.

30 There appears to have been a recognised practice for employees of the Municipality who possess private banking accounts to cash their cheques in the Municipal Treasury. On June 19, 1957 Plaintiff so cashed two cheques for \$300 each, and on the following day a third cheque for \$500. The cheque for \$500 was met on presentation to Plaintiff's bankers but the other two cheques were dishonoured. On June 21 the Acting Municipal Treasurer wrote to the Plaintiff demanding payment in respect of all three cheques. It is admitted that in fact Plaintiff had to repay only \$600 on the first two cheques, which he did promptly on June 22. As a result of these transactions the Town Superintendent who was Plaintiff's immediate superior officer, wrote to him on June 25 in these terms "I am directed by the President, Municipal Council, to suspend you from duty with effect from 25th June, 40 1957 until further notice".

In the  
High Court

No.10.

Judgment.

14th December,  
1959

- continued.

On July 18 the Establishment Committee of the Municipal Council passed a resolution whereby a sub-committee of three Councillors was appointed from that Committee "to inquire into the misconduct of Mr. Jerome Francis of the Town Superintendent's Department". The enquiry was fixed for August 15, but when Plaintiff appeared on that date he was informed by the Acting Municipal Treasurer that it had been postponed to a date of which he would be notified. The inquiry was duly held on August 19 at 11 a.m. but in the absence of Plaintiff, whose explanation for his non-attendance (which I accept) is that he did not receive notice of the appointed date till an hour when the inquiry had concluded.

10

At any rate the sub-committee, in their own words "were of opinion that the benefit of the doubt should be given to the accused (sic) and therefore we are not prepared to say definitely that there was intention to defraud the Council". The sub-committee in its report proceeded to recommend that Plaintiff's suspension should cease and that he be reinstated in office, but that there should be a departmental inquiry into his usefulness to the Council in the continuance of his duties.

20

The Establishment Committee met on September 18 with the President, Mr. A. D. York in the Chair, and four members, one of whom arrived after the decision was taken concerning the Plaintiff. After recording their acceptance of the recommendations of the sub-committee the Committee decided, however, with one member dissenting, that, in view of adverse reports on Plaintiff's work his services should be terminated with effect from September 30, 1957. This decision was subsequently confirmed at an Ordinary Meeting of the Municipal Council held on September 30, and on October 1 a letter of dismissal, signed by the Acting Municipal Treasurer, was addressed to Plaintiff in the following terms: "In connection with your suspension from duty I have been directed to inform you that the Establishment Committee has decided to terminate your services with effect from 30th September 1957, on the grounds of adverse reports against your work and conduct and the Committee's decision has been confirmed by the full Council Meeting held on 30.9.'57". It was not stated in evidence who gave these instructions to the Acting Municipal Treasurer but it seems to me that, if any official

30

40

50



instructions were given for the letter of dismissal to be sent, they could have been given only by the President.

In the  
High Court.

10 On October 14 Plaintiff, through his Solicitor, protested to the Council against his dismissal on the ground that it was invalid and demanded reinstatement. On October 28 the President replied to Plaintiff's Solicitor that Plaintiff's removal from office was in accordance with his (the President's) decision, in addition to the decision of the Establishment Committee and of the Municipal Council, whose concurrence, however, was unnecessary in law, and that Municipal Officers of the category of Plaintiff were appointed and removed by the President at pleasure. Another letter, bearing the same date, was addressed to Plaintiff, as follows: "With reference to letter dated 1st  
20 October (Ref: KLM(C) 73 (37)) addressed to you and signed by the Acting Municipal Treasurer, I have the honour to inform you that I confirm your removal from your office of Municipal Clerk with effect from 30th September 1957, and that I had so decided".

No.10.  
Judgment.  
14th December,  
1959  
- continued.

Plaintiff commenced his action on November 14, 1957 and he claims :-

- 30 (a) a declaration that the decision of the Establishment Committee of the Municipal Council was ultra vires and therefore null and void;
- (b) a declaration that the act of the President of the Municipal Council in terminating at his pleasure Plaintiff's appointment was contrary to the principles of natural justice and void;
- (c) a declaration that the termination of Plaintiff's services was wrongful and void and that Plaintiff was entitled to continue in his employment from October 1, 1957;
- 40 (d) alternatively, damages for wrongful dismissal and in lieu of reasonable notice of termination of services;
- (e) payment of the balance of Plaintiff's half-pay from June 25, 1957 to September 30, 1957.

The defence, in a nutshell, is that the decision to dismiss Plaintiff was a decision taken by the President himself, which decision was in fact approved by the Establishment Committee and by the Municipal Council, although such approval was

In the  
High Court.

No.10.

Judgment.

14th December,  
1959

- continued.

superfluous and unnecessary to the validity of the termination of Plaintiff's services, and that the President, in dismissing Plaintiff at pleasure, was acting within the powers conferred on him by Section 16(5) of the Municipal Ordinance. The subsection reads as follows :-

"The President may appoint such persons as he thinks fit to the office on the list so approved as aforesaid and may remove such persons from office and appoint others in their stead, provided that the appointment and removal of persons to or from an office carrying a commencing salary of two hundred dollars a month and over shall be subject to the approval of the Councillors".

10

Although it was alleged in the Statement of Claim that, in so doing the President was acting contrary to the principles of natural justice, was biased and wrong in law, and an issue was raised thereon by the pleadings the allegation of bias was dropped at the trial. Defendants' Counsel, on the other hand, did not contend that the principle of audi alteram partem had been observed by Defendants allowing Plaintiff an opportunity of being heard before the decision was taken to dismiss him.

20

The question, therefore, to be determined is whether, in the circumstances, the Plaintiff's engagement was lawfully and effectively terminated. This is a question of mixed fact and law. The former presents no difficulty and may be disposed of briefly.

30

Mr.Chelvanayagam submitted that the letter of October 1, 1957 showed that it was the Establishment Committee of the Municipal Council which purported to dismiss the Plaintiff, and since they had no power to do so under Section 16(5) of the Municipal Ordinance, their act was ultra vires and a nullity, and such nullity cannot be ratified by the President by his subsequent letter of October 28, so that Plaintiff is entitled to a declaration that he continues in his employment on the permanent establishment of the Municipality.

40

On the evidence it is clear that the matter of the unpaid cheques was brought immediately to the notice of the President, on whose instructions Plaintiff was suspended on June 25. He was cognisant of the complaint when he presided at the Establishment Committee meeting which decided on the dismissal, and he again presided at the full

Council Meeting approving the decision of the Committee. The minutes of these meetings showed that he and the Councillors present came to one and the same decision. I am therefore of opinion that, even if the letter of the Acting Municipal Treasurer dated October 1, 1957 could have been more appropriately worded in strict compliance with the provisions of Section 16(5), no amount of hair-splitting can alter the fact that the President decided, as the other Councillors did, to dismiss the Plaintiff. For this reason I hold that the purported dismissal in fact was a dismissal by the President with the concurrence and approval of the Municipal Councillors, although such approval was not necessary under Section 16(5), as Plaintiff's commencing salary was under \$200 a month. No question of ultra vires therefore arises.

10

The other facet of the question for determination is whether, as Defendants' Counsel contends, "removal" under the sub-section connotes "removal at pleasure".

20

In my opinion the principles applying to the ordinary relationship of master and servant cannot have any application in the case of appointments by the local government authority which do not depend purely on contract. In the former, a wrongful dismissal is none the less final and effective, and only renders the employer liable in damages. There can be no question of reinstatement. The appointment and removal of servants of the Municipality are, however, subject to provisions expressly laid down by Ordinance, which alone need and should be considered in dealing with such matters.

30

The Municipal Ordinance (Cap.133 of the Laws of the Straits Settlements) has, by our Municipal Ordinance (Extended Application) Ordinance, 1948 been made applicable to the Malay States. The Ordinance of the Colonial Legislature was passed when the Crown was Sovereign and, therefore, English authorities are, in my view, entitled to the greatest weight in the interpretation of similar words and phrases used in a similar context. The Plaintiff's dismissal took place after Merdeka Day, but there is, in my opinion, nothing in the concept of dismissal at pleasure repugnant to the Constitution. I can accordingly proceed to consider the point for determination without further reference to the Constitution.

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In a recent case tried in Penang by Rigby J.,

In the  
High Court.

\_\_\_\_\_  
No.10.

Judgment.

14th December,  
1959

- continued.

In the  
High Court.

No.10.

Judgment.

14th December,  
1959

- continued.

Lai Cheng Lim v. The City Council of George Town, Penang (1) where the Plaintiff claimed damages against the Defendants for wrongful dismissal, the main ground of defence was that the Defendants were entitled at any time to remove the Plaintiff from his office without notice, and the learned Judge held that under Section 16(5) of the Municipal Ordinance they were entitled to do so at pleasure. With that judgment I respectfully agree. Among the English authorities therein cited I would refer in particular to Brown v. Dagenham Urban District Council (2) and McManus v. Bowes & Others (3) which in my view, are conclusive on the matter. 10

In Brown's Case the Plaintiff, an assistant overseer and clerk to the Council who was dismissed without cause, notice or hearing, claimed inter alia damages for wrongful dismissal against the Defendants. He held office as clerk to the Council under Section 189 of the Public Health Act, 1875, while his appointment as assistant overseer was governed by Section 5(1) of the Local Government Act, 1894. The relevant portion of Section 189 provides: "Subject as aforesaid, every such officer and servant appointed under this Act shall be removable by the urban authority at their pleasure". By Section 5(1) of the Local Government Act: "..... the power of appointing and revoking the appointment of an assistant overseer, ..... shall be transferred to and vested in the parish Council .....". McCardie J., in dismissing the claim, held that Section 189 expressly gave the Council power to dismiss Plaintiff as clerk at their pleasure, while in respect of the office of assistant overseer he expressed his views in these terms, at page 747: 20

"No such words as "at their pleasure," which appear in S.189 of the Public Health Act, 1875 appear in S.5, Sub-s.1, of the Local Government Act, 1894, but the power of revocation again is given in the widest terms and no limitation is placed upon it ..... I can see no real distinction between a power to dismiss "at pleasure" under S.189 of the Public Health Act, 1875, and the power to "revoke" an appointment which is given by S.5, sub-S.1, of the Local Government Act, 1894. I must, 40

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(1) Penang High Court Civil Suit No.61/59

(2) (1929) 1 K.B.737.

(3) (1938) 1 K.B. 98.

therefore, hold that the Defendants could dismiss the Plaintiff at any time without notice and without cause from his post as assistant overseer, subject, of course to the question of bona fides. Such is the law created by legislation".

In the  
High Court.

No.10.

Judgment.

14th December,  
1959

- continued.

10 McManus v. Bowes was another action for wrongful dismissal, which was brought by a doctor appointed by the visiting committee of a lunatic asylum as a result of his dismissal by such committee. In that case section 276, Sub-S.1 of the Lunacy Act, 1890 fell to be considered. It is indistinguishable from Section 16, Sub-S.5 of our Municipal Ordinance, and reads :-

"The Committee may remove any person appointed under this Section ....."

20 It was held in the Court of Appeal by Slesser and MacKinnon L.JJ. (Greer L.J. dissenting), that the power given by Section 276 to remove any officer appointed under that Section must be construed as a power to remove at pleasure.

While I have some sympathy for the Plaintiff in that his dismissal was the only (sic? "only the") incidental result of the cashing of the cheques, I must hold that his claim fails. It is accordingly dismissed with costs.

Sgd: H.T.Ong,  
Judge,

Supreme Court,

Federation of Malaya.

30 Kuala Lumpur,  
14th December, 1959.

No. 11.

ORDER.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
CIVIL SUIT NO.395 of 1957

No.11.

Order.

14th December,  
1959.

BETWEEN:- Jerome Francis

Plaintiff

- and -

The Municipal Councillors  
of Kuala Lumpur

Defendants

40 Before The Honourable Mr. Justice Ong,  
Judge, Federation of Malaya.

In the  
High Court.

This 14th day of December 1959

O R D E R

No.11.  
Order.  
14th December,  
1959  
- continued.

THIS SUIT coming on for hearing on the 24th and 25th days of November 1959 in the presence of Mr.K.Chelvanayagam, Counsel for the Plaintiff and Mr.D.G.Rawson, Counsel for the Defendants AND UPON READING the pleadings and UPON HEARING the afore-said Counsel IT IS ORDERED that this Suit do stand for Judgment and the same coming for Judgment on the 14th day of December 1959 in the presence of Mr.C.C.Rasa Ratnam on behalf of Counsel for the Plaintiff and Mr.D.G.Rawson, Counsel for the Defendants IT IS ORDERED that this suit be and is hereby dismissed AND IT IS ORDERED that the Plaintiff do pay to the Defendants the costs of this suit as taxed by the proper officer of this Court.

10

GIVEN under my hand and the seal of the Court this 14th day of December, 1959.

Sgd: Gunn Chit Tuan  
Senior Asst.Registrar  
High Court, Kuala Lumpur.

20

In the  
Court of Appeal

No. 12.

MEMORANDUM OF APPEAL

No.12.  
Memorandum of  
Appeal.  
21st March,  
1960.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR  
CIVIL APPEAL NO. 3 of 1960

BETWEEN:- Jerome Francis of Kuala Lumpur Appellant

-- and --

The Municipal Councillors  
of Kuala Lumpur

Respondents

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(In the matter of Kuala Lumpur High Court Civil  
Suit No.395 of 1957)

Between

Jerome Francis of Kuala Lumpur Plaintiff

-- and --

The Municipal Councillors of  
Kuala Lumpur

Defendants

Jerome Francis the Appellant above-named appeals to the Court of Appeal against the whole of

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the decision of the Hon'ble Mr. Justice H.T. Ong given at Kuala Lumpur on the 14th day of December 1959 on the following grounds:-

In the  
Court of Appeal

No.12.

Memorandum of  
Appeal.

21st March,  
1960

- continued.

10 1. That the learned trial judge misdirected himself in law and in fact in that where a Statute creates a corporation and endows certain discretionary powers on its officers those powers save otherwise by Statute can only be exercised by the repository of those powers to the exclusion of all others and in this case the power having been vested on the President Municipal Council (hereinafter referred to as the President) and he having not personally exercised that discretion, the learned trial judge erred in finding "..... no amount of hair splitting can alter the fact that the President decided, as the other Councillors did, to dismiss the Plaintiff. For this reason I hold that the purported dismissal in fact was a dismissal by the President .....".

20 2. That the learned trial judge in coming upon his finding that "..... but it seems to me that if any official instructions were given for the letter of dismissal to be sent, they could have been given only by the President" misdirected himself and had failed to distinguish between a reasonable inference upon the evidence and one of speculation and had indeed arrived at the above finding through speculation and conjecture. In any event the doctrine of estoppel applies to a corporation and they are bound by the letter dated 30 1st October 1957 signed by the Municipal Treasurer, the President having nullified the contents of his letter dated 28th October 1957.

40 3. That the learned trial judge despite the clearest evidence of the President that he had not dismissed the Appellant he being the sole repository of that power erred in law and acted against the canons of interpretation to seek other ambiguous and speculative reasons to make a finding that the President had dismissed the Appellant, which is against the weight of the evidence.

4. That the learned trial judge misdirected himself in fact in his finding "The minutes of these meetings showed that he and the Councillors present came to one and the same decision" when in fact the minutes of the decision of the purported Establishment Committee shows :-

(i) That of the three Councillors present and

In the  
Court of Appeal

No.12.

Memorandum of  
Appeal.

21st March,  
1960

- continued.

voting excluding the President as Chairman, one dissented and the Chairman never votes except in the case of a tie, and

(ii) That of the Full Council of the 30th of September 1957, that the motion to refer back was defeated.

5. That the learned trial Judge misdirected himself and erred in law in not finding that the Establishment Committee was a usurper of powers which it never had, and in assuming jurisdiction into the matter of the Appellant's case and delegating functions to a sub-committee had acted illegally and without authority and are void at law. And that in any event Establishment Committee which met and decided upon the Appellant's case had acted without a quorum and was void at law. 10

6. That the learned trial Judge had misdirected himself in finding that "Defendants Counsel (presumably Plaintiff's) did not contend that the principle of audi alteram partem had been observed by Defendants allowing Plaintiff an opportunity of being heard before the decision was taken to dismiss him" when it is quite clear from the pleadings and the evidence which is unrebutted that the only lawful conclusion is that there had indeed been a failure of natural justice and on that alone the decision of the Establishment Committee is invalid and a nullity and the case of Andrew v. Mitchell 1905 A.C. was cited on the point. 20

7. That the learned trial judge had misdirected himself in not distinguishing at law between the exercise of a discretion by an individual and that of another body which must be genuinely exercised and not under the dictation, counsel or opinion of another body or quasi-body to which it was unlawfully delegated and which could not be delegated. 30

8. That the learned trial judge had misdirected himself in fact and in law in that upon the evidence, the President had divested himself and disabled himself of the Statutory power vested in him which he could not do and was void and no amount of colour by a usurper in any form can substitute a Statutory obligation which Parliament had in its wisdom established by providing its own method. The President could never abdicate his power which clearly he had done. 40

9. That the learned trial judge misdirected himself in that Section 16(5) of the Municipal Ordinance



ought to be construed strictly and that the onus of proof bringing the circumstances within that section is on the Defendants which upon the evidence they have not discharged.

10. That the order of suspension under the Municipal Ordinance rests with the Municipal Councillors alone and that the purported suspension of the Appellant is illegal and a nullity.

10 11. That the sub-committee appointed to investigate upon terms of reference "To enquire into the misconduct of Mr. Jerome Francis of the Town Superintendent's Department" limited to the cashing of cheques were sub-delegates with a limited jurisdiction and had acted ultra vires when they assumed jurisdiction to investigate at liberty into the Appellant's general conduct is invalid, illegal and a nullity and the assumption by the Establishment Committee that the sub-committee's finding was tantamount to an adverse report without an inquiry and against the principles of natural justice was  
20 invalid and a nullity and any ratification thereof itself invalid and a nullity.

DATED this 21st day of March, 1960.

Sgd: K.Chelvanayagam,  
Solicitor for the Appellant.

To:

The Registrar,  
Supreme Court,  
Kuala Lumpur.

30 And to:

The Municipal Councillors of  
Kuala Lumpur  
or their Solicitors  
M/S. Shearn Delamore & Co.,  
Advocates & Solicitors,  
The Embankment, Kuala Lumpur.

The address for service of the Appellant is  
c/o Mr. K. Chelvanayagam, Advocate and Solicitor,  
No.14, Ampang Street (Top Floor) Kuala Lumpur.

In the  
Court of Appeal

No.12.

Memorandum of  
Appeal.

21st March,  
1960

- continued.

In the  
Court of Appeal

No. 13.

JUDGMENT OF THOMSON, C.J.

No.13.

Judgment of  
Thomson, C.J.  
30th May, 1960.

This Appellant was, and on his own view still is, an employee of the Kuala Lumpur Town Council from which position he was removed, he alleges wrongfully, on or about 1st October, 1957.

The facts of the case are not in any serious dispute although there has been much controversy as to the inferences which should be drawn from them and as to the legal consequences to which they give rise. 10

The facts are as follows - On 1st July, 1950, the Appellant was engaged as some sort of a clerk in the Town Superintendent's Department of the Council on a month to month basis at a salary of \$108 a month and on 1st June, 1953, he was placed on the permanent staff of the Council at a salary of \$126 a month which by July, 1957, had been increased to \$276 a month.

In June, 1957, an incident occurred in connection with the cashing of certain cheques by the Appellant. It would appear that it was the practice of the Council to permit their employees, subject to certain restrictions, to exchange their personal cheques for cash at the Municipal Treasury. In pursuance of this arrangement on 19th June, 1957, the Appellant cashed two cheques each for \$300 and the following day he cashed a third cheque for \$500. Although there would seem to have been some sort of misunderstanding as to the \$500 cheque which was in fact met on presentation it is admitted that neither of the \$300 cheques was met on presentation because there were not the necessary funds in the Appellant's bank account. 20 30

Document No.1.  
Appendix "A"  
p.5.

On 21st June the Municipal Treasurer addressed a letter to the Appellant the material portions of which read as follows :-

"My attention has been drawn to the fact that on the 19th June 1957 you have cashed two cheques bearing Nos.38947 and 38949 on Chung Kiaw Bank Ltd. for \$300/- each on the 20th June another cheque for \$500/- on the same Bank and you have assured that there were sufficient funds to meet these amounts on the cheques issued by you. However on presentation of the cheques they were dishonoured due to the fact that there were no funds. 40

It is clear therefore that you cashed these cheques knowing full well that there were no funds to meet the cheques.

2. You are hereby demanded to pay cash to these three cheques immediately failing which you will be liable for disciplinary action and report will be made to the President Municipal Council for immediate action".

10 As has been said the statement in this letter as to the \$500/- cheque was not accurate but the statement as to the \$300 cheques was true and the day after the letter was written the Appellant effected payment of them in cash.

This incident of the cheques was reported to the President of the Council and on 25th June the Town Superintendent, who was the Appellant's superior, addressed a letter to him stating that he was directed by the President to suspend him from duty.

20 Though admittedly he received it the Appellant did not reply to this letter of suspension but on 27th June he addressed a letter to the Municipal Treasurer which was stated to be a reply to that functionary's letter of 21st June. In it he pointed out that the allegation as to the \$500 cheque was untrue. With regard to the \$300 cheques he gave an explanation to which he has adhered throughout. It was to the effect that on 18th June he gave \$700 in cash and a bank deposit slip to his brother who happened to be in Kuala Lumpur on a visit from Johore Bahru and asked him to bank the money for him. His brother did not bank the money and left for Malacca. He was unaware of this when he drew the cheques. He drew them on the assumption that his brother had paid the money into the bank and he pointed out that if the money had in fact been paid into the bank the cheques would have been met. There was therefore no question of dishonesty. He went on to point out that on 22nd June he had paid the Treasurer \$600 in cash in respect of the cheques.

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40

On 18th July the Establishment Committee of the Council appointed a Sub-Committee "to enquire into the misconduct of Mr. Jerome Francis of the Town Superintendent's Department" and certain other matters which do not affect the present case. The President of the Council was not a member of that Sub-Committee.

In the  
Court of Appeal

No.13.

Judgment of  
Thomson, C.J.

30th May, 1960  
- continued.

Exhibit P.2.  
p.63

Exhibit P.4.  
p.63

In the  
Court of Appeal

No.13.

Judgment of  
Thomson, C.J.

30th May, 1960  
- continued.

Exhibit P.4.  
p.63.

The Sub-Committee was appointed to meet on 15th August and the Appellant was informed of this. The date of the meeting, however, was subsequently altered to 19th August and a notice of this change of date was sent to the Appellant who said, however, that he did not receive it until the afternoon of 19th August when it was too late to be present at the meeting. The Sub-Committee considered the matter in his absence though it is clear that they had before them his letter of 27th June. They came to the conclusion that there had been considerable laxity and indeed breach of the Council's regulations on the part of the officers who had cashed the cheques for him. They considered that there was "doubt as to whether he had any intention to defraud". They looked at his Annual Confidential Reports and thought he was a "rather very unsatisfactory employee" and they recommended that a full report should be obtained on his work and his usefulness to the Council. As regards the incident of the cheques, however, they made no recommendation as to disciplinary action and recommended that his suspension should cease and that he should be reinstated in his office.

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On 18th September the Establishment Committee of the Council of which the President was a member considered the report of the Sub-Committee relating to the Appellant. Their "decision", from which one member dissented, was :-

Document No.1.  
Appendix "B"  
(Minutes) p.10.

"The Committee accepted the recommendations of the Sub-Committee of Enquiry. In view of the adverse reports on Mr.J.Francis work, the Committee decided to terminate his service from 30th September 1957".

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Exhibit P.3.  
p.66.

That decision of the Establishment Committee was confirmed by the Council itself and on 1st October, 1957, the following letter was addressed to the Appellant by the Municipal Treasurer:-

"In connection with your suspension from duty I have been directed to inform you that the Establishment Committee has decided to terminate your services with effect from 30th September, 1957 on the grounds of adverse reports against your work and conduct and the Committee's decision has been confirmed by the full Council Meeting held on 30.9.57."

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Exhibit P.5.  
p.67.

The Appellant then took legal advice and on 14th October his Solicitor addressed a letter to

the Council asking for further particulars, protesting at the way in which his client had been treated and concluding that the termination of his client's service was bad in law and unless his client was reinstated forthwith legal proceedings would be taken.

On 28th October the President of the Council replied to this letter stating that he did not consider that the termination of the Appellant's service was bad in law and that there could be no question of his reinstatement. The material portions of this letter read as follows :-

"2. The removal of Mr. Jerome Francis from his office with effect from the 30th of September was in accordance with my decision, in addition to the decision of the Establishment Committee and of the Municipal Council, whose concurrence was in fact unnecessary at law.

3. Municipal officers in the category of Mr. Francis are appointed and removed by me at pleasure, and the proceedings of the Committee and Sub-Committee to which you refer are irrelevant, though I in no way agree that they went outside their powers in considering the matters which they did".

On the same day the President wrote the following letter to Mr. Francis himself :-

"With reference to letter dated 1st October (Ref: KLM.(C) 73(37) addressed to you and signed by the Acting Municipal Treasurer, I have the honour to inform you that I confirm your removal from your office of Municipal clerk with effect from 30th September 1957, and that I had so decided."

In the event the Appellant commenced the present proceedings against the Municipal Councillors on 14th November, 1957. In them he asked for declarations that the decision of the Establishment Committee of the Council was ultra vires and null and void, that the act of the President of the Council in terminating his services at pleasure was contrary to the principles of natural justice and void, and that the termination of his employment was wrongful and void. In the alternative he asked for damages for wrongful dismissal and in lieu of reasonable notice of the termination of his service.

In the  
Court of Appeal

No.13.

Judgment of  
Thomson, C.J.

30th May, 1960  
- continued.

Exhibit P.6.  
p.69.

Exhibit P.7.  
p.70.

In the  
Court of Appeal

No.13.

Judgment of  
Thomson, C.J.  
30th May, 1960  
- continued.

The case was tried before Ong, J., who dismissed the Plaintiff's claim with costs and against that decision he has now appealed.

I pause at this stage to make one observation. On the view I take of the case which I shall state in due course I do not think the actual reason for the Appellant's dismissal is very relevant. It is clear, however, that it had nothing to do with the incident of the dishonoured cheques. His explanation of that incident, whatever it was worth, was accepted. What clearly did happen is that the incident of the cheques attracted attention to him, it was realised (it probably should have been realised long previously) that there were in existence certain confidential reports on his work and conduct and it was because of the contents of these that he was dismissed. These reports are not before the Court, but clearly it was the wish of the Appellant that they should not be before the Court. He knew of their existence at least as early as 1st October, 1957 (that is the date of the first letter he had from the Municipal Treasurer relating to his dismissal), he made no attempt to obtain discovery of them before the trial and at the trial when the Municipal Secretary, who was called for the Plaintiff, said in cross-examination that he had the reports in question in his custody Counsel for the Plaintiff immediately objected to them being put in evidence and Counsel for the Town Council did not press the point. I am not criticising Counsel for the Plaintiff. In his shoes I should probably have taken the same course myself. But I think it is not unfair to draw the inference that there is nothing in the reports that could help his client's case.

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What is clear and what may be relevant is that prior to his dismissal the Appellant received no intimation of any intention to dismiss him nor of the grounds on which any such intention was based nor was he given any opportunity to be heard.

40

I turn now to the statutory provisions governing the appointment and dismissal of servants of the Council. These are to be found in the Municipal Ordinance of the former Straits Settlements (Cap.133) as applied to the former Malay States including Selangor by the Municipal Ordinance (Extended Application) Ordinance, 1948, and as subsequently amended by Federal law.

Kuala Lumpur has been constituted a Municipality

and provided with a Town Council under Section 6 of that Ordinance. By Section 16(1) it is provided that the President of the Town Council shall once in every year submit to the Council for its approval a list of the Offices which he thinks necessary "for the purpose of this Ordinance" and that list has to be approved by the Council subject to a certain overriding control by the State Government. Sub-section (5) of Section 16 now reads as follows :-

10           "The President may appoint such persons as he thinks fit to the offices shown on the list so approved as aforesaid and may remove such persons from office and appoint others in their stead, provided that the appointment and removal of persons to or from an office carrying a commencing salary of two hundred dollars a month and over shall be subject to the approval of the Councillors".

20           It is to be observed that the power to remove is not made subject to any conditions of any sort nor is there any particular way laid down in which it is to be exercised.

          Following the reasoning of Slessor, L.J., in the case of McManus v. Bowes (1), with which with respect I entirely agree, I have come to the conclusion that the word "remove" in Section 16(5) means in the case of holders of an office carrying a commencing salary of less than two hundred dollars a month, "remove at will, at pleasure or at discretion".

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          What we have to consider, then, is to what limits, if any, that power of the President is subject.

          I would commence the discussion of this by observing that the right of a private employer to dismiss his servant is only limited by the terms of the contract between them. If, for example, that contract is terminable by a month's notice the employer can dismiss the servant on a month's notice without stating any reason for doing so, without having any reason for doing so or indeed for the most disreputable and wicked reasons. I may give my cook a month's notice because I think he is not a very good cook or because he has red hair and I have taken a dislike to people with red hair or indeed, so long as I avoid conspiracy, because I

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In the  
Court of Appeal

No.13.

Judgment of  
Thomson, C.J.

30th May, 1960  
- continued.

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(1) (1938) 1 K.B. 98, 118.

In the  
Court of Appeal

No.13.

Judgment of  
Thomson, C.J.

30th May, 1960  
- continued.

propose to take a sadistic delight in observing him and his family being reduced to a state of poverty. As long as I keep within the limits of my contract my motives for exercising my rights under it to put it at an end are no concern of the law. Here the law may be not very consonant with much public opinion and it may be that if I am a large employer of labour prudence may call for restraint in the exercise of my rights. For the purpose of the present argument, however, it is necessary that these rights should be stated.

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The point was thus put by Warrington, L.J., in the case of Short v. Poole Corporation (2) :-

"In the case of an individual employer under a contract with an employee, ..... the motives of the employer in giving notice would be wholly immaterial, and provided the notice in itself complied with the terms of the contract the employment would be duly determined by it".

20

In that case His Lordship then went on to enquire whether the position of a public authority was different from that of an individual. His answer was :-

"In my opinion it is different only in this, that being established by statute for certain limited purposes, no act purporting to be that of the public body can have any operation as such, if the individuals purporting to exercise the functions of the public body have, in performing the act in question, transcended the limits of the authority conferred upon it. If they have done so, and this fact is proved affirmatively by the person who complains of their action and seeks to have it declared invalid and inoperative, then, and then only, has the Court, in my opinion, jurisdiction to interfere".

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A little later (at p.91) His Lordship again observed :-

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"My view then is that the only case in which the Court can interfere with an Act of a public body which is, on the face of it, regular and within its powers, is when it is proved to be in fact ultra vires, and that the references in judgments in the several



cases cited in argument to bad faith, corruption, alien and irrelevant motives, collateral and indirect objects, and so forth, are merely intended when properly understood as examples of matters which if proved to exist might establish the ultra vires character of the act in question".

In the  
Court of Appeal

No.13.

Judgment of  
Thomson, C.J.

30th May, 1960  
- continued.

10 On the question of where the onus lies I would add by quoting the following passage from the judgment of Malins, V.C., in the case of Hayman v. Governors of Rugby School(3) :-

20 "I think the clear result of the numerous authorities cited on both sides in the argument of this case is that all arbitrary powers, such as the power of dismissal, by exercising their pleasure, which is given to this governing body, may be exercised without assigning any reason, provided they are fairly and honestly exercised, which they will always be presumed to have been until the contrary is shewn, and that the burden of shewing the contrary lies upon those who object to the manner in which the power has been exercised. No reasons need be given, but if they are given the Court will look at their sufficiency".

30 Applying the law as stated by Warrington, L.J., to the facts of the present case it is clear that if the Appellant is to succeed he must make out some circumstance which would support the inference that in dismissing him the President acted ultra vires, that is to say otherwise than for the purpose of the Municipal Ordinance which I take it to be the good government of Municipalities and not the maintenance for life of unnecessary and unsuitable functionaries.

40 There has been some criticism of the actual mechanism, so to speak, of the dismissal which will call for discussion at a later stage but it is not unfair to say here that it is the Appellant's case that the circumstance on which he relies to shew that the President acted in bad faith and so give rise to the inference that he had gone beyond his powers is that he was given no notice of the intention to dismiss him or of the grounds on which that intention was based. There is, of course, in the Ordinance no statutory obligation on the President to do anything of the sort, but it is said

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(3) L.R. 18 Eq. 28, 68.

In the  
Court of Appeal.

No.13.

Judgment of  
Thomson, C.J.

30th May, 1960  
- continued.

that there is a common law obligation arising from what is called natural justice not to do anything that may affect the subject's rights or property without giving him an opportunity to be heard, the obligation which is embodied in the maxim audi alteram partem.

This conception of the demands of natural justice in relation to the law of England has, of course, a long and respectable history though perhaps it is not necessary to follow Fortescue, J., in tracing it back to the action of God himself in the Garden of Eden who would not condemn Adam for his transgression till he had called upon him to know what he would say in his defence (Rex v. University of Cambridge(4)). As long ago as the XIII century it was said by Bracton (De Legibus, lib. iii.) that what is "necessary to justice is reasonable summons and diligent examination of the truth". Two hundred years later in the Year Book of 9 Edw. 4, c.15 we read:-

"sed lex naturae non habet certum ordinem, sed per quemcunque modum veritas scire poteret, et ideo dicitur processus absolutus; et a lege naturae requiritur que les parties sont presents (ou que ils sont absentes per contumacy) et examinatio veritatis".

It would be otiose to trace the influence of this conception through the centuries down to the latest discussion of the subject in Ceylon University v. Fernando(5). I would content myself (as did Lord Jenkins in that latest case) with quoting the words of Harman, J. (as he then was) in the case of Byrne v. Kinematograph Renters Society Ltd.(6) where the requirements of "natural justice" are stated as follows :-

"First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more".

But what we are concerned with here is not

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(4) (1723) 8 Mod. 148, 164  
(5) (1960) 1 W.L.R. 223.  
(6) (1958) 2 A.E.R. 579, 599.

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the general question of what are the requirements of natural justice. What we are concerned with is the application of these principles to the actions of local authorities in relation to questions of dismissal from office.

10 Here a clear distinction has been drawn between dismissal from an office which is a freehold or to be forfeited only for cause or is held ad vitam aut culpam and on the other hand offices in relation to which there is a discretionary power to remove the holder at pleasure.

20 Where the office is freehold or where removal from it can only be for specific cause the maxim audi alteram partem has always, or at any rate since the case in 1615 of the unruly chief burgess of Plymouth (James Bagg's cases)(7), been applicable (see e.g. Fisher v. Jackson)(8). Where however, the office is one from which the holder can be removed at pleasure or at discretion the position is entirely different and I have been unable to find any case where failure to inform the holder of such an office of any intention to remove him or to give him any opportunity to be heard has of itself availed to invalidate his dismissal or indeed afford him any remedy of any sort.

30 As long ago as 1671 in the case of the King v. The Mayor, etc. of Stratford upon Avon(9) which related to the removal from office of a town-clerk it was said that :-

"it is to no purpose to summon him to answer, whom they may remove without a crime".

Again, in the case of Rex v. Burgum Andover(10) where a common councilman had been removed from his office which he held during pleasure:-

"it was held a good return without shewing any good reason, having power to do it according to their discretions".

40 Then I come to the case of The Queen v. The Governors of Darlington School(11) which has figured in almost every subsequent discussion of the

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(7) 11 Co. Rep. 93b  
 (8) (1891) 2 Ch. 84  
 (9) 1 Lev. 292  
 (10) 1 Ld. Raym. 710  
 (11) (1844) 6 Q.B. 682.

In the  
Court of Appeal.

No.13.

Judgment of  
Thomson, C.J.

30th May, 1960  
- continued.

In the Court of Appeal.

No.13.

Judgment of Thomson, C.J.

30th May, 1960 - continued.

subject. The Defendants in that case were the Governors of a school which had been founded by Queen Elizabeth by charter and the charter gave them power inter alia to appoint masters to the school and to remove them "according to their sound discretion". In purported pursuance of that power the Governors removed a master from his office without hearing him and without informing him of any charge against him, in spite of a bye-law made by their predecessors in office which provided that no master should be removed unless he had been shown in writing signed by the Governors some sufficient cause against him. It was held by the Court of Queen's Bench and by the Court of Exchequer Chamber affirming their judgment that the Governors were entitled to remove a master without making any charge against him and without hearing him and that the bye-law which they had made regulating their own conduct in such connection was void. On the first point Lord Denman, C.J., said in the Queen's Bench (at p.695):-

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"We are far from saying that persons in authority ought not to give the fullest opportunity of defence to any of those employed under them, whom they may be disposed to remove on complaint preferred by others against them for misconduct. But they accept a larger trust, and impose on themselves a wider duty, when they undertake to govern the school in the manner required by his charter. They are bound to remove any master whom, according to their sound discretion, they think unfit and improper for the office: and, as that discretion may possibly be well exercised for defects of various kinds not amounting to misconduct, so there may be misconduct, incapable of proof by witnesses, but fully known to the governors themselves, on which they could not abstain from exercising their power of removing the master without the abandonment of their duty".

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On the second point Tindal, C.J., said in the Exchequer Chamber (at p.717):-

"we think the governors for the time being had no authority under the letters patent to make such byelaw so as to bind their successors in the execution of their duty;"

In the case of Teather and the Poor Law Commissioners (12) where a relieving officer had been

dismissed by the Poor Law Commissioners without having had any intimation of the intention to dismiss him or any opportunity to be heard, Erle, J., said (at p.71):-

In the  
Court of Appeal

No.13.

Judgment of  
Thomson, C.J.

30th May, 1960  
- continued.

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"I have no doubt that under the provisions of the statute the Poor Law Commissioners have a discretion to remove the paid officers of the parish or union: and that where they have such a discretion, they may order the removal of an officer though no charge has been made, or any notice given to the party, or an opportunity afforded him for making any defence. The case of The Queen v. The Governors of Darlington School, which is a very elaborate judgment, establishes the principle that where there is a discretionary power to remove, it may be exercised without notice to the party and without any statement of the grounds of removal".

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I would only add that so far as I have been able to advise myself that the Darlington School case and Teather's case are still good law to-day, It is true that in the case of Dean v. Bennett (13) Lord Hatherley, L.C., felt some doubt as to the soundness of the Darlington School case but as Malins, V.C., pointed out in the later case of Hayman v. Governors of Rugby School (Supra - at p. 75) that doubt did not amount to disapprobation and I have been unable to find any other case in

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which even doubt was expressed.

In the circumstances I think the only other case I need mention is the case of Brown v. Dagenham Urban District Council (14) In that case McCardie, J., was concerned with the interpretation of Section 139 of the Public Health Act, 1875, which provides that certain officers "shall be removable by the urban authority at their pleasure" and with the transfer of these powers to parish councils by Section 5(1) of the Local Government Act, 1894, and he came to the conclusion that these provisions

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conferred on a parish council power to revoke the appointment of an assistant overseer at will and without cause, notice or hearing.

Returning to the present case, to my mind it is clear in the light of what has been said that the power of the President under Section 16(5) of

(13) L.R. 9 Ch.489.

(14) (1929) 1 K.B. 737.

In the  
Court of Appeal

No.13.

Judgment of  
Thomson, C.J.  
30th May, 1960  
- continued.

the Municipal Ordinance to remove officers of the Council from their offices is a power to remove at pleasure and to do so without cause, notice or hearing. It is true that that power must be exercised within the limits imposed by the provisions of the Ordinance, that is to say, it must be exercised in the interest of the good government of the Municipality. The onus, however, of shewing that it has not been so exercised lies fairly and squarely on the shoulders of the party questioning it. He may, of course, discharge that onus in one of two ways. He may discharge it by calling positive evidence of his own or he may discharge it by pointing to matters of evidence on the other side which gave rise to an inference in his favour. He may, for example, be able to point to something that helps him in the reasons for his dismissal if these reasons are before the Court. The present Appellant has, however, done none of these things and the Court must therefore conclude that the power of the President was properly exercised. 10 20

There remains only the question of whether that power was in fact exercised by the President or whether its exercise by someone else was effectively ratified or adopted by him (see Richardson v. Abertillery Urban District Council (15) and Young v. Cuthbert (16))

I do not think there is really any room for doubt that the power was exercised by the President. At one stage that may not have been altogether clear but it was perfectly clear by the time proceedings were commenced. In his letter of 28th October, the President said :- 30

Exhibit P.6.  
p.69.

"the removal of Mr. Jerome Francis from his office ..... was in accordance with my decision, in addition to the decision of the Establishment Committee and of the Municipal Council, whose concurrence was in fact unnecessary in law".

Not a word was said in evidence in contradiction of that. In his own evidence the President made it clear that his practice was to consult his Council and its Establishment Committee on such matters and be guided by them although the legal power of dismissal lay with him alone. He went on to say "I considered that what the Plaintiff did 40

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(15) (1928) XLIV T.L.R.333  
(16) (1906) 1 Ch. 451.

was sufficient to merit a dismissal" and indeed it is clear that he must have been fully aware (though we are not) of what was alleged against the Appellant for in addition to his own knowledge as President he was present at the meeting of the Establishment Committee which considered the matter and at the meeting of the Council which considered and accepted the "decision" of the Establishment Committee.

10 It is difficult to see any reason why so long as he applies his own mind to any individual case the President should not take into account and be influenced by the views of his Council and its committees in the exercise of his power of removal so long at any rate as that guidance does not conflict with his own judgment and so long as the ultimate removal is effected by him. After all there have been great changes since the original enactment of the Municipal Ordinance. When it was  
20 first enacted the members of Municipal Councils were persons nominated by the Government, now they are elected persons and it would be contrary to the spirit of the times that such persons should be allowed no say whatever in the administration of the affairs of the Municipality. In the present case there is no reason to suppose that the President's own views did not coincide with those of his Council and it would be unprofitable to speculate as to what he would have done had they not thus  
30 coincided.

I would dismiss this appeal.

Kuala Lumpur,  
30th May, 1960.

Sgd: J.B.Thomson  
CHIEF JUSTICE,  
FEDERATION OF MALAYA.

No. 14.

JUDGMENT OF HILL, J.A.

40 In the High Court at Kuala Lumpur, on 14-12-59 Ong J. dismissed the Appellant's claim for wrongful dismissal brought against the Municipal Councillors of Kuala Lumpur.

The facts do not appear to be in dispute. Misfortune began to overtake the Appellant on 19-6-57 when he cashed two cheques for ~~5~~300/- each at the Municipal Treasury for these cheques were dishonoured on 21-6-57 and investigations into the

In the  
Court of Appeal

No.13.

Judgment of  
Thomson, C.J.

30th May, 1960  
- continued.

No.14.

Judgment of  
Hill, J.A.

21st May, 1960.

In the  
Court of Appeal

No.14.

Judgment of  
Hill, J.A.

21st May, 1960  
- continued.

Appellant's conduct were instituted which eventually led to his dismissal.

I do not propose to refer in any detail to the methods adopted in enquiring into the Appellant's conduct. A Sub-Committee of the Establishment Committee dealt with the question of the cheques and recommended that the benefit of the doubt should be given to the Appellant on the question of his intention to defraud. The Appellant did not appear through inadvertence before this Sub-Committee and the Committee recommended that departmental inquiry should proceed, apart from any action regarding the cheques, concerning the conduct of his work. 10

On 18-9-57 the Establishment Committee decided to terminate the Appellant's services in view of adverse reports on his work. The Chairman of this Committee was the President of the Municipal Council. The Appellant was again not present at the meeting of this Committee, nor was he informed of the investigations into his conduct and at no time has he been given an opportunity to say anything on his own behalf. 20

On the face of it the inquiries into the Appellant's conduct and his subsequent dismissal appear to be against the normal requirements of natural justice as expressed in the maxim "Audi alteram partem". This case, however, does not rest there. Sec.16(5) of the Municipal Ordinance is as follows:- 30

"The President may appoint such persons as he thinks fit to the office on the list so approved as aforesaid and may remove such persons from office and appoint others in their stead, provided that the appointment and removal of persons to or from an office carrying a commencing salary of two hundred dollars a month and over shall be subject to the approval of the Councillors".

At this stage I must state that I have read the original draft judgment of the learned Chief Justice and in the light of the numerous authorities he has cited I feel compelled to agree that the power of the President under Section 16(5) of the Municipal Ordinance to remove officers of the Council from their offices is a power to remove at pleasure and to do so without cause, notice or hearing. But when I come to answer the question: 40



"Who dismissed the Appellant?" I feel equally compelled, though regretfully, to differ with the answers found by the learned Chief Justice and the learned trial Judge.

10 The letter that conveyed to the Appellant notice of his dismissal was dated 1-10-57 and signed by the Ag. Municipal Treasurer. In it there is no reference to the President nor any indication that the decision to dismiss was his. The letter was as follows :-

"In connection with your suspension from duty I have been directed to inform you that the Establishment Committee has decided to terminate your services with effect from 30th September, 1957 on the grounds of adverse reports against your work and conduct and the Committee's decision has been confirmed by the full Council Meeting held on 30-9-57".

20 It is true that on the 28th October the President wrote two letters, to the Appellant and to his Solicitor, in which he stated that the decision to dismiss was his. In my view, however, those letters cannot and do not convert the actual letter of dismissal from the Acting Municipal Treasurer into a proper notice in conformity with Section 16(5) of the Municipal Ordinance.

In this view I may well be wrong, but the President gave evidence in Court and he is recorded as stating under cross-examination as follows:-

30 "As far as I am concerned it was Council's decision that Plaintiff be dismissed. It never rested with me, but with the Establishment Committee and the full Council".

Immediately after that statement he stated under re-examination:

"If my decision was not approved of by the Establishment Committee I should waive my decision".

40 In referring to the meeting of the Establishment Committee in examination-in-chief the President stated:

"There was a subsequent meeting of the Establishment Committee on 18-9-57 when I made a recommendation in that I retained the opinion I previously held. The matter was put to the vote.

In the  
Court of Appeal.

-----  
No.14.

Judgment of  
Hill, J.A.

21st May, 1960  
- continued.

Exhibit P.3.  
p.66.

Exhibits  
P.6 & P.7.  
pp.69 and 70.

In the Court of Appeal.

No.14.

Judgment of Hill, J.A.

21st May, 1960  
- continued.

From minutes of meeting of 18-9-57 the Committee not only considered the report of the Sub-committee but also the work and conduct of the Plaintiff. Its decision was confirmed by the full Council on 30-9-57".

Not "my" decision was confirmed but "its" decision.

There is no question here of possible faulty interpretation of evidence and I feel that these definite statements by the President cannot be brushed aside by his letters of the 28th October, obviously written after he had taken legal advice of some sort. It is significant too that the President nowhere stated that the Municipal Treasurer's letter was written on his instructions.

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In my view the Appellant should have succeeded in some measure in the lower Court as his dismissal was not in accordance with Section 16(5).

I would allow the appeal by giving the Appellant the first declaration he prays for "that the decision of the Establishment Committee of the Municipal Council is ultra vires and/or null and void".

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As the Appellant had no vested right to his employment and as his services could have been legally terminated by the President at any time during the past two years or so, I consider that three months' pay and allowances would adequately compensate him and would so order.

I think the Appellant should have the costs of this appeal and in the Court below.

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(Sgd.) R.D.Hill,  
Judge of Appeal,  
Federation of Malaya.

21st May, 1960.

No.15.

Judgment of Good, J.A.

25th May, 1960.

No. 15.

JUDGMENT OF GOOD, J.A.

I have had an opportunity of reading the judgments which have been delivered by the learned Chief Justice and Hill, J.A., and I find myself in complete accord with what my brother Hill has said; but, because I have felt obliged to differ, with respect, from the opinions of the learned Chief Justice and the learned trial Judge, I think it proper, at the risk of repeating much that has

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already been expressed in the judgment of Hill, J.A., to state the reasons for my opinion in my own words.

It is not necessary for me to repeat the facts of the case in full, and I will refer only to those facts upon which my opinion is based. They are as follows :-

10 On 18th September, 1957, the Establishment Committee met, under the Chairmanship of the President of the Municipal Council, and decided, by a vote from which there was only one dissentient, to terminate the services of the Appellant with effect from 30th September, 1957.

20 On 30th September, 1957, at an ordinary meeting of the Municipal Council presided over by the President, the dissentient member of the Establishment Committee proposed that the decision of the Establishment Committee be amended by the deletion of the words recording the decision to terminate the Appellant's services. This, in effect, was a motion to reverse the decision of the Establishment Committee. After some discussion on a point of order as to the propriety of discussing a confidential item in public session, the dissentient member moved that the matter be referred back (to the Establishment Committee) for reconsideration. The motion was put to the vote, and lost by a majority. The resolution, in effect, confirmed by a majority the majority decision of the Establishment Committee.

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On 1st October, 1957, the Acting Municipal Treasurer sent the following letter (Exhibit P.3) to the Appellant :-

40 "In connection with your suspension from duty I have been directed to inform you that the Establishment Committee has decided to terminate your services with effect from 30th September, 1957 on the grounds of adverse reports against your work and conduct and the Committee's decision has been confirmed by the full Council Meeting held on 30.9.57".

It is pertinent to note that, unlike the Town Superintendent's letter (Exhibit P.2) of 25th June, 1957 informing the Appellant of his suspension from duty, Exhibit P.3 was not expressed to have been written on the directions of the President. It is a reasonable inference that the Acting Municipal

In the  
Court of Appeal

No.15.

Judgment of  
Good, J.A.

25th May, 1960  
- continued.

Document No.1.  
Appendix "B"  
(Minutes) p.10.

Exhibit P.3.  
p.66.

Exhibit P.2.  
p.63.

In the  
Court of Appeal

No.15.

Judgment of  
Good, J.A.

25th May, 1960  
- continued.

Exhibit P.5.  
p.67.

Exhibit P.6.  
p.69.

Treasurer omitted any reference to the President because he was not purporting to convey to the Appellant a decision of the President, but was purporting to convey to him a decision of the Establishment Committee confirmed by the Municipal Council.

On 14th October, 1957 the Appellant's Solicitor wrote a letter (Exhibit P.5) to the Municipal Council questioning the legality of the termination of the Appellant's services. 10

On 28th October, 1957, the President replied by a letter (Exhibit P.6) on which the most charitable construction that can be placed is that it was probably written after taking legal advice. To my mind it is clearly recognisable as special pleading, and since it bears little resemblance, as an indication of the President's state of mind, to the evidence of the President which I shall quote later, I think it had better be set out in full:

"I have the honour to refer to your letter of the 14th October addressed to my Council. The removal of Mr. Jerome Francis from his office with effect from the 30th of September was in accordance with my decision, in addition to the decision of the Establishment Committee and of the Municipal Council, whose concurrence was in fact unnecessary at law. Municipal Officers in the category of Mr. Francis are appointed and removed by me at pleasure, and the proceedings of the Committee and Sub-Committee to which you refer are irrelevant, though I no way agree that they went outside their powers in considering the matters which they did. I regret therefore that I do not consider that the termination of Mr. Francis's service is bad in law, and there can be no question of his reinstatement". 20 30

Exhibit P.7.  
p.70.

On the same day the President sent to the Appellant a letter (Exhibit P.7) somewhat terser than his letter to the Solicitor, but to much the same effect: 40

"With reference to letter dated 1st October (Ref: KLM.(C)73/(37)) addressed to you and signed by the acting Municipal Treasurer, I have the honour to inform you that I confirm your removal from your office of Municipal

Clerk with effect from 30th September, 1957, and I had so decided".

The emphasis in both letters is on the decision of the President to remove the Appellant from office but in my opinion these letters cannot prevail ex post facto to alter the position, whatever it may have been, on 30th September, 1957. What that position was can be unequivocally ascertained from the evidence of the President himself. I quote the relevant passage in full:

Examination-in-chief: "I considered that what Plaintiff did was sufficient to merit a dismissal.

Usual procedure was, after I formed my opinion that the person should be dismissed, the grounds together with my opinion would be put before the Establishment Committee.

The concurrence of the Establishment Committee as a matter of law is not essential in a matter of appointment or dismissal of staff drawing under \$200/- p.m. As regards Plaintiff, I did make a recommendation for his dismissal.

A sub-committee was appointed to consider the matter.

That sub-committee made its report - it is appendix "B" dated 19.8.57.

There was a subsequent meeting of the Establishment Committee on 18.9.57 when I made a recommendation in that I retained the opinion I previously held. The matter was put to the vote.

From minutes of meeting of 18.9.57 the Committee not only considered the report of the sub-committee but also the work and conduct of the Plaintiff. Its decision was confirmed by the full council on 30.9.57".

Cross-examination: "In my capacity as President the only communication by me to the Plaintiff was in Ex.P.7 dated 28.10.57.

Till that date I did not dismiss the Plaintiff.

As far as I am concerned it was Council's decision that Plaintiff be dismissed. It never rested with me, but with the Establishment Committee and the full Council.

As to suspension, I made the order".

Re-examination: "If my decision was not approved of by the Establishment Committee I should waive my decision".

In the  
Court of Appeal

No.15.

Judgment of  
Good, J.A.

25th May, 1960  
- continued.

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In the  
Court of Appeal

No.15.

Judgment of  
Good, J.A.

25th May, 1960  
- continued.

The learned trial Judge, in dealing with the question of who exercised the power of removal, says this:-

"On the evidence it is clear that the matter of the unpaid cheques was brought immediately to the notice of the President, on whose instructions Plaintiff was suspended on June 25. He was cognisant of the complaint when he presided at the Establishment Committee meeting which decided on the dismissal, and he again presided at the full Council Meeting approving the decision of the Committee. The Minutes of these meetings showed that he and the Councillors present came to one and the same decision. I am therefore of opinion that, even if the letter of the Acting Municipal Treasurer dated October 1, 1957 could have been more appropriately worded in strict compliance with the provisions of Section 16(5), no amount of hair-splitting can alter the fact that the President decided, as the other Councillors did, to dismiss the Plaintiff. For this reason I hold that the purported dismissal in fact was a dismissal by the President with the concurrence and approval of the Municipal Councillors, although such approval was not necessary under Section 16(5), as Plaintiff's commencing salary was under \$200/- a month. No question of ultra vires therefore arises".

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With respect, I am unfortunately unable to reconcile this statement of the position with the President's own evidence. To my mind, it makes no difference that the President and the Councillors present came to one and the same decision. It is perfectly clear that the President supposed, erroneously, that he did not have the power to remove the Appellant on his own authority. Throughout his evidence, until the re-examination, the President speaks of his "opinion" (three times) and his "recommendations" (twice); and whenever he mentions a "decision" (twice), it is the "decision" of the Establishment Committee and the "decision" of the Council to which he is referring. The word "decision", meaning the decision of the President, was introduced by Counsel, not by the President himself. His evidence in re-examination, "If my decision was not approved of by the Establishment Committee I should waive my decision", must have been given in answer to the question,

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"If your decision had not been approved of by the Establishment Committee, what would you have done?"

Notwithstanding that the President said "The concurrence of the Establishment Committee as a matter of law is not essential in a matter of appointment or dismissal of staff drawing under ~~₹~~200/- p.m." (an appreciation of the true legal position which, on his own evidence, does not seem to have been present in his mind at the material time), I find it impossible to say that he exercised his own discretion in the light of the statement at the end of his cross-examination: "As far as I am concerned it was Council's decision that Plaintiff be dismissed. It never rested with me, but with the Establishment Committee and the full Council".

It is not, of course, wrong, improper, ultra vires or in any way illegal for a person exercising a statutory discretion to consult others before he makes up his own mind. He may seek guidance wherever he chooses, he may have the benefit of the advice of experts, he may even invite and give due weight to the views of his superiors; but he must not accept directions or subordinate his discretion to that of others. Here, the President deliberately and, it should be stated in fairness to him, in all good faith subordinated his own discretion to that of others, and I can see no difference, as a matter of law, between this case and the case of a functionary endowed with a statutory discretion taking a decision in purported exercise of the discretion under directions from his superiors. The position does not appear to me to be any different if the person exercising the discretion happens to agree with the orders of his superiors. If he accepts directions, he has not properly exercised his own discretion.

Straits Steamship Co., Ltd., v. Owen (1932)  
SSLR.145: per Murison, C.J., at p.163 :-

"Whitley J. found upon the evidence before him that the Harbour Master had, upon his own statement of the facts, acted, not on his own discretion, but upon the instructions of some other executive officers. "I was instructed", he says, "that for political reasons the contemplated prosecution was not in the public interest". It is idle for him to say, after that, that he exercised his discretion accordingly. Action on instructions from

In the  
 Court of Appeal

No.15.

Judgment of  
 Good, J.A.

25th May, 1960  
 - continued.

In the  
Court of Appeal

No.15.

Judgment of  
Good, J.A.

25th May, 1960  
- continued.

another is the direct negation of the exercise of a personal discretion".

and per Thorne, A.C.J. at pp. 166-167:

"The Attorney-General sought to establish that in fact the Appellant did exercise his discretion. In this, in my humble opinion, learned Counsel is not supported by the evidence of the Appellant himself. It seems to me that the last-named was quite frank in the statement he made in paragraph 7 of his affidavit of the 7th of April, 1932, where he states:-

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"I consulted the executive officers of the Crown and was instructed that for political reasons the contemplated prosecution was not in the public interest".

It seems to me that this deponent makes it quite clear in this and the preceding paragraph of his affidavit that, although he realized he had a discretion to grant or refuse a sanction he in fact refused a sanction upon the instructions of the executive officers of the Crown. Obedience to instructions, in my view, is the very antithesis of the exercise of a discretion, and, in my view, the learned trial Judge below was right in his ruling that the Appellant had not exercised, and indeed did not claim to have exercised, a discretion in the matter".

20

In the present case, the President, on his own admission, undoubtedly considered himself bound by the decision of the Establishment Committee as confirmed by the Municipal Council. In effect, the President was acting under the directions of a majority of the Council, and the decision to remove the Appellant was not his decision (even though it may have coincided with his opinion) but the decision of the Council. As such, it was ultra vires and accordingly the removal of the Appellant constituted wrongful dismissal.

30

For these reasons I would allow the appeal.

40

I agree with Hill, J.A. as to the quantum of damages: I would allow three months' salary and allowances at the rate applicable to the Appellant in September, 1957. I would also award him the costs of this appeal and of the proceedings in the High Court.

25th May, 1960.

Sgd: D.B.W.Good,  
Judge of Appeal,  
Federation of Malaya.



61.

No. 16.

ORDER

Coram: The Hon'ble Dato Sir James Thomson, P.M.N.,  
P.J.K., Chief Justice, Federation of  
Malaya,  
The Hon'ble Mr. Justice Hill, Judge of  
Appeal, and  
The Hon'ble Mr. Justice Good, Judge of  
Appeal.

In the  
Court of Appeal

No.16.

Order.

30th May, 1960.

10 IN OPEN COURT This 30th day of May, 1960.

O R D E R

THIS APPEAL coming on for hearing on the 19th  
and 20th days of April, 1960 in the presence of Mr.  
R.Ramani (Mr.K.Chelvanayagam with him) of Counsel  
for the Appellant and Mr.D.G.Rawson of Counsel for  
the Respondents AND UPON READING the Record of  
Appeal filed herein AND UPON HEARING Counsel as  
aforesaid for the parties IT WAS ORDERED that this  
Appeal do stand adjourned for judgment AND THIS  
20 APPEAL coming on for judgment this day in the  
presence of Mr.K.Chelvanayagam of Counsel for the  
Appellant and Mr.D.G.Rawson of Counsel for the Re-  
spondents IT IS ORDERED that this Appeal be and  
is hereby allowed and that the judgment of the  
trial Court below given on the 14th day of December  
1959 be set aside AND IT IS ORDERED that the Re-  
spondents do pay to the Appellant damages equal to  
three times the amount of the Appellant's monthly  
emoluments as on the 30th day of September, 1957  
30 AND IT IS FURTHER ORDERED that the Respondents do  
pay to the Appellant the costs of this Appeal as  
taxed and also the costs in the High Court taxed  
on the appropriate scale under the provisions of  
the Subordinate Courts Rules AND IT IS LASTLY  
ORDERED that the deposit of \$500/- (Five hundred  
Dollars only) lodged in Court by the Appellant as  
security for the costs of this Appeal be paid out  
to the Appellant.

40 GIVEN under my hand and the Seal of the Court  
this 30th day of May, 1960.

Sgd: Shiv Charan Singh  
Assistant Registrar,  
Court of Appeal,  
Federation of Malaya.

SEAL.

In the  
Court of Appeal

No. 17.

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

No.17.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR  
FEDERATION OF MALAYA CIVIL APPEAL NO.3 of 1960

Order, allowing  
Final Leave to  
Appeal to His  
Majesty the  
Yang di-Pertuan  
Agong.

12th December,  
1960.

BETWEEN:- Jerome Francis Appellant

- and -

The Municipal Councillors  
of Kuala Lumpur

Respondents

10

(In the matter of Kuala Lumpur High  
Court Civil Suit No.395 of 1957

Between:- Jerome Francis of Kuala Lumpur Plaintiff

- and -

The Municipal Councillors  
of Kuala Lumpur

Defendants)

Before: The Hon'ble Dato Sir James Thomson, P.M.N.  
P.J.K., Chief Justice, Federation of Malaya,  
The Hon'ble Mr. Justice Hill, B.D.L., Judge  
of Appeal; and  
The Hon'ble Mr. Justice Ong.

20

IN OPEN COURT

This 12th day of December, 1960.

O R D E R

UPON MOTION made unto the Court this day AND  
UPON READING the Notice of Motion dated the 28th  
day of October 1960 and the Affidavit of Jerome  
Francis affirmed on the 28th day of October 1960  
and filed herein AND UPON HEARING Mr.R.Ramani of  
Counsel for the above-named Appellant and Mr.Chan  
Hua Eng of Counsel for the above-named Respondents: 30

IT IS ORDERED that Final Leave be and is here-  
by granted to the above-named Appellant to appeal  
to His Majesty the Yang di-Pertuan Agong against  
the Judgment of the Court of Appeal herein dated  
the 30th day of May 1960:

AND IT IS ORDERED that the costs of and inci-  
dental to this application be costs in the said  
Appeal.

GIVEN under my hand and seal of the Court  
this 12th day of December, 1960.

40

Sgd: Shiv Charan Singh  
Assistant Registrar,  
Court of Appeal,  
FEDERATION OF MALAYA.

(L.S.)

ExhibitsE X H I B I T S

P.1.  
Letter,  
Municipal  
Treasurer to  
Jerome Francis.  
21st June, 1957.

P.1. - LETTER, MUNICIPAL TREASURER TO  
JEROME FRANCIS, 21st JUNE 1957

(Exhibit P.1. is Appendix "A" to the Amended  
Statement of Plaint and appears at p.1.)

P.2.  
Letter, Town  
Superintendent  
to Jerome  
Francis.  
25th June, 1957.

P.2. - LETTER, TOWN SUPERINTENDENT TO  
JEROME FRANCIS, 25th JUNE 1957

MUNICIPALITY OF KUALA LUMPUR

Town Superintendent's Dept.,  
Municipal Office,  
P.O.Box 1022,  
KUALA LUMPUR.

10

Mr. Jerome Francis,  
Clerk Timescale,  
Town Cleansing Department,  
K.L. Municipality.

25th June, 1957.

I am directed by the President, Municipal  
Council to suspend you from duty with effect from  
25th June, 1957 until further notice.

(Sgd.) Town Superintendent  
Kuala Lumpur Municipality.

20

c.c.P.M.C.

25.6.57.

P.4.  
Letter, Jerome  
Francis to  
Municipal  
Treasurer.  
27th June, 1957.

P.4. - LETTER, JEROME FRANCIS TO MUNICIPAL  
TREASURER, 27th JUNE, 1957

Jerome Francis,  
c/o Town Superintendent's Dept.,  
Kuala Lumpur.

27th June, 1957.

The Ag. Municipal Treasurer,  
Municipality, Kuala Lumpur.

30

Sir,

With reference to your letter dated 21st June  
1957 I have to inform you that the situation in  
which I was involved was inadvertent and with re-  
gret I explain the circumstances.

Exhibits

P.4.

Letter, Jerome Francis to Municipal Treasurer.

27th June, 1957  
- continued.

2. I have my personal Banking Account with Chung Khiaw Bank Ltd., Kuala Lumpur. On the 18th June, 1957, I gave seven hundred dollars cash with a completed deposit Bank slip to my brother Mr. S. Francis, who came from Johore Bharu, to bank in Chung Khiaw Bank. Unfortunately he did not bank the money and left for Malacca urgently. He did not inform me that he did not bank the money. I received a letter from him to this effect on the 20th June, 1957. Under the presumption that I had sufficient funds in the Bank, I issued cheques on the 19th and 20th June, 1957 and the amounts in the cheques would not have exceeded my bank deposit accounts. In no way I had any intention of over-drawing or dishonesty. I have on many occasions cashed cheques like many others, as the privilege granted to the Municipal Employees.

10

3. I refer para.1 of your letter and to inform you that cheque No.38949 was not issued to Municipality by me, and cheque for dollars 500/- issued on 20th June, 1957 was never dishonoured by my Bank, whereas para.1 of your letter reveals against it. This was rather bad on your good-self to put it in writing.

20

4. However, on the 22nd morning as instructed, I paid dollars 600/- cash to your good-self for the dishonoured cheques and the matter was settled then and there.

5. Re para.3, I do work in the Town Superintendent's Department and only on official duty I have entered your Department. Even to cash the cheque for Dollars 500/- on the 20th June 1957, I have never entered your Department but I got the money at the Counter.

30

Yours faithfully,  
(Sgd.) Jerome Francis.

c.c. President, Municipal Council (for information)  
Town Superintendent (for information)

P.9.

Notes of Enquiry.

19th August, 1957.

P.9. - NOTES OF ENQUIRY (19th AUGUST 1957)  
MINUTES OF A MEETING (18th SEPTEMBER 1957) and  
MINUTES OF A MEETING (30th SEPTEMBER 1957)

40

(Exhibit P.9 commences with the Notes of the Enquiry of 19th August 1957, which form the first part of Appendix "B" to the Amended Statement of Plaintiff, and are found at pages 6 - 9 where the slight differences between Appendix "B" and Exhibit P.9 are noted).

Appendix "B"CONFIDENTIALExhibits

Extract from the  
Proceedings of Establishment Committee Meeting  
of 18.9.1957 \*  
Sub-Committee of Enquiry - Misconduct of  
Mr. Jerome Francis

P.9.  
(Continued)

Minutes of  
Meeting.  
18th September,  
1957.

10 A copy of the Notes of Enquiry by Councillors appointed by the Establishment Committee into the misconduct of Mr. Jerome Francis is attached whose recommendations are submitted for the consideration of Committee. (Appendix "B").

Decision: The Committee accepted the recommendations of Sub-Committee of Enquiry. In view of the adverse reports on Mr. J. Francis's work, the Committee decided to terminate his services with effect from 30th September, 1957.

Councillor Mr. T. Sivapragasam dissented.

Appendix "C"

P.9.  
(Continued)

20 Extract from the  
Minutes of Ordinary Council Meeting held on 30th  
September 1957  
(ii) Item 4 - Sub-Committee of Enquiry - Misconduct  
Mr. J. Francis

Minutes of  
Meeting  
30th September,  
1957.

30 Councillors Mr. T. Sivapragasam proposed that the decision on this confidential item be amended by the deletion of the whole of the second sentence, i.e., "In view of the adverse reports on Mr. J. Francis's work, the Committee decided to terminate his services with effect from 30th September 1957". He explained that the disciplinary action against Mr. Jerome Francis arose out of a report of his cashing a cheque which there were no funds to meet. It had been admitted that he had made good the sums involved, and the Sub-committee of Enquiry had investigated into this matter thoroughly and its recommendations had been accepted by the Establishment Committee. He believed that the decision was made mainly in view of the bad reports concerning the officer's work.

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\* The Minutes form part of Appendix "B" to the Amended Statement of Plaintiff (see page 10) in a different form.

Exhibits  
P.9.  
(Continued)  
Minutes of  
Meeting  
30th September,  
1957  
- continued.

Councillor Mr.A.Tharmalingam pointed out that this matter was confidential.

The Chairman said that this item, being confidential would better not be discussed in Public.

Councillor Mr.Sivapragasam replied that he had already pointed out that this item was confidential and said that he was prepared to move a reference back if the Council felt this was necessary. He said that he was giving the reasons for the request for reference back and urged the deletion of that part of the decision which recommended the dismissal of the officer. If necessary the question of the work and conduct of the officer should be made a separate issue. The decision to dismiss the officer on a charge which had not been investigated was not fair to the officer or to the Council's conduct of business.

10

On a point of order, Councillor the Hon.Mr.Y. T.Lee pointed out that this matter should not be discussed in public.

20

Councillor Mr.T.Sivapragasam then moved that this item be referred back for reconsideration.

This was seconded by Councillor Enche Mansor bin Othman.

The motion for reference back, on being put to the vote, was lost by a majority.

P.3.  
Letter,  
Municipal  
Treasurer to  
Jerome Francis.  
1st October,  
1957.

P.3. - LETTER, MUNICIPAL TREASURER TO  
JEROME FRANCIS, 1st OCTOBER, 1957

KUALA LUMPUR MUNICIPAL COUNCIL

MUNICIPAL TREASURER,  
C.A.J.POTTER, FIMTA., ASAA.

Treasurer's Department,  
Municipal Offices,  
P.O.Box 1022,  
Kuala Lumpur.

30

Our Ref: KIM(C) 73(37)

1st October, 1957.

Mr. Jerome Francis,  
c/o Town Superintendent's Department,  
Municipality,  
KUALA LUMPUR.

Dear Sir,

In connection with your suspension from duty I have been directed to inform you that the Establishment Committee has decided to terminate your

40

services with effect from 30th September, 1957 on the grounds of adverse reports against your work and conduct and the Committee's decision has been confirmed by the full Council Meeting held on 30.9.57.

Yours faithfully,  
(Sgd.) K.B.Subbaiah  
Ag. Municipal Treasurer,  
KUALA LUMPUR.

Exhibits

P.3.

Letter,  
Municipal  
Treasurer to  
Jerome Francis.

1st October,  
1957

- continued.

10 P.5. - LETTER, K. CHELVANAYAGAN TO MUNICIPAL COUNCIL, 14th OCTOBER 1957

KC/IA/1317/57

14th October, 1957.

The Kuala Lumpur Municipal Council,  
c/o The Municipal Secretary,  
Municipality,  
KUALA LUMPUR.

Dear Gentlemen,

Re: Jerome Francis

20 I have been consulted by Mr. Jerome Francis with reference to a letter dated 1st October 1957 written on your behalf by the Ag. Municipal Treasurer to my client purporting to terminate his services. A copy of the letter is attached herewith and marked (J.F.1).

Firstly the letter dated the 1st day of October 1957 and received by my client some 3 days later purports to terminate his contract of service on the 30th of September 1957.

30 Secondly the termination of his service was on the grounds of "adverse reports against your work and conduct".

And thirdly it would appear that the Establishment Committee recommended and decided on the termination of his services which was confirmed by the full council on the 30th of September 1957.

My client will be grateful for particulars of the alleged adverse reports against him and also for his date of appointment and the dates of his increment in salaries.

40 I am instructed that on the 25th of June 1957 my client was suspended from duty as a result of certain facts contained in a letter dated 21st of

P.5.

Letter,  
K.Chelvanayagan  
to Municipal  
Council.

14th October,  
1957.

Exhibits

P.5.

Letter,  
K.Chelvanayagan  
to Municipal  
Council.

14th October,  
1957

- continued.

June 1957 from the Ag.Municipal Treasurer Kuala Lumpur to my client.

The Establishment Committee appointed a Sub-Committee of Councillors "to enquire into the misconduct of Jerome Francis of the Town Superintendent's Department" and other breaches against some other persons with which my client is not concerned. It is quite clear that the Sub-Committee was to enquire into this case concerning his cashing of cheques as contained in the letter dated 21st June 1957 that is to say "the misconduct" under the terms of reference to the Sub-Committee. 10

It appears that the inquiry proceeded in the absence of my client for which he was not responsible. It further transpires that in the course of the enquiry the sub-committee examined his confidential reports. This latter act was most improper and in any event outside the scope of the terms of reference and ultra vires. 20

However on the question of "the misconduct" alleged my client was cleared of any intention to defraud this Council and the recommendations of the Sub-Committee was "that the man's suspension should cease and he should be reinstated into office."

But instead of ending this matter there, the Sub-Committee went beyond their scope and recommended "that further departmental enquiry should proceed quite apart from any action with the incident of the cashing of the cheques." 30

This last order as has already been pointed out is ultra vires and void.

The Establishment Committee accepted the recommendations of the Sub-Committee and for some reason or other contrary to the acceptances of the recommendations.

- (1) Neither proceed to reinstate my client as recommended;
- (2) Do not order a departmental enquiry; 40
- (3) But proceed to terminate my client's services arbitrarily and without affording my client any opportunity to answer any charge against him,
- (4) And without proper and lawful notice terminating his services.



The termination of service is bad in law and unless my client is reinstated forthwith I have instructions to have this matter before the High Court for wrongful dismissal and for such other relief as my client may be advised.

I have the honour to be,  
Gentlemen,  
Your obedient Servant,  
(Sgd.) K.Chelvanayagam.

Exhibits

P.5.

Letter,  
K.Chelvanayagan  
to Municipal  
Council.

14th October,  
1957

- continued.

10 P.6. - LETTER, PRESIDENT MUNICIPAL COUNCIL TO  
K.CHELVANAYAGAN, 28th OCTOBER 1957

Our Ref: 46/KIM (Conf)  
Staff/73

Your Ref: KC/IA/1317/57.

Mr.K.Chelvanayagan,  
Advocate and Solicitor,  
14, Ampang Street,  
20 Kuala Lumpur.

President's Office,  
Municipal Offices,  
P.O. Box 1022,  
Kuala Lumpur.

28th October, 1957.

P.6.

Letter,  
President,  
Municipal  
Council to  
K.Chelvanayagan.

28th October,  
1957.

Sir,

Re: Jerome Francis

I have the honour to refer to your letter of the 14th October addressed to my Council.

2. The removal of Mr. Jerome Francis from his office with effect from the 30th of September was in accordance with my decision, in addition to the decision of the Establishment Committee and of the Municipal Council, whose concurrence was in fact  
30 unnecessary at law.

3. Municipal officers in the category of Mr. Francis are appointed and removed by me at pleasure, and the proceedings of the Committee and Sub-Committee to which you refer are irrelevant, though I in no way agree that they went outside their powers in considering the matters which they did.

4. I regret therefore that I do not consider that the termination of Mr. Francis's service is bad in law, and there can be no question of his

Exhibits

reinstatement.

P.6.

Letter,  
President,  
Municipal  
Council to  
K.Chelvanayagan.

28th October,  
1957  
- continued.

ADY/yes.

I have the honour to be,  
Sir,  
Your obedient servant,  
Sgd: A.D.York,  
President  
Municipal Council.

P.7.

Letter,  
President  
Municipal  
Council to  
Jerome Francis,  
28th October,  
1957.

P.7. - LETTER, PRESIDENT MUNICIPAL COUNCIL TO  
JEROME FRANCIS, 28th OCTOBER 1957

10

KUALA LUMPUR MUNICIPAL COUNCIL

Our Ref: 45/ (C) Staff/73

President's Office,  
Municipal Offices,  
P.O. Box 1022,  
KUALA LUMPUR.

Mr.Jerome Francis,  
141, Abdul Samad Road,  
KUALA LUMPUR.

28th October, 1957.

Sir,

With reference to letter dated 1st October  
(Ref: KLM(C)73(37)) addressed to you and signed by  
the Acting Municipal Treasurer, I have the honour  
to inform you that I confirm your removal from  
your office of Municipal clerk with effect from  
30th September 1957, and that I had so decided.

20

I have the honour to be,  
Sir,  
Your obedient servant,  
(Sgd.) A.D.York  
President,  
Municipal Council.

30

ADY/yes.

IN THE PRIVY COUNCIL

No.8 of 1961

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N:

JEROME FRANCIS

(Plaintiff) Appellant

- and -

THE MUNICIPAL COUNCILLORS OF

KUALA LUMPUR

(Defendants) Respondents

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RECORD OF PROCEEDINGS

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GRAHAM PAGE & CO.,  
Whitehall House,  
41, Whitehall,  
London, S.W.1.

Solicitors for the Appellant.

C.GROBEL, SON & CO.,  
4, New Court,  
Lincoln's Inn,  
London, W.C.2.

Solicitors for the Respondents.