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Judgment  
59, 1964

IN THE PRIVY COUNCIL

No.43 of 1963

ON APPEAL

FROM THE BRITISH CARIBBEAN COURT OF APPEAL

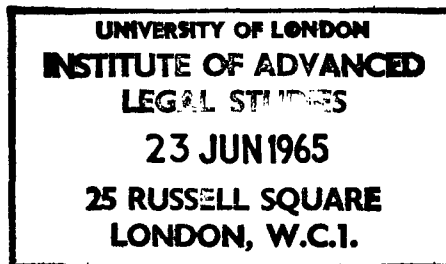
B E T W E E N :

BRITISH GUIANA CREDIT CORPORATION,  
a body corporate, incorporated by  
Ordinance, No.13 of 1954 whose  
Office is situate at Lots 20 and  
21 Water Street, Georgetown,  
Demerara (Defendants) Appellants

- and -

CLEMENT HUGH Da SILVA (Plaintiff) Respondent

RECORD OF PROCEEDINGS



- 78732

CHARLES RUSSELL & CO.,  
37 Norfolk Street,  
London W.C.2.  
Solicitors for the Appellants.

GOODMAN, DERRICK & CO.,  
30 Bouverie Street,  
Fleet Street,  
London E.C.4.  
Solicitors for the Respondent.

IN THE PRIVY COUNCILNo.43 of 1963ON APPEALFROM THE BRITISH CARIBBEAN COURT OF APPEALB E T W E E N :

BRITISH GUIANA CREDIT CORPORATION,  
 a body corporate, incorporated by  
 Ordinance, No.13 of 1954 whose  
 Office is situate at Lots 20 and  
 21 Water Street, Georgetown  
 Demerara (Defendants)

Appellants

- and -

CLEMENT HUGH Da SILVA (Plaintiff)

RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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IN THE PRIVY COUNCIL

No.43 of 1963

ON APPEAL

FROM THE BRITISH CARIBBEAN COURT OF APPEAL

B E T W E E N :

10 BRITISH GUIANA CREDIT CORPORATION,  
 a body corporate, incorporated by  
 Ordinance, No. 13 of 1954 whose  
 office is situate at lots 20 and  
 21 Water Street, Georgetown,  
 Demerara (Defendants) Appellants

- and -

CLEMENT HUGH DaSILVA (Plaintiff) Respondent

RECORD OF PROCEEDINGS

NO. 1

WRIT OF SUMMONS.

1960 No.2079 DEMERARA

In the Supreme  
Court of  
British Guiana

IN THE SUPREME COURT OF BRITISH GUIANA

No.1

CIVIL JURISDICTION

Writ of  
Summons  
13th December  
1960

20 BETWEEN: CLEMENT HUGH DaSILVA ... Plaintiff  
 - and -

BRITISH GUIANA CREDIT CORPORATION,  
 a body corporate, incorporated by  
 Ordinance, No.13 of 1954 whose  
 office is situate at lots 20 and  
 21 Water Street, Georgetown,  
 Demerara ... Defendants

30 ELIZABETH THE SECOND, by the grace of God, of  
 the United Kingdom of Great Britain and Northern  
 Ireland and of her other realms and territories,  
 Queen, Head of the Commonwealth, Defender of the  
 Faith.

To: British Guiana Credit Corporation, a body

In the Supreme Court of British Guiana

corporate, incorporated by Ordinance, No. 13 of 1954, whose office is situate at lots 20 and 21 Water Street, Georgetown, in the County of Demerara.

No.1

Writ of Summons  
13th December 1960  
continued

WE COMMAND YOU, that within (10) days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of the abovenamed Plaintiff; AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

10

Witness the Honourable Joseph Alexander Luckhoo, Chief Justice of the Colony of British Guiana, the 13th day of December, in the year of Our Lord, one thousand nine hundred and sixty.

. . . . .

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

INDORSEMENT OF CLAIM.

20

The Plaintiffs' claim against the Defendant is for -

(a) a declaration that he is the General Manager of the defendant Corporation and that he is entitled to occupy that post and perform the duties and functions attached to that office by virtue of his appointment made by the Defendants on the 22nd day of September, 1960, and communicated in writing by the Defendants to him on the 26th day of September 1960, and accepted by him in writing on the 3rd day of October, 1960, all at Georgetown, in the county of Demerara and colony of British Guiana.

30

(b) in the alternative the Plaintiff claims the sum of \$100,000.00 (one hundred thousand dollars) as damages for breach of contract to employ the Plaintiff as the General Manager of the Defendant Corporation, after he was duly appointed and after he accepted such appointment.

(c) such further or other relief as may be just.

40



In the Supreme  
Court of  
British Guiana

No.2

Statement of  
Claim  
30th December  
1960  
continued

administration including service in senior administrative posts such as Private Secretary to the Governor, Clerk to the Legislative Council, Clerk to the Executive Council, District Commissioner, Chief Establishment Officer.

- (d) His present duties include the assessing of industrial proposals for tax and customs duties, concessions and the preparation of the Colony's 1960 - 1964 Development Programme. 10
- (e) He is also familiar with the economic development's proposals of the country and the Government's policy, and has dealt successfully with overseas bodies such as the Colonial Office, the United Nations Social Fund and the International Bank for Reconstruction and Development. 20
- (f) He has also been responsible for appraising the effects of the various Government Development Schemes on the economic development of British Guiana and has done this in respect of very large drainage and irrigation and land development projects.

2. The Defendants are a body corporate incorporated by Ordinance No.13 of 1954, with registered office at lots 20-21 Water Street, Georgetown, in the county of Demerara and colony of British Guiana. 30

3. By notice appearing in the daily newspapers of this Colony and in the West Indies in the month of August, 1960, the Defendants announced the vacancy of the post of General Manager for their Corporation, invited applications to fill the said vacancy and intimated that a copy of particulars could be obtained on application. The Plaintiff verbally requested and obtained from the Defendants' secretary a copy of the particulars which contained the terms and conditions of employment, and which inter alia stated: 40

- (a) that the post carried a salary of

£11,280.00 per annum, a free partly furnished house and leave facilities in accordance with Government's General Order.

In the Supreme  
Court of  
British Guiana

No.2

Statement of  
Claim  
30th December  
1960  
continued

- (b) that leave passages would be paid to a maximum of \$2,500.00;
- (c) that motor car allowance would be provided;
- (d) that the appointment will normally be for three years in the first instance.

10

4. The Plaintiff accordingly submitted an application dated 24th August, 1960, to the Defendants addressed to the Defendants' Chairman in which he offered himself for appointment to fill the said vacancy as Defendants' General Manager supplying his qualifications, training and experience.

5. On Tuesday the 22nd September, 1960, at a properly constituted meeting of the Defendants' Board under item "appointment of General Manager vice W.G. Carmichael" all applications which had been received as a result of the advertisements published locally and in the West Indies as aforesaid were carefully considered and the Plaintiff was unanimously selected for the said post as their General Manager. The Defendants further decided that the Plaintiff be notified of his said appointment and that all unsuccessful applicants be notified that the vacancy had been filled.

20

30

6. By letter dated the 26th September, 1960, addressed to the Plaintiff and signed by the Secretary of the Defendants' Board the Defendants communicated to the Plaintiff the fact that he was appointed their General Manager on the terms and conditions as advertised.

7. The Plaintiff duly acknowledged and confirmed the said appointment by letter to the Defendants dated 3rd October, 1960, that he was appointed their General Manager on the terms and conditions as advertised.

40

8. At a properly constituted meeting of the Defendants' Board held on 27th October, 1960,



In the Supreme  
Court of  
British Guiana

                      
No.2

Statement of  
Claim  
30th December  
1960  
continued

under item "appointment of General Manager" the Plaintiff's aforesaid letter dated 3rd October, 1960, was read and noted at the said meeting. The minutes of the previous meeting held on the 22nd September, 1960, were read by the Secretary of the Board and confirmed by the Chairman.

9. The Plaintiff has received no further communication from the Defendants but by virtue of his being a member of the Defendants' Board he received later in November, 1960, a copy of the minutes of the meeting of the Defendants' Board held on the 11th November, 1960, and then for the first time he became aware of efforts to replace him by another person for the post of General Manager. 10

10. The Plaintiff is a member of Defendants' Corporation having been appointed by the Governor as the Official member of the Board by virtue of being the holder of the Office of Deputy Financial Secretary. The Plaintiff as a member of the said Corporation never participated in the consideration of any matters relating to the appointment of the General Manager and never voted or took part in any discussions relating to the said appointment, but withdrew from the meeting whenever there was any consideration of the said post of General Manager. 20

11. By letter dated 7th December, 1960, written by Solicitors on behalf of the Plaintiff to the Defendants, the Plaintiff claimed that he was the duly appointed General Manager of the British Guiana Credit Corporation, that he was ready and willing to take over and assume the responsibilities of his post within a reasonably short time, and that he was treating and regarding himself as the duly appointed General Manager. To this letter the Plaintiff has received no reply. 30

12. Following upon the Defendants' aforesaid letter of appointment of the 26th September, 1960, the Plaintiff did the following to his detriment:- 40

(a) on the 16th October, 1960, he made the usual application for the permission of

the Government of British Guiana to retire from the Public Service with knowledge that such permission would follow automatically upon the application by any Senior Administrative Officer who had reach the age of 50 years as he had done;

In the Supreme  
Court of  
British Guiana

-----  
No.2

Statement of  
Claim  
30th December  
1960  
continued

- 10 (b) the Plaintiff rented his home at Lama Avenue, Bel Air, Park, for an indefinite period, since under the terms of his appointment as Defendants' General Manager, the Defendants provided a free partly furnished house which the Plaintiff accepted;
- (c) the Plaintiff arranged his business and domestic affairs to fit in with his retirement from the Government and the taking up of his new appointment as Defendants' General Manager;
- 20 (d) the Plaintiff formally sought permission to retire from the Civil Service of British Guiana only because of his appointment as Defendants' General Manager. In so doing, he would lose the benefits which would have accrued to him if his retirement instead had been effected at a later age, namely, 55 years of age. The said benefits consist of increased pension, gratuity and the like.
- 30

13. The Defendants in breach of their agreement as aforesated to employ the Plaintiff as their General Manager, purported to appoint someone else to the said post in or about November, 1960.

40 14. The Plaintiff's appointment was already known in and out of this Colony. The Defendants permitted and/or acquiesced in announcements in the Press and over the Radio in or about December ..... 1960 that the said vacancy had been filled and the further announcement of a name to fill the said vacancy which was not the name of the Plaintiff.

15. The Plaintiff has suffered much humiliation embarrassment and loss of reputation as a

In the Supreme  
Court of  
British Guiana

No.2

Statement of  
Claim  
30th December  
1960  
continued

result of the aforesaid announcements, and would be adversely affected if someone else is allowed to perform the functions and duties of the General Manager of the Defendants, after he the Plaintiff had been appointed by the Defendants so to do and after the establishment, as aforesaid, of a contract between himself and the Defendants so to do.

16. The Plaintiff will suffer substantial damages if he is deprived of the benefits of his contract with the Defendants to serve as the General Manager of their Corporation. 10

17. The Plaintiff therefore claims against the Defendants:

(a) a declaration that he is the General Manager of the Defendants' Corporation and that he is entitled to occupy that post and perform the duties and functions attached to that office by virtue of his appointment made by the Defendants on the 22nd day of September, 1960, and communicated in writing by the Defendants to him on the 26th day of September, 1960, and confirmed by him in writing on the 3rd day of October, 1960, all at Georgetown, in the County of Demerara and colony of British Guiana; 20

(b) in the alternative the Plaintiff claims the sum of \$100,000.00 (One hundred thousand dollars) as damages for breach of contract to employ the Plaintiff as the General Manager of the Defendants' Corporation, after his offer so to serve, his appointment by the Defendants as such and his subsequent confirmation thereof; 30

(c) an injunction restraining the Defendants their servants and/or agents from filling the said vacancy by means of a person other than the Plaintiff; 40

(d) such further or other relief as may be just;

(e) Costs.

18. Particulars of special damages which the

Plaintiff will suffer and which is being  
claimed in the alternative under paragraph  
17(b):

In the Supreme  
Court of  
British Guiana

No.2

Statement of  
Claim  
30th December  
1960  
continued

	To loss of contract for minimum period of 3 years at \$11,280.00 per annum	\$33,840.00
10	To loss of free house partly furnished house provided by Defendants and presently rented at \$225.00 per month, for a period of 3 years	8,100.00
	To loss of leave passages	2,500.00
	To loss consequent on premature retirement	<u>13,550.00</u>
		\$57,990.00
	General damages (claimed under paragraph 17(b))	42,010.00
20	Total damages claimed under paragraph 17(b) if Plaintiff is denied his appointment as General Manager	<u>\$100,000.00</u>

Evelyn A. Luckhoo  
Solicitor for the Plaintiff.

Edward V. Luckhoo  
Of Counsel

Lionel Luckhoo  
Of Counsel

To: The abovenamed Defendants  
and

To: H.W. DeFreitas, Esq.  
their Solicitor,  
30 of High Street, Georgetown, Demerara.

Dated at Georgetown, Demerara,  
this 30th day of December, 1960.

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In the Supreme  
Court of  
British Guiana

No.3

(Title as No.1)

No.3

D E F E N C E

Defence  
13th January,  
1961

(1) Save as is hereinafter expressly admitted, the Defendants deny each and every allegation of fact in the Statement of Claim as if the same were set forth herein seriatim and specifically traversed.

(2) Paragraph 2 of the Statement of Claim is admitted.

10

(3) Except that they say that the notices in the newspapers stated that the Defendants wished to consider applications by suitably qualified persons for appointment as General Manager, the Defendants admit the allegations contained in paragraph 3 of the Statement of Claim.

(4) As regards paragraph 4 of the Statement of Claim, the Defendants admit that the Plaintiff applied for appointment as General Manager of the Corporation.

20

(5) So far as paragraph 5 of the Statement of Claim is concerned, the Defendants deny that the meeting of 22nd September, 1960, was properly constituted or that the Plaintiff was unanimously selected as General Manager. No Secretary was present when the said appointment was being discussed. The voting procedure was irregular. The Defendants will contend that the decisions taken at the said meeting were invalid.

(6) As regards paragraph 6 of the Statement of Claim, the Defendants say that by letter dated 26th September, 1960, the Defendants' secretary informed the Plaintiff that he was selected for appointment on the terms and conditions as advertised and requested to be informed as early as possible how soon he would be able to take up the appointment.

30

(7) The Defendants expressly deny the allegations of paragraph 7 of the Statement of Claim. The Plaintiff wrote to the Defendants on 3rd October, 1960, as follows:

40



In the Supreme  
Court of  
British Guiana

                      
No.3

Defence  
13th January,  
1961  
continued

Plaintiff was aware since 27th October, 1960, that the recommendation of his name as General Manager had been considered by the Governor-in-Council and that as a result the Defendants had been requested by the Financial Secretary to re-examine the said recommendations as the Government was anxious that the best person available should be obtained for the post of General Manager.

(10) The Corporation with the approval of the Governor-in-Council made an appointment of a well qualified person to the post of General Manager on 16th December, 1960. 10

(11) As regards paragraph 10 of the Statement of Claim, the Defendants say that the Plaintiff assisted in the drafting of the advertisement for the said post.

(12) With reference to paragraph 11 of the Statement of Claim, the Defendants admit that they received a letter dated 7th December, 1960, written by Messrs. Luckhoo & Luckhoo on behalf of the Plaintiff. That letter stated inter alia that on the 3rd October, 1960, the Plaintiff had by letter accepted the appointment of General Manager and that on the basis of the offer which had been made by the Defendants on the 26th September, 1960, and following his acceptance the Plaintiff treated his appointment as being truly made and effected. The Plaintiff's solicitors never stated that the Plaintiff was ready and willing to serve as General Manager in accordance with the terms and conditions of the Defendants' advertisement. 20 30

(13) The Defendants deny the allegation in paragraph 12 of the Statement of Claim that permission for retirement from the Public Service follows automatically upon the application by any Senior Administrative Officer. The Plaintiff stated in his application that he was 48 years of age. 40

(14) Further in reply to paragraph 12 of the Statement of Claim, the Defendants say that the Plaintiff rented his house in anticipation of and not in consequence of his alleged appointment. In May, 1960, the Plaintiff began

negotiations through the Ministry of Communications and Works for the letting of his house at Lama Avenue and his house was occupied by tenants from 11th July, 1960. Moreover the Plaintiff is in a position to withdraw his request for permission for release or retirement from the Civil Service.

In the Supreme  
Court of  
British Guiana

                      
No.3

Defence  
13th January,  
1961  
continued

10 (15) As regards paragraph 13 of the Statement of Claim, the Defendants say that there was no consensus ad idem between the Plaintiff and them, and will submit that the Plaintiff's letter to them dated 3rd October, 1960, amounted to a refusal of the terms and conditions comprised in the advertisement and a counter-offer of his own which was never accepted by the Defendants. Alternatively, the Plaintiff repudiated the terms and conditions on which he was selected for appointment as General Manager by introducing an addition and variation of terms contrary  
20 to the wishes of the Defendants.

(16) As regards paragraph 14 of the Statement of Claim, the Defendants say that they did not make any announcement that the Plaintiff was appointed General Manager.

(17) The Defendants deny paragraph 15 of the Statement of Claim, and say that they did not cause the Plaintiff any humiliation, embarrassment or loss of reputation and that such an allegation is unnecessary and misleading and is  
30 not a permissible head of damage in this type of action.

(18) The particulars of special damage pleaded in paragraph 18 of the Statement of Claim are not admitted.

(19) The Defendants will contend that any purported selection of the Plaintiff for appointment as General Manager of the Plaintiff's Corporation was invalid and bad in law because:-

40 (a) The advertisements for appointments were inserted in the newspapers in August, 1960, without the prior approval of the Governor-in-Council.

(b) The Secretary of the Corporation was not





UNDER PARAGRAPH 6

Letter of 26th September, 1960, was written after the invalid decisions of the meeting of 22nd September, 1960.

In the Supreme  
Court of  
British Guiana

No.4

UNDER PARAGRAPH 8

10 Name of person present at the meeting of 22nd September, 1960 who opposed the confirmation of the minutes of the meeting of 22nd September, 1960, was Gobin Biragie. All other persons present at the meeting of 27th October, 1960, except the Chairman had been appointed as members of the Board subsequent to 22nd September, 1960. The said opposition was not recorded in writing in the minutes of 27th October, 1960.

Particulars  
of Defence  
26th January  
1961  
continued

UNDER PARAGRAPH 11

It is alleged that the Plaintiff prepared the first draft of the advertisement for the said post.

20 Georgetown, Demerara,

Dated this 26th January, 1961.

B.O. Adams  
OF COUNSEL.

S. Narain  
SOLICITOR TO DEFENDANTS.

NO.5

No.5

(Title as No.1)

R E P L Y

Reply  
27th January,  
1961

REPLY

30 1. The Plaintiff joins issue with the Defendants on their defence.

2. The Plaintiff will contend the Defendants' statement of defence does not provide any excuse or reason legally or otherwise for

In the Supreme  
Court of  
British Guiana

No.5

Reply  
27th January,  
1961  
continued

a denial of the Plaintiff's claim.

3. The Plaintiff expressly denies that he repudiated any terms and conditions on which he was selected and appointed as General Manager of the Defendants' Corporation and/or that he introduced any addition and/or variation of any terms contrary to the wishes of the Defendants.

4. The Plaintiff did "enclose" a draft agreement of service which was submitted to the Defendants for their consideration in as much as all senior appointments of this class carry a written agreement of service, which draft was based on the standard Colonial Office and Crown Agents form. The same was intended to be and was understood to be no more than an aid submitted for the benefit of the Defendants in assisting them to draw up a formal contract of service, which the Plaintiff considered that the Defendants would wish to do having regard to what was done in the past. The Defendants knew and understood that they could utilise so much of Plaintiff's suggestions in the said draft as they might wish to use. For example (a) under paragraph 6 of the published terms it is stated "The appointment is non-pensionable and will normally be for 3 years in the first instance but the duration of the initial contract is subject to a variation to meet individual circumstances." The Plaintiff in consequence of the said provision merely suggested in his draft that the contract might be for 2 tours of 3 years each; (b) Paragraph 5 of the published terms, states: - "That the post carried a free, partly furnished house and leave facilities in accordance with the Government General Orders and Regulations in force at the time." According to the Government's General Order 209, "A house allowance is an allowance granted to an Officer who is entitled by virtue of the appointment he holds to free quarters but for whom quarters are not available". The Plaintiff in consequence suggested an allowance in lieu of a free partly furnished house, intending this to be an alternative if the house was not available. At no time did the Defendants ever treat or consider the Plaintiff's suggestion as being a counter offer,

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and at no time did the Defendants ever inform the Plaintiff that his suggestion amounted to a repudiation or variation of the complete and binding contract of service.

In the Supreme  
Court of  
British Guiana

                      
No.5

Reply  
27th January,  
1961  
continued

10           5. The Plaintiff will object that the Defendants are estopped from challenging or impugning the validity of the Plaintiff's appointment as General Manager, having regard to the fact that the same was made by them, duly recorded in their minutes, duly communicated to the Plaintiff and duly accepted and/or confirmed by the Plaintiff.

20           6. The Plaintiff will object that the Defendants are estopped from saying and/or ought not to be admitted to say what they have said paragraphs 5, 8, 15 and 19 of the statement of defence, having regard to the conduct of the Defendants as set out in the Plaintiff's Statement of Claim and having regard to Defendants' own defence.

          7. At all material times the Defendant well knew and understood that the Plaintiff was ready and willing and able to take up his appointment as General Manager within a reasonable time and/or as soon as he was released by the Government, to which release he was entitled.

30           8. The Plaintiff will contend that the Defendants are incorporated under law and are charged to perform their functions independently of political influences; that it is their duty and function to appoint a General Manager without the necessity of approval of the Governor-in-Council; that it is not a condition precedent to the appointment of a General Manager that the Governor-in-Council should approve prior thereto; that it would be contrary to the express provision of section 6 of Ordinance No.13 of 1954, to treat an act of  
40           appointment of General Manager by the Defendants as a recommendation to the Governor-in-Council; that in the instant case political influences and pressure have been brought to seek to upset the Plaintiff's firm appointment and instead to seek to secure a substituted appointment by one who had been rejected by

In the Supreme  
Court of  
British Guiana

No.5

Reply  
27th January,  
1961  
continued

the Defendants when the Plaintiff was selected.

9. The Plaintiff's experience, qualification and suitability was fully considered on the 22nd September, 1960, by the Defendants, constituted by a Board of the following Members, Mr. J.H. McB. Moore, O.B.E., Chairman, Mr. W.M. Green; Deputy Chairman, Mr. Vincent Roth, O.B.E., Mr. C.P.B. Melbourne, M.B.E., Mr. Hamid Rahaman, Mr. E.C. Rodrigues, Mr. Gobin Biragie, who after deliberation selected and appointed the Plaintiff as General Manager. Subsequent to the 22nd September, 1960, that is to say on or about the 26th September, 1960, the constitution of Defendants' Board was altered; the following Members were not re-appointed, W.M. Green, Vincent Roth, O.B.E., C.P.B. Melbourne, M.B.E., Hamid Rahaman, E.C. Rodrigues. The following new Members were appointed, Peter Anderson, Joseph Jardim, Ivan Remington, Oswald Fisher, Jacob Bowman, Montaz Ali. The Defendants' Board with the newly appointed Members without legal excuse or justification were encouraged and influenced by the Governor-in-Council to interfere and did interfere with the valid appointment made by their predecessors in Office in breach of contract with the Plaintiff and to his detriment.

Evelyn A. Luckhoo  
SOLICITOR FOR THE PLAINTIFF.

Edward V. Luckhoo  
OF COUNSEL.

Lionel Luckhoo  
OF COUNSEL

S. Rahaman  
OF COUNSEL

Dated this 27th day of January, 1961.

To: The above named Defendants,

- and -

To: Sase Narain, Esq.,  
217 South Street,  
Lacytown, Georgetown.

No. 6

(Title as No.1)

In the Supreme  
Court of  
British Guiana

ANSWERS OF CHAIRMAN OF CORPORATION  
TO INTERROGATORIES BY PLAINTIFF.

No.6

Answers of  
Chairman of  
Corporation to  
Interrogatories  
by Plaintiff.

26th October  
1961

I, JOHN HILTON McBEAN MOORE of 274 Peter  
Rose Street, Queenstown, Georgetown, British  
Guiana, being duly sworn make oath and say:-

10

Question 1 - Was a notice sent out dated 14th  
September, 1960, inviting members  
to attend a meeting of the  
British Guiana Credit Corporation  
to be held at Head Office at 9.30  
a.m. on Thursday 22nd September,  
1960, to consider the applica-  
tions received for the vacant  
post of General Manager of the  
Corporation?

Answer: Yes.

20

Question 2 - Was the Notice in (1) above  
signed by the Secretary?

Answer: Yes.

Question 3 - Was the meeting held on the said  
22nd September, 1960?

Answer: Yes.

Question 4 - Were you Chairman of the Meeting?  
How many members were present?

Answer: - I was Chairman of the Meeting.  
Seven Members were present.

30

Question 5 - Was the Meeting properly con-  
ducted?

Answer: - Yes.

Question 6 - Were there any irregularities at  
the Meeting? Did you consider  
that there were any irregulari-  
ties? If so what were they?

In the Supreme  
Court of  
British Guiana

No.6

Answers of  
Chairman of  
Corporation to  
Interrogatories  
by Plaintiff  
26th October  
1961  
continued

To whose attention were they brought? Is there any record made of any such irregularities? If so where?

Answer: There were no irregularities at the meeting. I do not consider that there were any irregularities.

Question 7 - How many applicants were there for the post of General Manager? 10

Answer: Twenty-six.

Question 8 - Were all of these placed before the Board?

Answer: Yes.

Question 9 - Was the Secretary of the Corporation an applicant?

Answer: Yes.

Question 10 - Was he (the Secretary) present when the Meeting commenced?

Answer: Yes. 20

Question 11 - Did he leave and/or was he asked to withdraw from the Meeting when the item of General Manager's appointment was being considered? If the Secretary left, why did he leave? Who asked him to do so? Did any member of the Board object to the withdrawal of the Secretary from the Meeting? If there was any objection was this recorded? If so where? 30

Answer: I arranged with the Secretary previous to the Meeting that when the item of the appointment of General Manager was to be considered he would withdraw from the meeting. As arranged he withdrew when the item was reached. There was no objection to the Secretary's withdrawal. 40

Question 12 - Were all the applications carefully considered? Were they by elimination reduced to three or if they were reduced, then to what number?

In the Supreme Court of British Guiana

No.6

Answer: All of the applications were carefully considered. They were by elimination reduced to three.

Answers of Chairman of Corporation to Interrogatories by Plaintiff  
26th October 1961  
continued

10 Question 13 - How was the selection made? If by ballot was each member given a paper on which to write the name of his choice?

Answer: After elimination of all but three the final selection was made by ballot. Each member was given a paper on which to write the name of his choice.

20 Question 14 - How many ballot papers were distributed to the members? How many ballot papers were returned? Did each member record his selection?

Answer: Seven ballot papers were distributed to the members and seven were returned. Each member recorded his selection.

Question 15 - Did you receive the papers from members?

Answer: Yes.

30 Question 16 - Did you count them? Was the number in order when compared with the number of members present?

Answer: I counted them and the number was in order when compared with the number of members present.

40 Question 17 - Did you open the ballot papers? Did the Deputy Chairman, Mr.W.M. Green assist you in checking the papers and the votes received by each of the persons whose names



In the Supreme  
Court of  
British Guiana

          
No.6

Answer of  
Chairman of  
Corporation to  
Interrogatories  
by Plaintiff  
26th October  
1961  
continued

were put forward for final con-  
sideration?

Answer: I opened the ballot papers and Mr. W.M. Green, Deputy Chairman, assisted me in checking the papers and the votes for each of the persons whose names were put forward for final consideration.

Question 18 - What were the results? How many votes did each applicant receive, that is, of the final names of applicants considered by the Board? 10

Answer: Mr. I. Persaud received two votes and Mr. C.H. DaSilva five votes.

Question 19 - If there were three applicants finally put forward for selection for the post of General Manager, were they not the Plaintiff, Mr. G.E. Luck and Mr. I. Persaud? If so, how many votes did each receive? 20

Answer: Yes, the Plaintiff, Mr. G.E. Luck and Mr. I. Persaud. The Plaintiff received five votes and Mr. Persaud two votes. Mr. Luck did not receive a vote.

Question 20 - Did you announce the results of the ballot? Did the Board then acquiesce that the Plaintiff was selected? Was there any opposition to this? If so by whom and is the same recorded? If so, where? 30

Answer: I announced the result of the ballot and the Board acquiesced that the Plaintiff was selected. There was no opposition.

Question 21 - Was the Secretary called in? Was he notified as to the person selected for the post of General Manager? 40

Answer: Yes. He was notified of the Plaintiff's selection after the meeting was concluded.

In the Supreme  
Court of  
British Guiana

Question 22 - Did you make notes of what had transpired?

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Answer: I made no notes.

Answer of  
Chairman of  
Corporation to  
Interrogatories  
by Plaintiff  
26th October  
1961  
continued

10 Question 23 - Did you prepare the minutes relating to the record of what had transpired? If you did not, did you convey the information to the Secretary? Did you see the draft minutes before they were cyclostyled? Did you approve that they should be so circulated? If not, did you make any changes and if any changes were made, what changes?

20 Answer: I saw the draft minutes of the meeting of the 22nd September, 1960, prepared by the Secretary but there was no reference to what transpired regarding the selection of a General Manager. At the Secretary's request I drafted the paragraph relating to what transpired and gave it to him for inclusion in the minutes. The Minutes as cyclostyled were not circulated.

30 Question 24 - Were the minutes of the Meeting of the 22nd September, 1960, as circulated, true and correct?

Answer: The minutes of the meeting of the 22nd September, 1960, were not circulated as the term of office of all members had expired. The minutes confirmed at the meeting of the 27th October, 1960, are a true and correct record.

40 Question 25 - Did anyone at the Meeting of the 22nd September make any complaint and/or objection and/or offer any opposition to anything which had

In the Supreme  
Court of  
British Guiana

No.6

Answer of  
Chairman of  
Corporation to  
Interrogatories  
by Plaintiff  
26th October  
1961  
continued

been done? If so was any such objection or complaint recorded, if recorded - where?

Answer: There was neither complaint, objection or opposition by any member.

Question 26 - Was the selection of the Plaintiff on the 22nd September, 1960, for the post of General Manager, properly made by the members of the Board on that date? Was this a decision of the Board? 10

Answer: Yes and it was a decision of the Board.

Question 27 - Did you subsequent to the meeting of the 22nd September, 1960, telephone the Plaintiff and inform him that his application was successful? Did you congratulate him verbally? 20

Answer: I do not remember telephoning the Plaintiff but I did inform him verbally in the afternoon of the 22nd September, 1960, that his application was successful and I might have congratulated him.

Question 28 - Did you on the said 22nd September, 1960 inform the Financial Secretary or cause him to be informed that the British Guiana Credit Corporation had appointed the Plaintiff as General Manager, and/or selected the Plaintiff for appointment as General Manager? 30

Answer: I informed the Financial Secretary on the 22nd September, 1960, that the British Guiana Credit Corporation had selected the Plaintiff as General Manager. 40

Question 29 - Did you instruct the Secretary

to write the letter of 26th September, 1960, to the Plaintiff informing him that he was selected for appointment?

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Answer: Yes.

10 Question 30 - Did you see the said letter of 26th September, 1960, written to the Plaintiff, in draft, before it was written by the Secretary and/or did you approve of the said letter which was written by the said Secretary? Did you instruct the Secretary to write the Financial Secretary informing him of the Plaintiff's selection as General Manager?

Answer of Chairman of Corporation to Interrogatories by Plaintiff 26th October 1961 continued

20 Answer: I did not see the letter of the 26th September, 1960, addressed to the Plaintiff in draft, but approved of it before issue. I also instructed the Secretary to inform the Financial Secretary of the Plaintiff's selection.

30 Question 31 - Did the said meeting of the 22nd September, 1960, after selection of the Plaintiff for appointment, decide to inform all other applicants that the post of General Manager was filled? If there was such a decision, was it minuted? If so where? Were all of the other applicants so informed by letter? Was one Eton Luck the present alleged holder of the Office of General Manager one of the unsuccessful candidates? Was he so informed?

40 Answer: The meeting of the 22nd September, 1960, decided that all unsuccessful applicants be notified that the position had been filled. It was recorded in the minutes of the said meeting. Twenty three of the unsuccessful applicants were informed by letter dated 27th September,

In the Supreme  
Court of  
British Guiana

No.6

Answer of  
Chairman of  
Corporation to  
Interrogatories  
by Plaintiff  
26th October  
1961  
continued

1960. The other two, employees of the Corporation were informed orally. Mr. Luck was one of the unsuccessful candidates who was informed by letter.

Question 32 - Was the next Meeting of the British Guiana Credit Corporation after the 22nd September, 1960, held on the 27th October, 1960? At this Meeting were the minutes of 22nd September, 1960, read by the Secretary? 10

Answer: Yes. Yes.

Question 33 - Was there any objection to these said minutes of 22nd September, 1960? If so by whom? How was the objection made orally or in writing? If in writing identify the writing. Did you note them? Did the Secretary note them? If not, why not? 20

Answer: There was no objection to the minutes of the meeting of the 22nd September, 1960, by anyone either orally or in writing. Of those present at the meeting of the 27th October, 1960, only Biragie and myself were present at the meeting of the 22nd September, 1960.

Question 34 - Did you confirm the minutes of the 22nd September, 1960, and sign them as Chairman? Were you satisfied that the minutes of the said meeting represented a true and accurate record of the said meeting of the 22nd September, 1960? 30

Answer: Yes. Yes.

Question 35 - At the Meeting of the 27th October, 1960, was the Plaintiff's letter dated 3rd October, 1960, read. 40  
accepting the Board's offer to him of the post of General Manager?  
Was a letter dated 18th October, 1960,

from the Financial Secretary read stating that it was the wish of the Governor-in-Council that the Board re-examine the matter of the appointment?

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Answer:           Yes.     Yes.

Answer of  
Chairman of  
Corporation to  
Interrogatories  
by Plaintiff  
26th October  
1961  
continued

10     Question 36 - Was the draft agreement enclosed in the Plaintiff's letter dated 3rd October, 1960, ever considered by the Board? If so, when? Was any record made? If so, where? If there was a consideration of the same was it minuted? If so, when?

Answer:           No.

20     Question 37 - Was there any fresh advertisement for General Manager? Did Mr. Luck renew his application? Were there by writing or orally any instructions and/or suggestions given the Board that the formerly rejected applicant should be appointed? When was the alleged decision to appoint Mr. Luck made by the British Guiana Credit Corporation? Was this decision communicated to him by the Board, if so, when and in what terms?

30     Answer:           There were no fresh advertisements for General Manager. Mr. Luck did not renew his application. There were no instructions either by writing or orally and/or suggestions given the Board, as to who should be appointed. The decision that Mr. Luck should be appointed was taken by the British Guiana Credit Corporation at its meeting on the 11th November, 40     1960. The decision was not communicated to Mr. Luck by the Board until the 16th December, 1960, and in accordance with the terms of the Financial Secretary's letter of the 12th December, 1960.

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Court of  
British Guiana

                      
No.6

Answer of  
Chairman of  
Corporation to  
Interrogatories  
by Plaintiff  
26th October  
1961  
continued

Question 38 - Prior to the commencement of this  
action, did the British Guiana  
Credit Corporation ever give writt-  
en or oral notice to the Plaintiff  
that he was no longer the appointed  
General Manager?

Answer: No

Question 39 - Did the British Guiana Credit  
Corporation ever withdraw and/or  
revoke and/or amend the letter of 10  
26th September, 1960? If so,  
when? Was this communicated to  
the Plaintiff? If so was this  
done in writing or orally? If in  
writing, identify the document.

Answer: No.

Question 40 - Has any excuse and/or explanation  
ever been made by the British  
Guiana Credit Corporation to the  
Plaintiff for purporting to appoint 20  
someone else whilst he was the duly  
selected and appointed General  
Manager.

Answer: No.

J.H. McB. Moore.

Sworn to at Georgetown, Demerara,  
this 26th day of October, 1961.

BEFORE ME

F.I. Dias

A COMMISSIONER OF OATHS TO  
AFFIDAVITS. 30

36/ Stamp  
cancelled.



No.7JUDGES NOTES

In the Supreme  
Court of  
British Guiana

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No.7

Judges Notes  
28th February  
1962.

CLEMENT H. Da SILVA

- v -

## BRITISH GUIANA CREDIT CORPORATION

Counsel and/or Solicitor for Plaintiff - L.A.  
Luckhoo, Q.C. with C. Lloyd Luckhoo, Q.C.,  
E.V. Luckhoo, John Carter and S. Rahaman,  
instructed by Miss Ena Luckhoo.

- 10 Counsel and/or Solicitor for Defendants:  
Dr. F.W.H. Ramsahoye/Sase Narain.

Ramsahoye says that he desires to raise an  
objection to the order made by Mr. Justice  
Bollers on 21.3.1961.

The object of the objection is to raise  
the point is a nullity and the interrogatories  
answered do not form part of the record in this  
place.

- 20 The order took the form of an order on  
Mr. Moore to answer interrogatories filed and  
served on behalf of the Plaintiff.

Submits that the order cannot be made in  
this form and the order should have been to  
grant leave to file and serve interrogatories  
and further to order some person to answer the  
interrogatories when filed and served.

- 30 Submits that the correct form of the  
Order was made by Fraser, J. on 15.5.61 and  
entered on 26.5.61. And relies on the form of  
Order as my authority. Quite recently it came  
to his knowledge that Mr. Moore resigned from  
the Corporation on 18.3.1961 and that the in-  
terrogatories in any event could not be answered  
by him and that when he answered he was not  
a member of the Corporation.

Submits that the order cannot bind the



In the Supreme  
Court of  
British Guiana

Corporation if the interrogatories are answered by a person who was not a member when he answered.

No.7

Says objection is made under Order 23 Rule 4 (See Order 25 of Annual Practice).

Judges Notes  
28th February  
1962  
continued

Luckhoo, L.A.

Says that he was not made aware of the Preliminary objection taken. Says that the Plaintiff's counsel is asking this Court to sit as an appellate Court against a Court in interlocutory proceedings. 10

Says that the Plaintiff had done so in other proceedings.

When papers were served and application made the Chairman was a member of the Corporation. When the order was made there followed a series of applications by the Defendant for extensions of time with accompanying affidavits to the effect that the Chairman was out of the Colony and that time was required for the Chairman to answer. When the Chairman eventually returned to B.G. the answers were given in the appropriate form sworn on 26.10.61. Up to that stage no objection was made to the order or to the form of order. Says that the Defendant is precluded at this stage to challenge the order and seeks to appeal against the order. 20

Order 23 Rule 4 does not seem to contemplate an objection of this kind. There are Rules for appeal against an Order made in an Interlocutory application. 30

Submits that the Defendant by answering the interrogatories has taken a fresh step and is therefore precluded from taking the present objection.

Ramschoye in reply:

Says a nullity is no less a nullity merely because it has not been declared to be a nullity by an appellate tribunal.

There can be no acquiescence in a nullity 40

because it would amount as in this case to a change of the law. A man cannot be estopped if the result will be to affect a change in the law. An irregularity may be waived but a nullity cannot be waived.

In the Supreme Court of British Guiana

No.7

Decision on this point reserved until the final determination of the action.

Judges Notes  
28th February  
1962  
continued

PLAINTIFF'S COUNSEL'S OPENING

Luckhoo, Q.C.

10 Says the Plaintiff filed action on 13.12.1960. At that time he was holding office as Deputy Financial Secretary of British Guiana.

Had wide experience and high qualifications.

Was a member of the B.G. Credit Corporation as Deputy Financial Secretary. Credit Corporation incorporated by Ordinance 13 of 1954, as amended by 13 of 1955.

Powers of Corporation included in the Ordinance.

20 Under Section 6(1) of 13 of 1954 power to employ.

August, 1960, advertisement in local and foreign Press for application for post of General Manager of the B.G. Credit Corporation.

Applications to be made not later than 15.9.60.

Salary B.W.I. \$11,280: or £2,350: Free Partly Furnished House.

30 Not pensionable. For 3 years in first instance. Plaintiff obtained a copy of the further particulars from Secretary of the Corporation, Mr. L.E. Kranenburg.

By letter dated 24.8.1960 the Plaintiff offered his services to fill the vacancy of General Manager.

Board met on Tuesday 22.9.1960.

In the Supreme  
Court of  
British Guiana

No.7

Judges Notes  
28th February  
1962  
continued

Properly constituted meeting of the Board.  
Item on the Agenda - was for appointment of the  
General Manager vice Mr. W.G. Carmichael.

Plaintiff was not present.

Kranenburg was one of the applicants and  
was present up to when discussion was to take  
place on this item. He left the meeting.

Quorum: Section 8(4) requires Chairman and 3  
members.

26 applications for the post. All plac- 10  
ed before the Board.

Selection was by means of ballot:

G.E. Luck            )  
I. Persaud            )  
C.H. Da Silva        )

7 Ballots distributed. Chairman assisted by  
the Deputy Chairman checked the papers and the  
votes received. G.E. Luck received no votes.  
I. Persaud 2 votes. C.H. Da Silva received 5  
votes. Chairman then announced the result 20  
and the Board declared that the Plaintiff was  
selected to the post of General Manager. No  
opposition.

Chairman drafted the paragraph for the  
minutes and gave it to the Secretary. No  
objection to the procedure.

Chairman on 22.9.60 then informed the  
Financial Secretary that the Board had selected  
the Plaintiff as General Manager. Chairman  
instructed the Secretary to inform the 30  
Plaintiff.

All unsuccessful applicants were sent  
letters.

Minutes of 22.9.60 have been confirmed.  
Refers to Section 46 of Ordinance 13 of 1954.

Letter dated 26.9.1960 was taken by  
Kranenburg who signed the letter as Secretary  
to the Plaintiff.

Letter of 26.9.1960 constituted an acceptance of the offer.

In the Supreme  
Court of  
British Guiana

---

No.7

Upon verbal enquiry by Kranenburg the Plaintiff said that he would take over duty on 16.12.60.

Plaintiff intimated that he was retiring from the service. Was 49 years at the time. In application age was stated as 48 years.

Judges Notes  
28th February  
1962  
continued

10 Draft agreements were prepared and sent by letter on 3.10.60 by the Plaintiff.

On 27.10.60 there was another meeting of the Board. Minutes of meeting of the 22.9.60 were read and confirmed. Only Moore, Biragie were the only two persons present at the previous meeting because the constitution of the Board had been substantially altered.

Never been a reply to the Plaintiff's letter of 3.10.60.

20 Meeting on 11.11.60 - Financial Secretary's letter of 18.10.60 considered.

No other advertisement.

No new application.

Decision communicated to Mr. Luck - decision on 16.12.60.

Plaintiff received copy of the minutes of 11.11.60.

Letter written on 7.12.60 to the Chairman of the B.G. Credit Corporation.

30 Never has there been a reply to the letter of 7.12.60.

Deals with Defence:

Refers to Minutes of 9.12.60.

Plaintiff made application to be retired from the Public Service.

Government released the Plaintiff.

In the Supreme Court of British Guiana

No.7

Judges Notes 28th February 1962 continued

Plaintiff ceased working prior to 14.1.61. Plaintiff had a tenant who was to deliver up possession on 30.9.60.

Referred questions:

- (1) Validity of the appointment.
- (2) Letter of 3.10.60 a refusal of the terms of appointment.
- (3) Advertisements not put in with the approval of the Governor-in-Council.

Adjourned to 1.15 p.m.

10

Adjourned to Thursday 1st March, 1962 at 9.00 a.m.

1st March 1962.

Appearances as before:

L.A. Luckhoo, Q.C. says that the parties had agreed on a statement of facts and documents.

Those matters not in the document are in dispute.

Luckhoo requests that the agreed statement has been signed by Solicitors on both sides.

Dr. Ramsahoye says that the position is as stated by L.A. Luckhoo.

20

Documents marked in the order listed Exhibits "A" - "H" - with Exhibit "G" being marked "G1" to "G4".

No.8

Agreed Statement of facts and documents 1st March, 1962.

No.8

(Title as No.1)

AGREED STATEMENT OF FACTS AND DOCUMENTS:

FACTS

Plaintiff's Statement of Claim.

Para. 1 ..... admitted except for (d) (e) (f).

30

Para. 2, 3, 4 ..... admitted  
 Para. 5 ..... admitted except  
 for word  
 "Unanimously".  
 Para. 8, 11 ..... admitted.  
Defence  
 Para. 2, 3, 4, 6 ..... admitted.

In the Supreme  
 Court of  
 British Guiana

No.8

Agreed  
 Statement of  
 Facts and  
 Documents  
 1st March,  
 1962  
 continued

DOCUMENTS ... ADMITTED AND TENDERED

- 10      1. Daily Chronicle Saturday 6th August, 1960.
- 2. Document of particulars issued by Defendants re vacancy of General Manager.
- 3. Application of Plaintiff dated 24th August, 1960, in response to advertisement.
- 4. Minutes of Defendants' meeting held on 22nd September, 1960.
- 20      5. Letter from Defendants to Plaintiff dated 26th September, 1960
- 6. Letter from Plaintiff to Defendants dated 3rd October, 1960 with draft agreement of service.
- 7. Minutes of Defendants' meetings held 27th October, 1960, 11th November, 1960, 18th November, 1960, 9th December, 1960.
- 30      8. Luckhoo & Luckhoo's letter written on behalf of Plaintiff and dated 7th December, 1960.

S. Narain    Evelyn A. Luckhoo  
 Solicitor to Defendants. Solicitor to Plaintiff.

Georgetown,  
 Dated 1st March, 1962.

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In the Supreme  
Court of  
British Guiana

PLAINTIFF'S EVIDENCE

No.9

Plaintiff's  
Evidence

EVIDENCE OF CLEMENT HUGH DA SILVA

Thursday 1st March, 1962, at 9.00 a.m.

No.9

Evidence of the 1st Witness - Clement Hugh  
Da Silva.

C.H. Da Silva  
Examination

CLEMENT HUGH Da SILVA on his oath says:

I am the Plaintiff. I was the Deputy  
Financial Secretary of the Colony of British  
Guiana up to 14.1.61. As Deputy Financial  
Secretary my duties included the assessment of  
industrial proposals for tax and the prepara-  
tion of the Colony's 1960 - 1964 Development  
Programme. I am familiar with economic  
development proposals for B.G. I have dealt  
with such overseas bodies as the United  
Nations Special Fund; The International Bank  
for Reconstruction, Washington; and the  
Secretary of State for the Colonies, Colonial  
Office. I was also responsible for apprais-  
ing the effects of various development schemes  
on the economic development of British Guiana.

10

20

In the Daily Chronicle of Saturday,  
6.8.60 there appeared an advertisement -  
Exhibit "A". As a result I obtained Exhibit  
"B" from the Secretary of the B.G. Credit  
Corporation. In response to paragraph 3 of  
the notice I obtained Exhibit "B". As a  
result on 24.8.60 I sent in the application  
Exhibit "C". In Exhibit "C" I stated that I  
was applying for the appointment as General  
Manager. I gave particulars of my qualifi-  
cations and training. As Deputy Financial  
Secretary I was a member of the Defendant's  
Board. There was a meeting of the Board on  
22.9.60 and I received this letter requesting  
me to attend the meeting.

30

Letter dated 14.9.60.  Tendered. Objected  
to by Dr. Ramsahoye.

Objection on the ground that the  
document is not signed by the  
persons stated in subsection 3 of  
section 7 of the B.G. Credit Corp.  
Ord. No.13 of 1954/.

40

Mr. L.A. Luckhoo says that this is a document signed by the secretary of the Defendant Corporation. Says that the section says the document may be signified in a certain manner.

In the Supreme  
Court of  
British Guiana

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Dr. Ramsahoye says he withdraws his objection to the admissibility. Objection considered. Overruled. Letter dated 14.9.60 admitted and marked "J".

Plaintiff's  
Evidence

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No.9

10 I did not attend the meeting on 22.9.60. As a member of the Board I subsequently received a copy of the minutes of a meeting of 22.9.60. These are the minutes Exhibit "D". In these minutes it is stated that I was, at that meeting, appointed General Manager (witness reads extract from the minutes as to the appointment of Mr.C.H. Da Silva as General Manager).

C.H. Da Silva  
Examination  
continued

20 I received Exhibit "D" but I do not recall the exact day. They usually reached me about one week after. I read the minutes and I treated them as correct.

30 On 26.9.60 I received Exhibit "E". (Letter read in Court by the witness). This letter Exhibit "E" was handed to me by the Secretary, Mr. L.E. Kranenburg, at the office of the Financial Secretary at the desk of the Financial Secretary. The Financial Secretary and I were speaking. Mr. Kranenburg came in with two envelopes. He handed one to the Financial Secretary saying this is Clem's appointment. (Dr. Ramsahoye objects). He handed me this letter. Exhibit "E" which I opened and read and the secretary asked me how soon could I assume duty as General Manager of the Corporation. I told the Secretary around the middle of December after the Budget. The secretary left.

40 About a week later while speaking to the Secretary over the telephone, he again asked me how soon would I be going over. I was waiting on the Financial Secretary and I told the Secretary that I was waiting on the Financial Secretary and suggested to him that in the meanwhile he should prepare the usual agreement of service. The Secretary informed me that he did not have the agreement of service of the previous General Manager and asked me to get out one of the standard Crown Agents and Colonial Office forms of agreement for his use as a draft.



In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.9

C.H. Da Silva  
Examinari on  
continued

I I wrote the letter Exhibit "F". I got one of the Crown Agents and Colonial Office forms and I attempted to modify it and sent it across to the Secretary for his use. Exhibit "F" is dated 3.10.60 I was at that time treating myself as being appointed from the time I received the Corporation's letter. I considered myself appointed as General Manager from the time I received the corporation's letter. I considered myself appointed as General Manager from the time I received the letter of 26.9.60.

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Since I received the letter of 26.9.60 I received no written or verbal communications from the Credit Corporation relative to my appointment. As a member of the Board I continued to receive minutes.

I see minutes of a meeting of the Defendant Corporation held on 27.10.60, Exhibit "G". There is a reference made to the previous meeting. There is a confirmation of the minutes of the meeting of 22.9.60. The personnel of the Board had changed since the meeting of the 22.9.60. At item 8 in Exhibit "G" there is reference to the appointment of a General Manager. (Witness reads extract of minutes). I was not present when the item was discussed. I had received leave to be out of attendance for the item. I had never seen the letter which was referred to as a letter from the Financial Secretary.

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(Luckhoo says notice has been served to produce the letter No. F.S.G. 283/55 II dated 18.10.60.

Dr. Ramsahoye says that he is sending for the letter).

I see here the minutes of 11.11.60 - Exhibit "G2". I see reference to the Post-General Manager. I was permitted to leave the meeting when this was discussed. (Extract of minutes read by witness). This is a letter F.S.G. 283/55 II dated 18.10.60. (Letter produced from custody of Defendant's Solicitor). Letter tendered, admitted and marked "K".

40

So far as I know there was never a readvertisement for the post. I know Mr. G.E. Luck

was an applicant for the post when it was first advertised. I received a copy of the minutes towards the latter part of November, 1960. I consulted Luckhoo and Luckhoo. Exhibit "H" dated 7.12.60 was written on my behalf to the B.G. Credit Corporation. So far as I am aware there has never been a reply to this letter.

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10 I see the minutes of 18.11.60, Exhibit "G3". There is reference to the post of General Manager. I see the minutes of the meeting of 9.12.60 - Exhibit "G4". I was absent from this meeting. Item 1 is on the appointment of a General Manager. (Extract of minutes read). In the Sunday Graphic of 11.12.60 there was a photograph and statement to the effect that Mr. G.E. Luck had been appointed General Manager of the Credit Corporation. Newspaper tendered, no objection,  
20 admitted and marked "L". Dr. Jagan was then Minister of Trade and Industry. Mr. G.E. Luck was then the acting Permanent Secretary to the Ministry of Natural Resources; he was also acting Permanent Secretary of Trade and Industry.

C.H. Da Silva  
Examination  
continued

30 These are the minutes of a meeting which I received. They are for a meeting held on 25.11.60. Minutes tendered, no objection, admitted and marked "M". These are the minutes of the meeting of 25.11.60. A list of the staff and particulars were prepared by the Corporation's staff. (Extract read by witness). Copies were distributed in the form attached to the minutes.

40 I know as a member of the Board that the salary of the post of General Manager was \$11,280: per annum fixed. On several occasions I saw the Executive Council decision and a letter sent by the Financial Secretariat to the General Manager informing him of the salary of \$11,280: for the post. I saw the letter for the original salary and I saw letters whenever the Governor-in-Council had varied the salary.

(Mr. Luckhoo says that notice to produce letters from Financial Secretary during 1958/1959.

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Examination  
continued

Dr. Ramsahoye says that there are not letters from 1958/1959 received by the Credit Corporation from the Financial Secretary for those years dealing with the question of the emoluments for the post of General Manager (either the approval of the emoluments or approval of further increases).

Da Silva continues

I see these minutes. They are for the meeting 26/6/1959 of the Defendant Corporation. (Dr. Ramsahoye objects to the admissibility of the minutes of the meeting of 26/6/1959). Objection overruled. Admitted and marked "N"). 10

(Extract of minutes read by the witness as to Draft Service Agreements).

On 26.9.1960 I received a letter from the Defendant Corporation. On that date I was 49 years and some months. I was born on 10.3.1911. I was employed in the Public Service. Normally I would have continued in the Public Service until age 55. As a result of the letter of 26.9.1960 on 16.10.1960 I addressed a minute to the Financial Secretary enclosing the Board's letter of appointment and asking for either a secondment under the law or asking that I be allowed to retire. Under the Regulations I could retire at age 50 voluntarily. I came under the 1944 Pensions Ordinance. I had understood that the procedure for voluntary retirement at age 50 would be just a formality and would not be refused. At that time I had leave due to me about 10 or 11 months leave. It was possible to have this done by December. The formality of obtaining the approval of the Secretary of State for the Colonies would not have impeded an officer going into retirement. Sometimes 3 or 4 months after the officer goes off on leave, sometimes 6 months the formal approval would come. 20 30

I received no answer to the application of 16.10.60. On 8.12.60 I addressed a formal letter repeating my application to retire. Sometime in January, 1961, I got a letter saying that I may have my leave; the question of retirement has been sent to the Colonial 40

Office. I went off duty on 14.1.61. About early in February 1961 I got the formal approval of the Secretary of State and I had in fact retired.

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Examination  
continued

10 From the time I received the letter of 26.9.60 scores of friends congratulated me on my appointment as General Manager. I also heard a broadcast over the radio in which the reference to No.1 or No.2 in the Financial Secretariat left no doubt as to who was referred to. Among the persons who congratulated me were influential men, personal friends. When I heard of Mr. Luck's appointment I felt very badly and I felt very dis-  
gusted at the way I was treated by apparent colleagues.

20 I had first been promoted to the post of Deputy Financial Secretary, the top of the ladder after 28½ years service and I would certainly not have retired at the age of 50. I intended to remain in the Public Service.

30 If I had remained in the public service I would have gone on leave to the United Kingdom to Oxford University and would have contemplated the course for the degree of B. Litt. degree. A valuable degree in the subjects of the Technique of Loan Finance and the formation of a country's capital resources through the use of credit funds. I had already done one year's residence at Oxford University when I commenced the course. I was more than half way through the course. The authorities at Oxford had permitted me to leave after one year and to return to finish the course. I do not have a basic degree without which you cannot obtain a B. Litt. but the University authorities admitted my experience and service in British Guiana as the equivalent of a basic degree. Upon my retirement my plans in this connection fell through.

40 As General Manager one of the conditions of service was a free partly furnished house. I had my own house in the month of September, 1960. That house is at B 19/20 Lama Avenue, Bel Air Park. It was at the time rented to Dr. Diephuis. I rented the house to him for three or four months from about the middle of July, 1960. After I received the letter of appointment I told

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Examination  
continued

Dr. Diephuis that I would remove into the Corporation's house in Queenstown and he asked me to allow him to remain in my house until he left the country. I agreed. He remained in my house until August, 1961.

I intended to take up the Corporation's post immediately. I had to live with relatives and eventually moved into a small flat.

Adjourned to 9 a.m. on 2.3.62.

Friday 2nd March, 1962 at 9.00 a.m.

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Appearances as before:

Clement Hugh Da Silva on his oath says: Contd.

I say I was appointed General Manager of the Defendant's corporation. I considered myself so appointed as soon as I received the Corporation's letter of 26.9.60 on the 26.9.60. In my letter of 3.10.60 I said that I accept the appointment in order to confirm the agreement of employment reached between the Corporation and myself concluded in or by their letter of 26.9.60. I enclosed a draft agreement in my letter of 3.10.62 in order to assist the Secretary who asked me to send him a draft Crown Agent's standard form. When in my letter I stated that I was enclosing a draft agreement I was not laying down any conditions of my employment. I could only sign the agreement if the corporation had agreed to it. I knew the terms and conditions on which I was employed. I saw them in the newspaper and I also got a full statement from the Secretary. Those two documents contained the terms of my employment. It was not necessary for me to have an agreement before assuming duty. The agreement was a formality.

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In my draft agreement I made certain additions which were clauses in the standard Crown Agents agreement of service which I had used as a draft at the invitation of the Secretary to help him. I have a copy of the Crown Agents form. I was satisfied with the terms and conditions advertised. I applied on those terms and conditions. (Witness reads from para.6 of

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the conditions of service). I put 2 terms of 3 years. I interpreted the wording of the conditions to mean that I could ask questions or make suggestions as to my terms of service. My suggestion of 6 years divided into 2 tours of 3 years each seemed to me to fit in with this minimum three years and still allowed at the end of that period for a further 3 years if the Corporation wanted me and I wanted them. My insertion of 2 tours was merely a suggestion. I was satisfied to accept 3 years. I consider that the newspaper or the document I got from the Secretary as containing the full particulars of my conditions of employment.

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continued

I would have taken up my duties as General Manager without signing any agreement. The formality of signing the agreement sometimes took place months after the officer assumed duty. I know that that was the case of the accountant Mr. P.C. Yansen and Mr. L.E. Kraenbourg, the Secretary, who signed their written agreement about 1 year after they assumed their appointment. I was always ready and willing to take up my appointment as General Manager on the conditions as advertised. I am still willing to take up the appointment as advertised. I shall continue to be willing. Since I retired in January, 1961, I have not been employed anywhere. My vacation leave expired on 22.1.62. While on pre-retirement leave I obtained the Government's permission to accept paid employment. Leave commenced in January 14, 1961 and ended on 22.1.62. I had endeavoured to obtain suitable employment. I started straight away to obtain employment, e.g. The Demerara Company Limited for a Finance Officer; The Crown Life Insurance Company for a Director of Finance; The Chief Elections Officer during the last elections for appointment as a Returning Officer. I was not so appointed. I have applied as business and commercial executive in Water Street. I also applied for employment in Trinidad and in Grenada.

I am claiming against the Defendant the relief set out in paragraph 17 of the statement of claim more particularly 17(a) and (b) and (c).

I claim special damages as shown in

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continued

paragraph 18 of the statement of claim. I have lost salary of \$11,280: per annum for 3 years - \$33,840. There is also loss of free house for the said period - \$8,100. I have lost my leave passages - \$2,500. I now say that the loss consequent on premature retirement is \$13,550: instead of \$5,700: I claim General Damages in addition to the Special Damages making a total claim of \$100,000. (Luckhoo seeks amendment of Statement of Claim by :

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(a) deletion of \$5,700 for loss consequent on premature retirement and substitution therefor of \$13,550:

(b) for consequential changes viz:

of Special Damages - delete	\$50,140
insert	\$57,990

General Damages - delete	\$49,860
insert	\$42,010

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Dr. Ramsahoye says he has no objection to application to amend.

Amendment granted as prayed.)

Cross-  
examination

Cross-examined by Ramsahoye:

When I instituted these proceedings I was myself a member of the Board when I sued. I cannot remember when I became a member of the Board. My termination date was 14.1.61. The commencement date was probably April, 1960. When I became a member Mr. Carmichael was the General Manager. I am aware of the emoluments of Mr. Carmichael. He received a salary of \$880: plus a gratuity of \$60: per month. That was \$940: per month or \$11,280 per year. His gratuity was settled by the Governor-in-Council when he was first employed. I do not know that Mr. Carmichael's original salary was fixed by the Governor-in-Council at \$800: per month. I know that the Governor-in-Council approved a salary of \$880: for the General Manager of the B.G. Credit Corporation. This is a certificate from the Treasury dated 22.5.1957 showing the salary of the General Manager as £2,200:

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Certificate tendered, no objection, admitted and marked "O".

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I am aware of the provisions of section 6 of Ordinance 13 of 1954. I know that at the commencement of Mr. Carmichael's appointment he was granted a gratuity of £37.10s. per quarter by the Governor-in-Council.

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From 22.5.1957 to the 6.8.60 I know that the Governor-in-Council did not reconsider the salary of the post of General Manager. So far as I know there was no reconsideration up to the date of the writ on 13.12.1960. My membership of the Corporation was ex officio - Deputy Financial Secretary. The Minister was the charge officer to whom matters from the B.G. Credit Corporation would go. As an official member of the Corporation I sat at meetings at which applications for loans were considered and the general running of the Corporation. This would include appointment of staff. On establishment matters I would have been the most knowledgeable member of the Board. I gave advice at meetings of the Board as a member on matters of salary, leave, etc. relating to the staff of the Corporation.

C.H. Da Silva  
Cross-  
examination  
continued

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I must admit that I took some part in the preparation of the advertisement for the office of General Manager. I do not agree that the full particulars of the advertisement were settled in the Finance Secretariat. I would say that suggestions in draft were made by the Financial Secretary. I saw a draft submitted to the Corporation. I saw the draft before it was submitted to the corporation. I am referring to Exhibit "B".

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The draft of the particulars which I saw as sent by the Financial Secretary is identical with Exhibit "B". The originals of Exhibit "B" may have been prepared in the Treasury at the request of the Corporation after being approved by the Board. I do not know for certain if the particulars of which Exhibit "B" is a copy were prepared in the Treasury. The particulars of the vacancy did not have to be submitted to the Chief Secretary. I remember on 4.8.1960 I wrote a letter to the Chief Secretary enclosing copies of



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examination  
continued

full particulars of the vacancy requesting that the advertisement be published in the newspapers in Jamaica, Trinidad and Barbados. The letter had as enclosures a copy of Exhibit "B" being the full particulars and also a copy of the advertisement. On 4.8.1960 I made a request by letter to the Controller of Government Printing that Exhibit "A" be advertised in the local press. The advertisement first appeared in the local press in a newspaper of 6.8.1960.

10

I was first aware that there was going to be a vacancy for the post of General Manager of the Corporation at the time of the farewell meeting for Mr. Carmichael. It was probably about June, 1960. When I learned of the impending vacancy I thought of myself as a probable candidate. I would say that a short time after Carmichael's party I decided that I would wish to be a candidate for the appointment. I would say that this may have been about June, 1960. I did not resolve to apply until I saw the vacancy notice. It was after reading or studying the vacancy notice that I resolved to apply. It was after reading the notice in the newspapers. When I sent the notices to the Chief Secretary and to the Printing Officer I had not yet resolved to apply.

20

I resolved to apply because I found myself as a deputy under a younger man. This post suited me. Apart from the consideration that I wanted to be a head there were other considerations, e.g. the free partly furnished house, the emoluments and I liked the work. Those were the considerations which interested me. I would not say that those considerations were present in my mind before the advertisement appeared.

30

I had dealings with the International Bank. I do not know if copies of Exhibit "B" were sent to the International Bank. The officers who dealt with correspondence with the International Bank were 4 in the Finance Secretariat and about 2 or 3 in the Treasury. I did participate in the discussions on the Board when it was decided to issue an advertisement. I did not participate when the applications were being dealt with.

40

When I applied for the post I did not inform

the Public Service Commission that I had applied for another position. I informed the Head of my Department that I had applied for another position. I informed him by sending him a copy of the application in accordance with civil service procedure for making applications.

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10 I applied on 24.8.60. I had already completed 1 year's work for the B. Litt. degree. I wanted to return to Oxford to finish my degree. I had 10 months leave to get as a member of the Public Service. When I applied on 24.8.60 I had not any feeling as to whether I would be successful. I did not know whether there was a likelihood that I might be successful. I did not know if I would be successful. I thought I had a good chance and looked forward to the result. I hoped I would be successful. I do not remember the date upon which I did so but I did inform the Head of my Department that I would wish my leave to complete the B. Litt. I do not remember the time. It could have been after I applied. I would say that I have informed the Head of my Department that I would wish my leave to complete the B. Litt. degree before and after I had applied for the post.

C.H. Da Silva  
Cross-  
examination  
continued

30 I remained Deputy Financial Secretary of B.G. until January, 1962. I served actively until 14.1.61 and thereafter I was on leave. Following my application I received a letter dated 26.9.1960 - Exhibit "E". In my reply on 3.10.60 I stated that I was reporting the position to Government with a view to release from Government as early as possible. When I received the letter of 3.10.60 I applied to Government to be seconded or to be permitted to retire at 50. On 3.10.60 I was in no position to say whether Government would grant me a secondment. I knew that Government would allow me to retire at 50. I say I knew this because of the assurance given by the Government to the staff associations that voluntary retirement at 50 is a formality. I had no personal assurance given to me that I would be able to go at 50. It was open to the Government to refuse my request to retire at 50 on the ground of strong public interest. I do not know if the Governor was entitled to refuse my application to retire without assigning a reason. The Governor could

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Cross-  
examination  
continued

have delayed my leave as had been done previously. I was in a position to take up other employment with the permission of the Government or if I had resigned. The Government may have refused my application to resign but I consider that a remote possibility. My intention was not to resign but to be permitted to retire. I had applied for permission to work during my leave. I applied in writing and I got my reply in writing. This is a letter dated 24.3.61 from the Financial Secretary to myself - granting me permission to accept paid employment during pre-retirement leave. Letter tendered, admitted and marked "P" (from custody of the Plaintiff). The Governor is the authority to grant permission to work during pre-retirement leave. The circumstances referred to in "P" I had stated in my letter that a directorship of a company needed disclosure and specific approval in writing and I had assured Government that a directorship was not involved. I have not since 24.3.61 when permission was given taken up actual paid employment. I did not say in my letter seeking approval to work that I intended to go abroad. I went abroad on 18.10.61. I returned on 18.1.62. The last day I was a public servant was 21.1.62.

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I never received any specific reply from Government on my application for a secondment. I could not leave that appointment of Deputy Financial Secretary to work with the Defendant Corporation on secondment unless the Government released me. When I entered the Public Service I do not know what was the age limit for entry. When I applied for the post I knew that my age was 49. I used a staff list in the Financial Secretariat which had a mistake in that my birth date was stated as 10.3.1912. Whereas it is 12.3.1911. That is the reason for stating 48 years in my application. I followed the list inadvertently. When I stated my age as 48 I gave no thought to the procedure which might have to be adopted for me to be released to take up the job as General Manager of the Credit Corporation. I have never looked at my name in the Colonial Office List. The Colonial Office List has never come to me for correction. I have seen the B.G. Civil Service List. I have seen my name in that list. I thought the age was 1911 given in that list. I do not know

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if when I entered the Public Service I gave my age as 1912. I see the 1935 B.G. Staff List of the B.G. Civil Service. The date of birth is given as 10.3.1912. I would say that in every official document with which I have had to deal concerning my date of birth, including my application for the post of General Manager, my date of birth has been stated as 10.3.1912.

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10 On 16.10.1960 was the first time I became aware that the date of birth previously stated to be 10.3.1912 was inaccurate. I discovered the mistake when I applied to the Financial Secretary about my release. I showed him the error. I discovered the mistake when I was considering secondment or retirement. I thought secondment was the difficulty and I wanted to retire. I produced a birth certificate, found the mistake and I reported it to the Financial Secretary. When I wrote the letter  
20 on 3.10.60 I was not conscious of the mistake. I knew all along that my birth date was 1911. When in the official documents I stated 10.3.1912 I was aware that the real date was 10.3.1911. I was never mistaken about it. I had always known the facts.

C.H. Da Silva  
Cross-  
examination  
continued

Adjourned to Tuesday 6.3.1962  
at 9 a.m.

Tuesday 6th March, 1962 at 9 a.m.

30 Clement Hugh Da Silva under cross-examination  
says further on his oath:

Cross-  
examination  
continued

40 I am aware of General Order No.15. I was not aware of that order in 1938. In the early days of service I was not aware of it because I did not have General Orders. I was the Principal Establishment Officer in 1955 or 1956. I was also the Chief Establishment Officer acting. It would have been my duty to know of the provisions relating to the Public Service. It would have been my duty to know of the whole process of appointment to the Public Service. My first appointment in the Public Service was not my first appointment after leaving school. I worked at one place. I did not consider the conditions on which I could enter the Public Service when I applied for my first appointment

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continued

in the Public Service. I was not at the time I joined the service aware of any regulations relating to appointments in the Public Service. From my point of view there was no question about the age at which I entered the Public Service.

After I entered I did not learn that the age limit was 21 except where the Governor gave permission. I admit that if the age limit at that time was 21 I should never have been appointed unless the Governor gave special permission. In my career as a public servant I have not read the whole of the first edition of the General Orders issued in 1938. I never had occasion to apply to the Governor for special permission. I never applied for entry into the Public Service. I was just taken on. My age on admission to the Public Service was 22 years. I joined the service on 2.9.33. I was born on 12th March, 1911.

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I would say that I got general permission to accept paid employment except a directorship of a company. I would say that the permission I got gave me the right to accept employment as General Manager of a corporation. When I got permission to retire I did not at the same time get permission to accept paid employment. When I got permission to retire it was permission to retire at the expiration of my leave which was approximately 11 months. After I got permission to retire I wrote the Governor again asking for permission to take up paid employment. The Governor considered that request. I was notified on 2.3.1961 that the Governor had refused permission in the absence of a statement of specific employment. Letter dated 2.3.1961 (from custody of Plaintiff). Tendered, admitted and marked "Q".

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In reply to this letter dated 2.3.61 I wrote on 9.3.61. This is a copy of the letter I wrote. (No objection). Tendered, admitted and marked "R". In that letter I represented that I wanted to do secretarial work. I stated that I wanted to set up my own practice as a secretary. I did not do the costing of a catering business which I mentioned in the letter. I did not also do the work of valuing securities. I do not fully accept the suggestion that the permission I got was to set up a Secretary's practice. I

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would say that I got permission to accept my employment except the directorship of a company.

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I got the permission on 24.3.61. Until then I was in a position to take up any employment other than as Deputy Financial Secretary from the 14.1.61. I mean paid employment. Officially I was not in a position to accept paid employment until 24.3.61. Assuming that the permission related only to employment as a secretary in the answer set out in para.2 of my letter of the 9.3.61 I agree that I could not accept paid employment generally before 22.1.62.

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Cross-  
examination  
continued

At the time I applied for the post of General Manager in August, 1960, I was aware and it was upper-most in my mind that at the time I was serving in an established position under the Crown. I also reflected on the fact that I had years of service and pension rights preserved. I realised that if my pension rights were to be preserved I would have to be subject to Government on the matter of my release or otherwise. When I wrote that application I was not in a position to commit myself to be available for employment on a definite date. When I wrote the application I did not consider myself committed to take on the job at a particular date. In the circumstances I would not have thought it fair for the Corporation to commit me to take on the job on a particular date.

(Short adjournment for 10 minutes on application of Dr. Ramsahoye).

C.H. Da Silva continues:

If I had been requested by the Corporation to turn on the job on a certain date my reply would have depended on whether the Government released me or whether I resigned. It would mean if I resigned that I would have lost my pension and gratuity. My gratuity was approximately \$15,000: and an annual pension of approximately \$3,400: - \$3,500: per annum. Because of that fact I decided to seek secondment or retirement.

I was Deputy Financial Secretary. There is nothing in the General Orders about officers resigning and giving notice. So far as I know

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continued

there is no requirement for notice in the case of a public officer resigning. When I received the letter from the Corporation notifying me of my appointment I did consider the date of my release. The letter was received on 26.9.60. On that day I was not in a position to commit myself. I do not know if the Corporation was aware of this. I wrote the Corporation a letter on 3.10.60. When I said that I would enter into agreement with the Corporation on the draft I meant that I would have entered into the terms of my draft or alternatively if the Corporation had amended the draft to comply with the terms of the advertisement I would have entered into such agreement as modified by the Corporation. I would say that the date of my assumption of duty depended on the date I was released. That date was unknown to me on 3.10.60. I was asked in the letter of 26.9.60 of the time I could take up the appointment. That question was not answered by the letter of 3.10.60. I would say that it was answered verbally. I had informed the Secretary that I would be released on 16.12.60. I was not in a position to take up the appointment on 16.12.60. I was not released. My letter of 3.10.60 was not an acceptance of an officer of appointment in my mind. I used the word "accept" to record and confirm what had happened. What had happened was my appointment on receipt of the Board's notification of 26.9.60. I considered myself appointed on 26.9.60 and everything was concluded. There was no need for any acceptance by me. I also believed that on 26.9.60 all the terms of my agreement had been fully settled even though I would not commit myself to the time for the assumption of duty.

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Sometime after 3.10.60 I gave instructions to my Solicitors to bring proceedings. A letter was written on 7.12.60. Letter is Exhibit "H". This letter reflected the position as I explained it to my lawyers. I would say that the letters of 3.10.60 and 7.12.60 reflected truthfully the position in my mind.

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In the application of 24.8.60 mention was

made that I had done work for a degree at Oxford. It also mentioned the work I had done at the Treasury. Also work with B.G. Airways and International Bank.

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Cross-  
examination  
continued

10 I see paragraph 7 of Exhibit "B". That  
paragraph calls for qualifications similar to the  
work I did. I gave the draft particulars of the  
vacancy notice to Mr. Moore, Chairman of the Cor-  
poration on 27.7.60. That was 2 days before  
29.7.60 when they were considered. I had read  
over the draft particulars before it was handed  
to Mr. Moore. The original draft was type-  
written, it was not in handwriting. It had gaps  
I think filled in in ink. I did not fill in  
those gaps. The typewritten draft was not dic-  
tated. It was typed directly by the draftsman.  
It was after that that I read it. The draftsman  
typed it after information had been given to him  
by me. I would not say that what he typed was  
20 what he was told to type. The draftsman did not  
know what figure to put in in the first figure in  
paragraph 5 of the particulars. I did not give  
the draftsman any of the particulars contained in  
document. The assistance I gave was to furnish  
an ordinance and the two files were to get  
information for paragraph 5 of the vacancy notice.  
I do not know if the files were to provide in-  
formation for paragraphs 2, 5, 6, 7 of the notice.  
I had glanced through the files before. I do  
30 not know whether they had information other than  
paragraph 5. The draftsman was an officer  
superior to me in status. He was an officer who  
knew fully my qualifications.

Adjourned to 1.15 p.m. on  
6.3.62.

Resumed at 1.15 p.m.

Clement Hugh Da Silva further on his oath says:

40 If someone prepared a draft for the vacancy  
notice I would be the person to correct it for  
typographical errors. If there were typographi-  
cal errors I would have corrected the draft of  
the vacancy notice.

I was present at a meeting of the Board on  
29.7.60 when the Board considered and accepted



In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.9

C.H. Da Silva  
Cross-  
examination  
continued

the draft. At the time I had not yet resolved to apply but I had thought myself a probable candidate. I did not then disclose to the Board that I thought myself a probable candidate. The Board discussed the whole notice including paragraph 7. I do not remember if the Board discussed paragraph 7 dealing with qualifications. I remember that discussion did take place about age. I do not remember the Board discussing any other subject. No reference to age was made in the advertisement. There was a suggestion by some that there should be an age limit. I was in favour of an age limit. I did not feel that I had any interest in the matter other than as a member of the Board at the time of the discussion. I agree that if I had an interest I ought to have disclosed it. I know that there is a provision in the Ordinance No.13 of 1954 whereby such disclosures are necessary. I know of the provisions of sub-  
section 4 of section 10 of Ordinance 13 of 1954. I went to Mr. Kranenburg because the notice in the newspapers required that further particulars be obtained from the secretary. I wanted to study the conditions fully that is why I went to Mr. Kranenburg.

I did not think that from the time I applied for the job as manager I ought to have resigned my appointment as a member of the Board. I did not think that it would have appeared to the public that my duty and interest conflicted. As Deputy Financial Secretary I continued as a member. I never discussed with other members of the Board that I intended to make myself available for consideration. It is correct that no one on the Board knew that I was interested until the Chairman received my application.

In the draft I asked to be engaged for 6 years resident service. If I could have been released the period would have taken me to around 55 years. In December I heard that someone else had been appointed to the position of General Manager. I did not consider whether in the circumstances I ought to have withdrawn my application to retire at 50. I was aware that if I had not asked to retire at 50 I could have remained until I was 55. To retire at 50 it

was purely voluntary from the point of view of the officer. If I had remained as Deputy Financial Secretary I would have received a salary of \$9,360: per annum. It was previously \$8,160: Revised it would be a salary of \$780: per month. That would be separate from my pension rights. If I continued under the Guillebaud recommendations for a period of 3 years my gratuity would have been \$18,329: and my pension then would have been worth \$4,399: per annum. Having retired at 50 my gratuity is \$15,625: and my pension now is \$3,750: The difference in gratuity of \$2,704: and difference of pension \$649: per year, over 12½ years which is the longevity factor. As against that I would have received a salary of \$11,280: per annum which is \$940: per month, i.e. \$140: per month more. I would also have received a partly furnished house, also a travelling allowance of \$25.

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In my application dated 24.8.60 I stated that my salary allowing for increases proposed but not implemented is not much less than the post of General Manager. I meant that the Deputy Financial Secretary's salary plus his pension rights were still a bit smaller than the salary alone of the General Manager's post.

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With reference to para.12(b) of the Statement of Claim it is true that my home was rented before 26.9.60. It was rented in July, 1960. I had not then resolved to apply for the job as General Manager. I rented it for 4 months in July, 1960, because I had applied for leave. The application was turn down. Uncertain of the position I let Dr. Dephuis have the house for a short time. The application was turned down before I let the house. I was told that it may be considered in a short time. At first my renting of my house had nothing to do with the Corporation nor with my leave because I did not know whether I would get leave. I rented the house for \$325: per month. It was not very profitable for me to rent the house at \$325: It was only profitable. After the 4 month period I continued to let to Dr. Dephuis at a rate which was profitable to me. I did not continue to live with relative. I ceased to live with relatives in December, 1960. After December 1960 I rented a small flat. I held the tenancy until Dr. Dephuis left the country in August, 1961.

In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.9

C.H. Da Silva  
Cross-  
examination  
continued

In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.9

C.H. Da Silva  
Cross-  
examination  
continued

Between August - October, 1961, I went back to my own home. When Dr. Dephuis left I do not remember if I negotiated for another tenant. I know Frank Biddeck. I made negotiations with him for renting my house. I asked him to pay \$375: per month if some additional work was done, or \$325: as it stood. A contract of tenancy was not concluded. I have rented my house again. I have rented from October, 1961. It is rented to March, 1962. It is rented at the rate of \$325: per month.

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The house which is provided for the General Manager was rented. It was rented about the same time Dr. Dephuis rented my house. It was rented to colleague of Dr. Dephuis. I think it was rented to Captain Hayes. It was rented for \$225. The Ministry of Communications and Works asked me to find out whether the Corporation would rent the house which was vacant at the time. I asked the Corporation and as the house was closed for sometime and as it was a means of revenue the Corporation agreed to rent the house to Captain Hayes until a General Manager was appointed.

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It is correct to say that the Corporation's house was rented for 1 year to Captain Hayes - expiring in August, 1961 at a rental of \$225: per month. I had known since June that serious efforts were being made to recruit a General Manager. I now say that the house was rented to Captain Hayes from month to month for \$225: until a General Manager was appointed. I was not in charge of the rental of the Corporation's house. I merely passed on the information. It is not correct to suggest that I made arrangements with Captain Hayes. I made arrangements through the Ministry of Communications and Works for the letting of my house to the United Nations Special Fund Commission carrying out the Harbour Siltation and Erosion investigation. The Ministry of Communications and Works approached me about the letting of the Corporation's house. I would not know if the negotiations took place in May, 1960, with Captain Hayes.

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I think the Corporation first asked me to find out from the Government if anyone wanted to rent the house which was closed for about 2 or

3 months. Almost immediately after the Ministry of Communications and Works asked me the same question. I was asked because lots of people offered houses through the Finance Secretariat. I told the Ministry of Communications and Works that the house of the Corporation was available. I do not remember whether I told Hayes that he could have the house for one year at \$225: per month. I do not know how Hayes remained there for one year. In January when I resigned from the Corporation Hayes was still there.

In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.9

C.H. Da Silva  
Cross-  
examination  
continued

Upon my selection as General Manager I made no enquiry about the Corporation's house. In my draft agreement I mentioned that an allowance in lieu should be paid because I interpreted the vacancy notice which reads "A free partly furnished house, and leave facilities in accordance with the Government's General Orders and Regulations" to mean that the house would be available to the General Manager in accordance with the Government's General Orders, No. 209 of which provides the alternative either the house or an allowance in lieu. I thought that wording suggested that if the Corporation wanted to keep Captain Hayes in the house to give me an allowance instead. I do not think that it was that I had arranged with Captain Hayes for a year and for that reason I put in the term.

I said that I was willing to forego my leave to take up the appointment. It is not correct to suggest that I did not intend to take up my appointment until after the expiration of my 10 months leave. I did not feel confident that from the time the vacancy occurred that I would be appointed General Manager and that my subsequent conduct was based on that assumption.

I was a Government Officer in 1949 when the Government purchased the B.G. Airways.

In the draft there was a suggestion that I would be able to leave the service of the Corporation by giving 3 months notice in writing or by paying one month's salary. I also suggested that if I left the Corporation otherwise than by agreement that I pay the Corporation 3 months' salary as liquidation damages. I admit that these

In the Supreme Court of British Guiana

considerations were not present in the particulars of the vacancy.

Plaintiff's Evidence

I was aware that the sum of \$11,280: was arrived at by adding \$10,560:, Carmichael's salary or the salary of the post, plus \$720: the gratuity of the post.

No.9

C.H. Da Silva Cross-examination continued

I am aware that gratuity and salary are treated differently in the Ordinance No.13 of 1954. I say section 6(1) deals with salary and 6(2) deals with pensions and gratuities. The position was that separate approval had to be given for salary and for pension and gratuity. When the advertisement was prepared the salary and the gratuity were merged. I do not know that Mr. Carmichael was not paid gratuity while he was on leave.

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I saw the terms of Carmichael's appointment in a contract approved by the Governor-in-Council. I did not know that Mr. Luck was an applicant before I saw the picture in the newspaper. I knew that the Board which made the appointment was going out of existence on 25th September, 1960. Applications were considered on 22.9.60 I do not know why the Board decided to select a General Manager instead of waiting until the new Board was appointed. I do not know whether my chances for selection were better with the old Board than with the new Board.

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The old Board did not interview me.

Re-examination:

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Re-examination

The members of the old Board were eligible for re-appointment. The members of the old Board were in operation for many years. I would say that the old Board were outstanding men in the community. The salary \$11,280: was approved by the Governor-in-Council in two parts. The first part \$10,560: by letter Exhibit "O" dated 22.5.57 and \$720: approved by the Governor-in-Council originally in 1954 as Gratuity. It was the gratuity and salary which were combined.

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On 16.10.60 I wrote the Financial Secretary. I also wrote on 8.12.60. This is a copy of the letter which I wrote. This is the reply dated

12.1.61 Letter dated 8.12.60 tendered, admitted and marked "S1". Letter dated 12.1.61 tendered admitted and marked "S2". I had acted as Chief Establishment Officer. I have known of no case where an officer aged 50 had sought leave to retire and Government refused the request. Memorandum dated 7.11.45 tendered, admitted and marked "T".

In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.9

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Adjourned at 3.30 p.m. on  
Thursday 8.3.62 at 9 a.m.

C.H. Da Silva  
Re-  
examination  
continued

Thursday 8th March, 1962 at 9 a.m.

Appearances as before:

Clement Hugh Da Silva re-examined by L.A.  
Luckhoo says :

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The new Board of the B.G. Credit Corporation was appointed towards the end of October, 1960. I could not have resigned from the Board. Under Section 4(7) of the Ordinance provided for resignation of non-official members only. In 1933 I was not aware of any age limit at that time. I had to produce my birth certificate in 1942 when Government checked the ages of all persons in the service. We each had to produce our birth certificates. I produced my birth certificate. There is an official document with my age on it. My registration with the New Widows' and Orphans' Fund. This is a certified copy of my registration. Tendered, admitted and marked Exhibit "U".

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There was no requirement in the advertisement for age. In order to retire at 50 the officer would apply. His head of department would say yes. The officer would go off. The application would then be sent forward to the Colonial Office for formal approval. The answer would come back and the Government would sometimes 2, 3 or 4 months after send the formal letter telling the applicant of his formal approval. The vacancy notice was drafted by W. D'Andrade who was the Financial Secretary. He used the files to draft the notice. On 27.7.60 I handed a copy of the draft notice to Mr. Moore on the request of the Financial Secretary.

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The details of the rental of the General

In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.9

C.H. Da Silva  
Re-examination  
continued

Manager's house were in the minutes of the Corporation. In the minutes of the meeting of 26.4.60 mention is made of the rental of the General Manager's house in Peter Rose Street. These are the minutes of the meeting of 26.4.60 - item 7. Tendered admitted and marked "V1". (Item 7 read by witness). These are minutes of 10.6.60. Tendered, admitted and marked "V2". (Witness reads items 6 of the minutes of 10.6.60). These are the minutes of 1.7.60. Tendered, admitted and marked "V3". (Witness reads item 4). These are the minutes of 6.9.60 tendered, admitted and marked "V4". (Witness reads item 3(e)).

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By the Court

By the Court:

A gratuity is the pensionable part of a salary which can be expressed in two ways. Firstly by a pensionable salary of "X" dollars. Secondly they could amalgamate gratuity and salary into one sum showing the total as non-pensionable which means that the officer draws the salary but at the end of his service he gets nothing more. I now say that a gratuity is the pension of salary and is in lieu of pension.

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A pension is the sum an officer receives at the end of service calculated on the basis of length of service in months along with other factors. Notwithstanding the salary of \$11,280: attached to the post of General Manager the Governor-in-Council could under the provisions of section 6(2) attach a gratuity to the post. All gratuities are payable quarterly and are based upon completed quarters of service subject to the right of the officer to elect to wait until the end of the contract to draw the whole sum. The £37.10.-. gratuity might have been quarterly payments. I do not know whether approval had ever been given for the amalgamation of the salary of \$10,560 - £2,200 per annum with the gratuity of £37.10s. per quarter by the Governor-in-Council. Minutes of meeting of 29.7.60 tendered, by consent, admitted and marked "W" (from custody of Defendants). I now say that it was discussed by the Board and it was understood that the sum of \$11,280: represented an amalgamation of a salary of \$10,560: per annum and a gratuity of £37.10s. per quarter.

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Dr. Ramsahoye:

By Leave of Court:

I did not know that the Financial Secretary had stated to the B.G. Credit Corporation on 11.1.61 that his impression was that I had prepared the draft and that he had revised it. I am aware that a Mr. Colin Ridley was refused permission to retire at age 50 when I was acting Chief Establishment Officer. I would say that the refusal was temporary. I was aware that notwithstanding secondment for a definite period the Government was still entitled to recall an officer on strong grounds of public interest.

L.A. Luckhoo by leave:

Mr. Ridley was in the middle of drafting a new complicated Drainage and Irrigation Ordinance. He applied to go at age 50. At an interview the Chief Secretary directed that the Ordinance should be finished by Mr. Ridley.

In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.9

C.H. Da Silva  
Further Cross-  
examination

Further Re-  
examination

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NO. 10

No.10

EVIDENCE OF LOUIS EMILE KRANENBURG

L.E.Kranenburg  
Examination

LOUIS EMILE KRANENBURG on his Oath says:

I am a retired civil servant. I spent 30 years in the Public Service. I retired as Permanent Secretary in the Ministry of Communications and Works. Prior to that I was Assistant Colonial Secretary (Establishment). I was also attached to the Local Government Board in my early years.

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I began to work with the B.G. Credit Corporation on 8.8.1954. I was appointed Secretary on 11.12.1956. I remained as Secretary until 8.4.1961. I was under contract and I served my period until 8.8.61 immediately prior to which I was on 4 months leave. While I was Secretary Exhibit "A" appeared in the newspapers. This was done with the approval of the Board. Exhibit "B" is the vacancy notice.



In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.10

L.E.Kranenburg  
Examination  
continued

This notice was approved by the Board. I gave copies of Exhibit "B" to several persons including the Plaintiff. I was also an applicant for the post of General Manager. On 22.9.60 a meeting was held in connection with the appointment. The minutes Exhibit "D" are correct. When I returned to the meeting the Chairman informed me that Mr. Da Silva had been selected for the appointment. This was done in the presence of the whole Board. In the presence of the whole Board I was instructed to inform Mr. Da Silva accordingly and all applicants that the appointment had been filled. No member of the Board objected to these instructions. I carried out these instructions. I see Exhibit "E" dated 26.9.60. I signed this letter. I wrote it. I showed it to the Chairman before I despatched it. I carried the letter and I handed it to Mr. Da Silva on 26.9.60. At the same time I took another letter to Mr. D'Andrade, Financial Secretary, informing him of Mr. Da Silva's appointment. I handed Mr. D'Andrade the letter personally. When I gave Da Silva the letter Exhibit "E" I asked him how soon he thought he could assume duty. Da Silva said around the middle of December when he was finished with the Budget. D'Andrade was in the office at the time. This conversation took place in D'Andrade's office. I think I said that would be alright.

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About one week later Da Silva telephoned me. In the course of the conversation he said that he hoped that I would prepare the service agreement for his appointment early. My recollection is that I told him that I did not have a copy of the agreement signed by Carmichael but that I knew it was in the form used by the Crown Agents. I told him that he could get a copy of the form from the Colonial Secretariat. I asked him to get a copy and put up a rough draft of the terms of his appointment for my consideration.

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I received Exhibit "F" dated 3.10.60 from the Plaintiff. There was a letter and a draft agreement. I never considered the draft which Da Silva sent. The Board never considered the draft. As Secretary of the Corporation I considered the Plaintiff definitely appointed.

The Board never revoked the appointment. The letter of 26.9.60 is the usual way in which letters are signed by the Secretary of the Board. I knew of no cases where Mr. Moore and I sign letters. The draft was never considered as a counter offer.

In the Supreme  
Court of  
British Guiana

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Plaintiff's  
Evidence

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No.10

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A letter from the Financial Secretary requested the Board to reconsider the appointment. Exhibit "K" is the letter. The Board considered the letter. The Board, as a result of the request, considered the application again. Up to 15.12.1960 no person other than Da Silva was appointed. On 15.12.60 I went into office a little after 9 o'clock. I was told that Mr. Luck of the Ministry of Natural Resources was in the General Manager's office. I went into him and after the usual formality Luck told me that he had come to assume duty as General Manager and that he had assumed duty and that he had already reported in writing to the Chairman. I told him that we had had no notification of his appointment and that I shall have to report the matter to the Chairman. I reported to the Chairman. I returned to the office. Mr.Luck was still there.

L.E.Kranenburg  
Examination  
continued

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On 16.12.60 I went to the office. I found that the Board Room was locked. There was no key. After making enquiries I reported to the Chairman who suggested that I asked Mr. Luck. I telephoned Mr. Luck's house. He was not there. I reached him about 11.30 - 12 midday at home and he said that he would let me have the key. I got the key when Luck came about 2.55 p.m. There was a Board meeting fixed for 3 p.m. that afternoon. The Chairman was there. He was accompanied by Mr. Humphrys of Messrs. Cameron and Shepherd. They went into the Board Room. When the meeting commenced certain members enquired who was the gentleman who was not a member of the Board. The Chairman explained that he was Humphrys of Cameron and Shepherd, Solicitors of the Corporation, whom he had invited to explain certain aspects of the case which Da Silva was bringing against the Corporation. The members then objected as they had not invited Humphrys and they asked that he be asked to leave. Humphrys withdrew and he was asked to wait. The members said that they were not there to discuss

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In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.10

L.E.Kranenburg  
Examination  
continued

Mr. Da Silva's case or to listen to advice about it but that they had come specifically to appoint a General Manager. Mr. Luck was then invited into the meeting and was asked by certain members of the Board to prepare his letter of appointment which he did. It was typed read over and I was asked by Mr. Andrew James, who was Deputy Chairman, to sign the letter. I refused to sign the letter explaining that the letter as typed, which I was asked to sign, was not in accordance with the terms set out in a letter received by the Financial Secretary that morning notifying the conditions under which Mr. Luck was being seconded to the Corporation as General Manager. That letter was torn up by Mr. Luck. A new letter in the terms of the letter from the Financial Secretary was redrafted and actually typed by Mr. Luck and it was presented to me again with a request that it be signed. I said that I would sign it under protest which I did. I explained that I had already signed a letter appointing a General Manager. That was the letter of 26.9.60 - Exhibit "E". That letter which I signed on 16.12.60 under protest was a letter appointing Mr. Luck. I alone signed that letter. I was then Secretary of the Corporation.

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Cross-  
examination

Cross-examined by Ramsahoye:

I do not remember whether the age limit for entering the service in 1933 was 21. I know of the 1938 General Orders. I do not remember what existed in 1933. I am aware of section 7 (3) of Ordinance 13 of 1954. I would not know whether a service agreement should be signed in the manner set out in 7(3). I remember a Service Contract so signed. I have applied section 7(3) only when advised. I signed an authority with a Mr. Yerakadoo.

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Mr. Carmichael received a salary of £2200: p.a. or \$840: per month. In addition he received £37.10s. as gratuity for each period of 3 months completed service. I do not know when the gratuity of Mr. Carmichael was fixed. I see Exhibit "O" I have never seen Exhibit "O" before today. This is a signed copy of letter which I wrote on the 22.4.1960 to the Manager, Barclays Bank. Tendered, admitted and marked "X".

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I remember writing a letter 26.2.1958 -  
 This is it. Tendered, admitted and marked "Y".  
 This is an order on the Corporation on the Bank  
 requesting the payment of Mr. Carmichael's  
 gratuity dated 7.4.1960, Order tendered, -admitted  
 and marked "Z1", and "Z2", i.e. Order with  
 receipt.

In the Supreme  
 Court of  
 British Guiana

Plaintiff's  
 Evidence

No.10

10 The advertisement for the appointment was  
 prepared at a place other than the Corporation's  
 place of business. I was not consulted on its  
 terms. I see Exhibit "B". I first saw  
 Exhibit "B" at the meeting of the Board when it  
 was discussed and approved. The Chairman pro-  
 duced it, i.e. Mr. Moore. I do not remember if  
 Da Silva was present. If the minutes state that  
 Da Silva was present then the minutes must be  
 correct. I would say that the draft was just  
 put, read and approved. I do not remember any  
 20 dissenting voice. I do not remember anyone  
 criticising the draft. I did apply for the  
 appointment. I do not know how the draft had  
 been prepared elsewhere. It did not worry me.  
 I did not ask why it was done that way. Normally  
 posts were not advertised.

L.E.Kranenburg  
 Cross-  
 examination  
 continued

Adjourned to 1.15 p.m.

Resumed at 1.15 p.m. on 8.3.62.

LOUIS EMILE KRANENBURG on his oath says under  
 cross-examination:

30 Mr. Da Silva did say he could assume duty  
 about the middle of December. I do not think  
 that this appears in the minutes. He told me so  
 on 26.9.60. I was present at the Board meetings  
 subsequent to 26.9.60. I cannot say whether  
 there was a meeting on 27.10.60. I never report-  
 ed what Da Silva said to a meeting of the Board.  
 I asked Da Silva to prepare a rough draft of the  
 agreement. There was no reason why I could not  
 get the form and prepare the agreement except  
 that he was on the spot and could easily get it.  
 40 The draft agreement was submitted with a letter of  
 3.10.60 which I showed to the Chairman. The  
 draft agreement was with the letter. The Chair-  
 man read it, noted it and gave it back to me.

The letter of 3.10.60 was put before a meeting

In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.10

L.E.Kranenburg  
Cross-  
examination  
continued

of the Board. It was put up with a letter from Da Silva's lawyers. The letter and the draft agreement were put before the Board. The minutes of 27.10.60 are correct. I now say that Da Silva's letter and the draft agreement were submitted with a letter from the Financial Secretary. I know that in December, 1960 until January 1962 Da Silva held the office of Deputy Financial Secretary. Mr. Moore resigned as Chairman on 18.3.61. Mr. Fisher resigned on 24.3.61. Letter dated 6.4.61 from Financial Secretary to Secretary, Credit Corporation, tendered, admitted and marked "AA". The duties of the Official member were the same as those of every other member. There is provision for members other than official members to resign. The Governor could have revoked the appointment of a member. I was a contract officer.

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The paragraph about pension scheme clause 6 means that the Corporation was considering a contributory pension scheme. It was likely that the General Manager would have been eligible for contribution to a Pension Scheme if ever it was introduced. In November I was told that the Board sat and selected Mr. Luck for appointment. I was not present.

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Re-examination. Re-examination:

Mr. Luck was never informed. The selection was to be reported to Government for approval in the first instance before he was informed. When I was appointed in 1954 I had no agreement. I was appointed Secretary on 11.12.56. In July, 1959, I signed a service agreement. It was a considerable time after the appointment. It had retrospective effect. I signed the service agreement and the General Manager signed. Nobody else signed.

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By the Court:

I presume that the sum \$11,280: was made up of the salary of £2,200: per annum and the gratuity of £37.10s. per quarter. I have no recollection of the Board considering the salary in relation to the gratuity. I was aware that the Governor-in-Council had to approve of a salary above \$480: I do not know whether the

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Board asked for the approval of the sum of \$11,280: I was instructed to ask the Governor-in-Council for approval of Mr. Luck's appointment. I would agree that the Board could have recommended a gratuity to the holder of the post of General Manager quite apart from the salary of \$11,280: offered. The Corporation did not consider provision of section 6(1) of Ordinance 13 of 1954 in relation to this appointment. I would say that the Governor-in-Council had already assigned a salary in excess of four thousand eight hundred dollars a year.

In the Supreme  
Court of  
British Guiana

Plaintiff's  
Evidence

No.10

L.E.Kranenburg  
Re-examination  
continued

By Mr. Luckhoo:

The previous General Manager received \$880: per month and \$180: every three months. It would be worth \$940: each month to the General Manager. That had the sanction of the Governor-in-Council.

CASE FOR THE PLAINTIFF CLOSED.

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DEFENDANT'S EVIDENCE

Defendant's  
Evidence

NO.11

EVIDENCE OF JAISAY GIRDHAR

No.11

JAISAR GIRDHAR on his oath says:

Jaisar Girdhar  
Examination

I am acting Chief Accountant of the B.G. Credit Corporation. I have been employed since November, 1955. I dealt with staff salaries including the salary of Mr. Carmichael. When Mr. Carmichael was General Manager I wrote up the cash book. These are Minutes of a Meeting of the Corporation of 26.3.57. Tendered and marked "BB". It deals with a recommendation in Mr. Carmichael's salary to increase from £2,000 to £2,200: In May 1957 the approval was given by letter Exhibit "O". Mr. Carmichael received \$880: per month up to July, 1960. The last payment was \$3,420: for 4 months, April, May, June and July, 1960. Mr. Carmichael received gratuity up to March, 1960. Mr. Carmichael worked in April. He received none. During May, June and July he was on

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In the Supreme  
Court of  
British Guiana

leave. The gratuity was payable for every completed quarter of service. As he had only worked for April Mr. Carmichael would not get the gratuity.

Defendant's  
Evidence

No.11

I know there was an advertisement for a General Manager. There was no communication from the Government on the question of salary after Exhibit "O", i.e. in May, 1957. No further communication was received after May, 1957.

Jaisar Girdhar  
Examination  
continued

Cross-examined by Luckhoo:

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Cross-  
examination

In June - July 1960, I was a Grade A Clerk until September, 1961. After that I was made accountants (acting). In 1960 the Accountant was R. Yerrakadoo. In 1960 Mr. Yansen was Chief Accountant. They would be better acquainted with what happened in 1960 than I would.

In March, 1957, a gratuity of £37.10s. was being paid for every completed 3 months service.

Re-examination:

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Declined.

CASE FOR THE DEFENCE CLOSED.

No.12

NO.12

Judges Notes  
of Counsel's  
Addresses  
8th March 1962.

JUDGES NOTES OF COUNSEL'S ADDRESSES

Dr. F.W.H. Ramsahoye:

Contract ultra vires.

Even if there was a concluded contract the contract was ultra vires.

Figure of \$11,280: was unauthorised merger of gratuity and salary or unauthorised figure.

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Refers to section 6 of Ordinance 13 of 1954.

Advertisement shows not only payment of salary but also of pension.

Submits that there was no concluded contract because there was no intention on the parties to create legal relationships.

In the Supreme  
Court of  
British Guiana

Plaintiff was not capable of committing himself to a time of assuming duty.

No.12

In mind of plaintiff the Defendant's offer was in their letter of 26.9.60.

Judges Notes  
of Counsel's  
Addresses  
8th March 1962.  
continued

Submits that the Plaintiff made a counter offer in terms different from those offered.

10 Submits that the counter offer destroyed the offer and the Plaintiff has not accepted the offer to this day.

Crossley v. Maycock (1874) 18 Ex. C.180.

Jones v. Daniel (1894) 2 Ch. 332.

Cheshire & Fifoot, Low of Contract 4th Edition p.31.

Question of Mutuality:

Plaintiff was not in a position to bind himself to the Corporation.

20 Refers to Halsbury - 3rd Edition Vol.8 p.69 para. 118 note (b).

Booker v. Palmer (1942) 2 All E.R. 674 p.677.

L.A. Luckhoo:

Asks for an adjournment to Monday 12.3.62. at 9 a.m.

Monday 12th March, 1962 at 9 a.m.

12th March, 1962.

L.A. Luckhoo, Q.C. replies for Plaintiff:

30 Case of an individual against the Credit Corporation which is autonomous. Not a case of Clement Da Silva and the Government.

- (1) Is Plaintiff's story to be accepted.
- (2) Was there a valid contract.



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- (3) If there was, who is responsible for the breach.
- (4) The Defendant had the power to appoint a General Manager and if they did was the salary assigned shown to be ultra vires
- (5) Rule of Estoppel and Conditions Precedent.
- (6) Consideration of the Defence.
- (7) Question of Damages.

10

Were the terms of a valid contract in existence.

Anson's Law of Contract.

Exhibit "A" shows an invitation to the public.

In Exhibit "B" all the details of the contract. Refers to section 4 of Exhibit "B".

Appointment under section 6 of Ordinance 13 of 1954.

The Plaintiff in Exhibit "C" says that in response to Exhibit "B" he applied for appointment.

20

Refers to para.5 of Statement of Claim.

The Plaintiff's offer was accepted in the clearest possible manner.

Only communication was required to make the contract complete.

Test of acceptance is objective. It is not a subjective test.

Upton-on-Severn Rural Council v. Powell  
(1942) 1 All E.R. 220.

Letter of 26.9.60 is the communication.

30

Powell v. Lee (1908) 99 L.T. 284.

If no time is stated then, a reasonable

time is to be inferred.

Halsbury, 3rd Edition Vol.8, 163, para.278.

If the law principles are established then the contract is complete.

Hillas & Co. v. Arcos (1932) 147 L.T. 503 at p.514.

No suggestions that the Defendants required the Plaintiff to turn on immediately.

Time not of the essence of the contract.

10 Rossiter v. Miller (1878) 3 A.C. 1124.

Refers to letter of 3.10.60. Never treated as a counter offer or a repudiation of the offer.

P.1150

Branker v. Gabarra (1947) 2 All E.R. 101.

Refers to Exhibit "B" para.6.

Repudiation is operative only if it comes from the one side and is communicated to the other.

Morrison on Repudiation of Contracts.

20 Ch. 4 p.34 p.37

Byrne v. Van Tienhoven (1880) 5 C.P.D. 344.

There was a good and binding contract.

Point (3): New Board met on 27.10.60.

Refers to Exhibit "K".

Refers to letter of 18.10.60.

Refers to Exhibit "G1".

Refers to Exhibit "G2" of 11.11.60.

Point (4)

Operation of Omnia Praesumuntur.

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Refers:

Broom's Legal Maxims - 9th Edition 611.

It cannot be questioned whether the Govern-  
or-in-Council.

Adjourned to 1.15 p.m.

Resumed at 1.15 p.m.

Luckhoo, Q.C. continues:

Presumption is that the issue of the  
particulars had the full sanction of the Law.

The vacancy note was typed and prepared by  
a member of the Governor-in-Council. 10

The letter of Appointment was in terms of  
the advertisement.

Subsequently the Governor-in-Council con-  
sidered the whole of the matter. The letter  
does not raise the question of the right to  
appoint but only raises the question of the suit-  
ability of the appointee. Only conclusion is  
that the salary was approved by the Governor-in-  
Council. 20

Minutes of 25.11.60.

Financial Secretary not called.

Chairman of the Corporation not called.

Refers to Order 17 Rule 14.

The letter of the Financial Secretary was  
by implication approval of the salary of  
\$11,280:

R. v. Reynolds (1893) 2 Q.B.

Refers to para.19 of the Defence. Salary  
and Gratuity. 30

The gross amount of the salary advertised  
was approved by the Governor-in-Council in two  
different parts.

Attorney General v. Great Eastern Railway  
(1880) 5 A.C. 473, p.478.

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Says that the combination of the salary and  
gratuity should be considered as intra vires.  
Royal British Bank v. Turquand, 119 E.R. 886.

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The Claim of Br. of warranty of authority  
could have been raised by the Plaintiff is the  
question of ultra vires.

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Stankie v. Bank of England (1903) A.C. 114.

10 Br. Russian Gazette v. Associated Newspapers  
(1933) 2 K.B. 616.

The Defendants by their conduct are precluded  
from denying the existence of a valid contract  
between the Plaintiff and the Defendants.

Refers to the several minutes of the  
Defendant Corporation.

Plaintiff does not have to plead a condition  
precedent.

20 There could have been oral approval given by  
the Governor-in-Council to the Chairman through  
the Financial Secretary.

Mayne on Damages.

Contract of Employment p.322.

212. Lindsey Queen's Hotel Limited (1919) 1 K.B.

182, Monk v. Redwing Aircraft (1942) 1 K.B.D.  
186.

Hayward v. Pullinger (1950) 1 All. E.R.581.

Refers to statement of claim.

30 Loss of salary.

Loss of House Rent.

Loss of Leave Passage.

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Powell v. Lee

Refers to Independence of Corporation.

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Ramsahoye: In reply:

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On question of damages.

Plaintiff was holding employment as Deputy  
Financial Secretary.

Plaintiff suffered no loss.

Adjourned to Monday 19th March,  
1962 for Decision.

19th March 1962 Monday 19th March, 1962.

10

Appearances as before.

Written Judgment delivered.

The Action is dismissed. The Plaintiff  
is ordered to bear his own costs and to pay one  
half of the taxed costs of the Defendant Cor-  
poration certified fit for counsel.

Luckhoo applies for stay of execution for  
6 weeks.

No objection by Ramsahoye.

Stay of execution granted for 6 weeks.

20

H.A. FRASER  
19.3.62.

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"The law of Contract," Chitty said, "is  
"concerned with those undertakings between man  
"and man which the law will, if necessary, en-  
"force in case either of the parties fails to  
"carry out his bargain in order that the legiti-  
"mate expectation of the other in the realiza-  
"tion of his object may not be defeated."

10

That precise statement of the law accurately  
describes both the ancient and the modern concept  
of the right of each individual to be his own  
legislator; but the growth of society and the  
development of commerce have created an artifi-  
cial juristic person in the form of a corpora-  
tion which, although inanimate, has perpetual  
succession and is invested with the capacity of  
acting in several respects as an individual  
according to the powers conferred upon it by the  
instrument of its creation. The principles of  
law upon which the liability of a corporation is  
to be decided, as far as it is necessary for the  
decision of this case, are very clear and well  
settled, although, perhaps, in practice, not al-  
ways steadily kept in view.

20

The Defendant is a statutory corporation  
established by the British Guiana Credit Corpora-  
tion Ordinance, 1954 - No.13 of 1954. The  
Plaintiff, at the time the Writ was filed, was  
an official member of the Defendant Corporation.  
He then held the office of Deputy Financial  
Secretary in the public service of this country  
and continued to hold that office until 21st  
January, 1962, when he retired after 28 years  
service. He now receives a pension and is not  
employed. He is 51 years old.

30

The Plaintiff seeks a declaration that he  
is the General Manager of the Defendant Corpora-  
tion by virtue of his appointment to that post  
by the Board of the Corporation. Alternatively,  
the Plaintiff claims from the Defendant Corpora-  
tion the sum of \$100,000: as damages for breach  
of a contract to employ him as its General

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Manager. There is no claim for specific performance because an ordinary contract for personal services is not so enforceable; but it seems that the claim for a declaration in the terms sought by the Plaintiff is intended to achieve the purpose of a decree of specific performance and I should say at once that the Court will not make a declaratory order in those circumstances.

When the hearing commenced on 28th February, Dr. Ramsahoye submitted that the interrogatories answered by Mr. J.H. McB. Moore, a former Chairman of the Defendant Corporation, should be removed from the record on two grounds. Firstly, he submitted, the order directing the interrogatories made by Mr. Justice Bollers, was bad for want of form and was therefore a nullity; and, secondly, Mr. Moore had ceased to be a member of the Defendant Corporation for several months before he actually answered the interrogatories. I do not agree with the submission. Mr. Moore had resigned from the Board on 18th March, 1961. The interrogatories were answered on 26th October, 1961. Assuming, without deciding, that the Order made by Mr. Justice Bollers was defective in form objection could have been taken on summons at any time under the provisions of Order 26 Rule 11 of the Rules of the Supreme Court, 1955. With regard to the second limb of the submission the position is that the Court has jurisdiction to make the order if the person ordered is an officer of the corporation at the time of the making of the Order - see The Madrid Bank -v- Bayley (1866) 2 Q.B. 37. Once that order is made it must be complied with unless varied and I have seen no authority that allows the exemption of an "officer" who retires before compliance. Quite apart from this however, the solicitor for the Defendant Corporation, subsequently to Mr. Moore's retirement, made two applications on the ground of illness for an extension of time for Mr. Moore to answer the interrogatories. Both applications were granted. Decision on this submission was reserved and there being no merit I made no order; but it is not without interest to recall that no

reference whatsoever was made to the interrogatories by either counsel throughout the trial.

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I now turn to the case. The issues are not involved. They fit narrowly into two propositions and I cannot but comment on the length of time devoted to evidence in a situation that fully justified an agreement on the facts except proof of damage. The two propositions are these: (1) Whether there was mutuality in the contract; and (2) Whether the contract was ultra vires the Defendant Corporation.

10

On the question of mutuality it was submitted that the Plaintiff's acceptance was not final in that he made a counter offer to the Defendant Corporation and that in any event there was no intention between the parties to create legal relations by the correspondence exchange. On this issue the facts are as follows :- pursuant to an advertisement appearing in the Daily Chronicle on 6th August, 1960, the Plaintiff obtained from the secretary of the Defendant-Corporation particulars of the vacancy of the post of General Manager. In the Statement of particulars the salary and allowances as well as the conditions and duration of service were set out. By letter dated 24th August, 1960, the Plaintiff applied for the post. In all there were 26 applicants for the post. At a properly constituted meeting of the Board held on 22nd September, 1960, the Plaintiff who was not in attendance was selected for appointment. It is important to reproduce the record of what occurred. The minutes read :-

20

30

"(iii) Appointment of a General Manager, vice Mr. W.G. Carmichael: As the secretary was one of the applicants for the position, he withdrew from the meeting while this item was being considered.

40

All applications which had been received as a result of the advertisement published locally and in the West Indies were then carefully considered, and Mr. Clement H. Da Silva, now Deputy Financial Secretary and Official Member of the



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Board, was chosen for the appointment. It was decided that Mr. Da Silva be notified and Government be advised of the appointment; all the unsuccessful applicants to be notified that the position had been filled.

On 26th September, 1960, Mr. L.E. Kranenburg, the secretary of the corporation handed the Plaintiff personally a letter in these terms:

10

"26th September, 1960.

Mr.C.H. Da Silva  
etc.

Dear Sir,

With reference to your letter of 24th August, 1960, applying for the vacant post of General Manager of this Corporation I am pleased to inform you that a meeting of the Corporation held on Thursday, 22nd September, 1960, you were selected for the appointment on the terms and conditions as advertised; and I shall be glad to be informed as early as possible, how soon you would be able to take up the appointment.

20

Yours faithfully,

L.E. Kranenburg  
Secretary"

On 3rd October, 1960, the Plaintiff replied in these terms:

30

"3rd October, 1960.

Dear Sir,

Appointment as General Manager

I thank you for your letter of 26th September informing me of my selection for appointment as General Manager. I enclose a draft agreement of service which I shall enter in with the Corporation. I accept

the appointment.

I am reporting the position to the Government with a view to release as early as possible. Meanwhile I would ask that no official announcement be made by the Corporation.

Yours Sincerely,  
C.H.Da Silva".

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10 Attached to this letter there was a draft agreement of service which included some terms which had not appeared in the statement of particulars of the vacancy supplied to the plaintiff by the secretary, and others which varied some of the terms in the statement. The Plaintiff explained the circumstances of his sending the draft agreement. I believe him; but those circumstances have no relevance to the legal effect of the documents sent by the Plaintiff on 3rd October.

20 Dr. Ramsahoye cited two cases which are precisely on the point and prima facie might appear to resolve the issue. In the case of Jones v. Daniel (1894) 70 L.T. (n.s.) 588 the letter of acceptance by the vendor's solicitor stated that the vendor had accepted the offer and that a contract was enclosed for signature by the purchaser. The contract carried terms which were not in the offer made. In an action for specific performance it was held that there was no contract between the parties. Similarly in the case of Crossley v. Maycock (1874) L.R. 18 Eq. C 180, the vendors wrote to the intending purchasers as follows:

".....which offer we accept and now hand you two copies of conditions of sale and therewith enclosed a formal agreement with conditions of a special character."

40 It was held that the acceptance was conditional and therefore there was no contract.

In considering this aspect of the matter I wish to say that in my view a contract between parties is substantially a matter of intention

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and behaviour and while judicial authority pre-  
scribes the principles to be applied it is un-  
safe to adopt and apply a conclusion drawn from  
a set of facts in one case to those of another  
case even though apparently similar. In this  
case there is a feature which I consider rele-  
vant and which in my mind creates a difference.  
The Plaintiff's letter of 3rd October was read  
at a meeting of the Board on 27th October, 1960.  
According to Mr. Kranenburg the draft agreement  
was attached to it at the time but it does not  
appear from the minutes that the terms of the  
draft were considered. The reason for this  
was, it seems, that immediately after the Plain-  
tiff's letter was read the Chairman read another  
letter dated 18th October, 1960, from the  
Financial Secretary to the Chairman of the  
Corporation. That letter was as follows:

10

"18th October, 1960.

Sir,

20

With reference to the Secretary's  
letter of 26th September and our subse-  
quent conversations on the subject of  
filling the vacant post of General Manager  
of the Corporation, I am directed to in-  
form you that the matter was considered by  
the Governor-in-Council.

2. I am to ask the Board of the Corpor-  
ation to re-examine the recommendation  
made as the Government is anxious that  
the best person available be obtained for  
the post. If the Board wishes to have  
the qualifications of any of the candi-  
dates residing in the West Indies further  
investigated, the Chief Secretary would  
be glad to enlist the aid of the Govern-  
ment of the territory in which the candi-  
date is residing. If the Board is not  
satisfied that any of the persons who  
have so far applied is suitable, the  
vacancy should be re-advertised over a  
wide field.

30

40

3. I should be grateful if you would

put the matter to your Board accordingly.

I have etc.

W.A. D'Andrade  
Financial Secretary.

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After the two letters were read it was decided to consider the matter at a special meeting to be held on 4th November. It is not clear whether the matter was considered at that meeting but in the minutes of a meeting held on 11th November it is recorded as follows:

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10

"10. Appointment of a General Manager:

The matter was considered in terms of the Financial Secretary letter No: F.S.G. 283/55 II dated 18th October 1960, (see paragraph 8 of the minutes of Members Meeting, 27th October 1960.)

20

The qualifications training and experience of all the candidates were reviewed exhaustively by the Board who unanimously agreed that Mr. G.E. Luck, Permanent Secretary, Ministry of Natural Resources, British Guiana, was suitable for the post and should be appointed.

It was decided, however, not to offer Mr. Luck the appointment until the Governor-in-Council had been informed of the decision and had approved the selection."

30

It seems clear that the Plaintiff's letter of 3rd October had made no impact on the Board either as an acceptance of an offer or as a conditional acceptance. By 27th October, except for the Chairman and a single member, a new crew had manned the decks of the Board, a sight was taken on a new tangent and the ship had altered its course. The Plaintiff's appointment was not a matter of moment at the meeting of 27th October and I am satisfied that the form of his acceptance was not considered by the Board then or at any time afterwards

40

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The Plaintiff said that the revised terms included in the draft were not intended as a counter-offer. He conceded however that he wished that the hopes he expressed in that form might be fulfilled. He said he was quite prepared to take the appointment on the terms set out in the statement of particulars. Mr. Da Silva had hoped to retire. He expected a gratuity of \$15,625: and an annual pension of \$3,750. In addition, his own house was let for \$325: and by virtue of his appointment as General Manager he was likely to obtain the facility of a free partly furnished house of a rental value of \$225: Above all this he was to receive an annual salary \$11,280: as General Manager. In these circumstances can it be said that he was making a counter-offer? I think not. I believe his evidence on this point. The whole web of the defence on this aspect arose ex post facto and had no factual bearing on the behaviour and intentions of the Board on 27th October or subsequently.

10

20

Dr. Ramsahoye also urged that the Plaintiff was in no position to accept the post of General Manager because he did not intend to resign and his secondment or retirement depended upon a number of factors over which he had no control. I do not think there is much weight in this submission. If there was a contract which the Plaintiff could not perform he may have been liable for a breach but the probability or the inevitability of a breach of contract has no causal influence on an intention to create legal relations; if it did, it will be impossible to establish a breach of contract unless it can be shown that the party in breach was able to perform at the time the contract was made. The whole fabric of the law of contract would become weakened and a wide door would be left open for dishonourable dealing. In the absence of a stipulation as to time of performance a reasonable time must be presumed and the circumstances of each case must determine what is a reasonable time.

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40

In paragraph 19(b) of the defence it is pleaded that the Secretary was not legally entitled to write the letter of 26th September, 1960. I construe this to mean that if the

letter of 26th September 1960 is considered to be the Defendant Corporation's offer then the secretary had no authority to sign it or alternatively that the purported offer of the Defendant Corporation was not made in accordance with the Ordinance. If this is so, the Defendant Corporation would be entitled to contend that there was an absence of mutuality. A veiled suggestion of this was made in the cross-examination of Mr. L.E. Kranenburg and copies of two letters were tendered to show the manner in which documents are executed by the corporation on a special authority. Dr. Ramsahoye did not address on this aspect of the defence but it must nonetheless be considered.

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At common law a corporation could only bind itself by contract under the common seal except in some slight matters of service, e.g. the employment of a cook or gardener. It is however not necessary to use the common seal if the incorporating statute specifically provides for an alternative method of signifying assent. As I understand the position the common seal can always be used on the proper authority being given but the absence of the seal will not affect the element of mutuality if the contract is executed strictly in accordance with the formalities prescribed in the Ordinance - see The Queen v. The Justices of Cumberland, (1847) 17 Q.B. 102. In the case of Ernest v. Nicholls, (1857) 6 H.L.C. 401, Lord Wensleydale said at p.419:

"All persons, therefore, must take notice of the deed and the provisions of the Act. If they do not choose to acquaint themselves with the powers of the directors, it is their own fault, and if they give credit to any unauthorised persons they must be contented to look to them only, and not to the company at large. The stipulations of the deed, which restrict and regulate their authority, are obligatory on those who deal with the company; and the directors can make no contract so as to bind the whole body of shareholders for whose protection the rules are made, unless they are strictly complied with."

In the case of Fontaine v. Carmarthen Railway

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Co., (1868) 5 L.R. 316 Sir W. Page Wood, V.C.  
said at pp.321 - 332:

"..... where there is merely a power vested in directors to act for the company in certain special emergencies, the Court is obliged to consider all acts of directors by which it is sought to bind the company as being the acts of agents ..... and in the case of companies where directors are the special agents of the company, and do not possess the power of affixing the corporate seal except under certain prescribed rules, a person who deals with the directors is taken to have notice of the rules ..... and if there be anything to be done which can only be done by the directors under certain limited powers, the person who deals with the directors must see that those limited powers are not being exceeded."

10

20

In Chitty on Contracts, 21st Edition, page 35  
it is stated:

"The last requisite to the agreement of the parties is that the assent should be mutual. This may mean one of at least two things; either (a) that the parties must be agreed on the same thing in the same sense; or (b) that there must be, in a simple contract at least, obligations on both sides and not on one side only. There must be reciprocity of obligation."

30

And at page 36:

"Lack of Mutuality: Whenever it appears that, if the contract were not binding on both parties at the time it was made, this want of mutuality would leave one party without a valid and available consideration for his promise, then the contract will be void."

40

It has long been settled that in order to bind a corporation the agreement must be under seal or executed in the prescribed manner.

Section 7 of the British Guiana Credit Corporation Ordinance reads as follows:-

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"7(1) The seal of the Corporation shall be kept in the custody of the Chairman or the Deputy Chairman or the Secretary of the Corporation and may be affixed to instruments pursuant to a resolution of the Corporation in the presence of the Chairman or Deputy Chairman and the Secretary.

10

(2) The seal of the Corporation shall be authenticated by the signature of the Chairman, or Deputy Chairman and the Secretary.

(3) All documents, other than those required by law to be under seal made by, and all decisions of, the Corporation may be signified under the hand of the Chairman or Deputy Chairman or General Manager and the Secretary.

20

Section 13 of the Ordinance as repealed and re-enacted by section 2 of the British Guiana Credit Corporation (Amendment) Ordinance, 1955- No.13 of 1955 - provides as follows for the execution of documents:

13. Any transport, mortgage, lease, assignment, transfer, agreement, or other document requiring to be executed by the Corporation, or any cheque, bill of exchange or order for the payment of money requiring to be executed by the Corporation shall be deemed to be duly executed if signed by a person or persons specially or generally authorised by resolution of the Corporation so to sign."

30

Having considered those two sections the position seems to me to be this: In order to bind the Defendant Corporation the letter of 26th September should bear the common seal in manner provided by section 7 or should be signed by some person or persons specially or generally authorised by a resolution of the corporation. There is nothing to indicate

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that Mr. L.E. Kranenburg as secretary was ever alone specially authorised to sign for the corporation. On the contrary the copies of the two letters tendered by the Defendant Corporation show that the Secretary and the Chief Accountant were given special authority. In the case of A.R.Wright and Son Ltd. v. Romford Corporation (1956) 3 All E.R. 785 there was an agreement in writing but not under seal, signed by the borough engineer on behalf of the corporation and being made in accordance with the corporation's standing orders, it was contended that it was valid by virtue of section 266(2) of the Local Government Act, 1933, which required a contract to be so made, and because the corporation could appoint and had validly appointed the borough surveyor to execute the written contract on their behalf under section 74(2) of the Law of Property Act, 1925. In giving judgment Lord Goddard said at p. 788:

10

20

..... "but section 74(2) of the Act of 1925 cannot, in my opinion, in any way validate an agreement which is not under seal and does not fall within the recognised exceptions, unless, indeed, it be made under some authority conferred by statute on the particular corporation. Although it may be distasteful to give effect to a technical defence of this description, it is a valid defence in law, and it accordingly follows that the action cannot be maintained."

30

This principle was also considered in the case of Cope v. The Thames Haven Dock and Railway Co. (1849) 3 Ex. R. 841. The head-note reads as follows:

A Railway Company was incorporated by an Act of Parliament, one section of which enacted, that the directors should have power to use the common seal on behalf of the Company, and that all contract relating to the affairs of the Company, signed by three directors in pursuance of a resolution of a court of directors, should be binding on the Company. The following section enacted, that the

40

directors should have full power to employ all such managers, officers, agents, clerks, workmen, and servants as they should think proper.

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By resolution of the board of directors, signed by their chairman, the plaintiff was appointed agent to negotiate with another railway for the lease of the line :-

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10 Held, that the contract was not binding on the Company, it not having been sealed, or executed with the required formalities.

For the reasons given I must find that there was a lack of mutuality between the parties on the sole ground that no enforceable offer or acceptance was made by the Defendant corporation for the reason that the document dated 26th September, 1960 was not executed by the corporation in the manner required by section 7  
20 or section 13 of the Ordinance.

I now turn to the second proposition and that is whether the contract was ultra vires the Defendant Corporation. I propose to deal with this matter on the assumption that my finding on the first proposition is wrong and that therefore the contract is in other respects validly enforceable. This proposition is pleaded in paragraph 19(d) of the statement of defence.

30 Sub-sections 1 and 2 of section 6 of the Ordinance reads as follows:

Appointment of General Manager, Secretary, Officers and servants. 6(1) The Corporation shall appoint and employ at such remuneration and on such terms and conditions as they think fit a General Manager, a Secretary and such other officers and such servants as they deem necessary for the proper carrying out of the provisions of this Ordinance:

40

Provided that no salary in excess of the rate of four thousand eight hundred dollars

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per annum shall be assigned to any post under this subsection without the prior approval of the Governor-in-Council.

(2) No provisions shall be made for the payment of any pensions, gratuities or other like benefits to the General Manager, the Secretary, other officers, servants or to other persons by reference to their service without the prior approval of the Governor-in-Council.

10

On behalf of the Plaintiff it is contended that the Defendant Corporation has the power to appoint and that the stipulation regarding assignment of the salary does not affect the power to appoint. In the light of the authorities that contention is untenable. The appointing process necessarily involves the assignment of a salary. Subsection (1) does not permit an appointment to be made without remuneration and it has long been established that the powers of a corporation are only such as are conferred by the statute. It cannot therefore be contended that a corporation can do anything which is not specifically prohibited by the statute. It is true that by virtue of section 6 of the Defendant Corporation has unfettered power to contract for matters like a free furnished house, for travelling allowance and for leave; but how effectively can the corporation exercise that power if the power to fix the salary is fettered by a condition precedent? The power cannot be exercised unless the condition precedent is fulfilled. In the case of Attorney General v. Lord Mayor of City of Sheffield (1912) 106 L.T. 367 Eve, J. said at p.370:

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"One must look at the transaction as a whole, and the fact, if indeed it be a fact that the Defendants have power to do a part of the act will not legalise the act if its completion involves at any stage a step ultra vires of the corporation."

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I wish to adopt what was said in Hattersley v.

The Earl of Shellburne (1862) 31 L.J.R. 873.  
Vice Chancellor Kindersley said at p. 878:

In the Supreme  
 Court of  
 British Guiana

No.13

Judgment  
 19th March 1962  
 continued

10 "But it is clear, that all the matters  
 that are specifically agreed to be done  
 by this agreement are all component parts  
 of one design, and for the purpose of  
 accomplishing one single end. They are  
 different wheels and levers and springs  
 of one complete machine, by which the  
 object of that machine is to be worked;  
 and if it were not for accomplishing that  
 one object none of these details would  
 have been agreed upon or made the subject  
 of any stipulations."

Before dealing with the facts in the case before  
 me there are two other cases to which I wish to  
 refer. The first is the case of Davis v. Cor-  
 poration of Leicester (1893) 2 Ch. D.208. The  
 facts as set out in the headnote were these:

20 In March, 1888, a municipal corpora-  
 tion offered for sale by auction, in lots,  
 some of their corporate land, subject to  
 special conditions restricting the right  
 of each purchaser to build on his lot.  
 At the auction none of the lots were sold.  
 In June, 1888, the Plaintiff entered into  
 a contract to purchase two of the lots,  
 subject to the conditions. The proper  
 steps were taken to obtain the approval of  
 30 the treasury, which is required by sects.  
 108-109, of the Municipal Corporations  
 Act, 1882, to enable a municipal corpora-  
 tion to sell their corporate land; and  
 that approval was given in the ordinary  
 way by two Lords of the Treasury joining  
 in the conveyance to the Plaintiff. The  
 conveyance contained a covenant by the  
 Plaintiff in the terms of the restrictive  
 conditions, but there was no reference to  
 40 those conditions, or to the previous  
 abortive sale. There was no covenant by  
 the corporation binding them by the condi-  
 tions as regarded the unsold lots, and the  
 Treasury were not, before they gave their  
 approval, informed that the corporation  
 would be liable to any such restriction.

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Judgment  
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continued

The Corporation afterwards contracted with the trustees of a church to sell to them two others of the lots, and authorised them to build on those lots in a manner inconsistent with the conditions:-

Held, by North, J., and by the Court of Appeal, that, if the corporation had been ordinary individuals, they would have been bound by the original building scheme, and that they, and the trustees, who had purchased with notice of the scheme, must have been restrained from building or permitting building on the lots purchased by the trustees, in a manner inconsistent with the conditions:

10

But held, that the Treasury had only given their approval to what was to be found in the conveyance, and that they had not sanctioned the disposition by the corporation in favour of the Plaintiff of any right over other land than that which was conveyed to him, and consequently that neither the corporation nor the trustees could be restrained from violating the conditions.

20

In delivering judgment Kay, L.J., said at p. 235:

"Therefore the case is reduced to this, that the Plaintiff is now seeking to bind the corporation and the other Defendants who have purchased other lands from the corporation by an implied agreement from the building scheme, which he says was a term and condition of the disposition of the land to him which he bought, which alleged implied agreement and which terms and conditions have never been submitted to the Treasury, and, of course, have not been approved by them. The answer is that such a thing would be ultra vires of the corporation, because, as I read sect. 109, such terms and conditions attached to the sale of the particular lands which the Plaintiff bought could not be made valid and binding upon the corporation without the approval of the Treasury."

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The other case is Pacific Coast Coal Mines, Lim. v. Arbuthnot (1917) 86 L.J.P.C. 172. In that case a company incorporated under the Companies Acts of British Columbia entered into an agreement which was admitted to be ultra vires, and obtained a private Act of the provincial Legislature to validate it. The Act "validated, ratified, and confirmed" the agreement, "subject to the same being adopted by a resolution passed by 75 per cent of the shareholders of the Company present personally or by proxy, at any meeting of the shareholders of the said Company called for that purpose, and for the purpose of authorising the issue of the said debentures, after the 14th day of February, 1911", which was the date of the petition for the passing of the private Act:- The Privy Council held that the condition imposed by the statute was not one of internal management only, the non-observance of which could be cured by the acquiescence of the shareholders, but was a condition of the agreement becoming inter vires; and unless it was literally and in reality fulfilled the agreement remained ultra vires of the company, and incapable of being carried out. In delivering the judgment of the Court Viscount Haldane said at p.176:-

In the Supreme  
Court of  
British Guiana

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Judgment  
19th March 1962  
continued

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"But the case stands quite otherwise when the act is one which has not, by the constitution of the corporation, been put within its power excepting on the fulfilment of a condition. In that event the persons dealing with the corporation are bound to ascertain whether the condition has been fulfilled. The question which alternatively applies is, of course, one of construction of the statute authorising the act. Their Lordships are compelled to dissent from the view taken by the Judges of the Court of Appeal on this point, and to hold, with Mr. Justice Clement, who tried the action, that unless the condition prescribed by the words cited from the private Act was literally and in reality fulfilled the agreement remained, what it undoubtedly was apart from the Act, ultra vires of the appellant company."

I might perhaps also mention an Irish Case the

In the Supreme  
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British Guiana

No.13

Judgment  
19th March 1962  
continued

report of which I have not seen but it is referred to in The Doctrine of Ultra Vires by Street. It is the case of Holmes v. Trench, (1898) 1 Ir. 319 in which an Asylum Board entered into a contract for the purchase of land without first obtaining an Order in Council. It was held that the whole transaction was a nullity and not capable of ratification.

The proviso to subsection 1 of section 6 of the Ordinance states: 10

"Provided that no salary in excess of the rate of \$4,800 per annum shall be assigned to any person under this subsection without the prior approval of the Governor in Council."

I construe this provision as a condition precedent to the exercise of the power conferred by subsection (1) to fix remuneration and appoint. It is not permissive it is imperative. It prohibits the assignment of a salary until approval is given by the Governor-in-Council and it indicates, in my judgment, that the Governor-in-Council was to have the means of satisfying himself as to the conduct of the Board, and, if he thought proper, of contesting the intended provision of salary. 20

There is no doubt whatever that the Governor-in-Council never approved of the salary of \$11,280: which the Defendant Corporation assigned to the post of General Manager in the advertisement of 6th August, 1960, and in the statement of particulars. Mr. Luckhoo submitted that the salary of \$11,280: was an amalgamation of the approved salary \$10,560: per annum and the approved gratuity of \$180: per completed quarter of resident service. Alternatively, he submitted that the Court should presume that approval was given because the documents of the Defendant Corporation refer to the salary of the post as \$11,280: per annum. These submissions bear little relation to the meat of the Plaintiff's case and it seemed to me that up to the time when his examination-in-chief was finished the 30 40

Plaintiff genuinely believed that specific approval had been given by the Governor-in-Council for a salary of \$11,280: (quite apart from gratuity) during Mr. Carmichael's tour of office. In examination-in-chief on the morning of 1st March the Plaintiff said in reply to Mr. Luckhoo:

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continued

10 "I know as a member of the Board that the salary of the post of General Manager was \$11,280: per annum (fixed). On several occasions I saw the Executive Council decision and a letter sent by the Financial Secretariat to the General Manager informing him of the salary of \$11,280: for the post. I saw the letter for the original salary and I saw letters whenever the Governor-in-Council had varied the salary."

20 Early in his cross-examination on the following day 2nd March, the Plaintiff said:

30 "I am aware of the emoluments of Mr. Carmichael. He received a salary of \$880: plus a gratuity of \$60: per month. This was \$940: per month or \$11,280 per year. His gratuity was settled by the Governor-in-Council when he was first employed. I do not know that Mr. Carmichael's original salary was fixed by the Governor-in-Council at \$300: per month. I know that the Governor-in-Council approved a salary of \$880: for the General Manager of the British Guiana Credit Corporation. This is a certificate from the Treasury dated 22nd May, 1957 showing the salary of the General Manager as £2200: (\$10,560).

40 I am aware of the provision of section 6 of Ordinance 13 of 1954. I know that at the commencement of Carmichael's appointment he was granted a gratuity of £37.10s. (\$180:) per quarter by the Governor-in-Council.

From 22nd May, 1957 to the 6th August, 1960 I know that the Governor-in-Council did not reconsider the salary of the post of General Manager. So far as I know there was no reconsideration up to the date of the writ on 13th December, 1960



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19th March 1962  
continued

Towards the end of his cross-examination the Plaintiff said:

"I was aware that gratuity and salary are treated differently in the Ordinance, No.13 of 1954. I say section 6(1) deals with salary and 6(2) deals with pensions and gratuities. The position was that separate approval had to be given for salary and for pension and gratuity. When the advertisement was prepared the salary and the gratuity were merged."

10

In re-examination the Plaintiff said:

"The salary \$11,280: was approved by the Governor-in-Council in two parts. The first part \$10,560: by letter Exhibit "O" dated 22nd May, 1957 and \$720: approved by the Governor-in-Council originally in 1954 as gratuity. It was the gratuity and salary which were combined."

In answer to the Court the Plaintiff later said that he did not know if the Governor-in-Council had given approval for the amalgamation of the salary of £2,200 per annum (\$10,560) and the gratuity of £37.10s. per quarter (\$180). His evidence as to the absence of approval by the Governor-in-Council is supported by Jaisar Girdhar, the acting Chief Accountant of the Defendant Corporation. He said that no communication had been received by the Defendant Corporation from the Governor-in-Council on the question of salary since 22nd May, 1957. Mr. Kranenburg said that the Defendant Corporation did not consider the provision of section 6(1) in relation to the appointment of the Plaintiff.

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It is easy to understand what happened. The Plaintiff mistakingly believed the salary of the post was \$11,280: and had been approved by the Governor-in-Council. At that meeting of 29th July, 1960, no one remembered the necessity to fulfill the condition precedent prescribed by the Ordinance. It was urged that the approval of a gratuity of £37.10s. per completed quarter of service and the approval of a salary of £2,200 per annum as

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10 stated in the letter of 22nd May, 1957, should  
 be treated as an approval to pay a salary of  
 \$11,280: or at least emoluments of \$11,280:  
 To accept this proposition is to do violence to  
 the plain words of the Ordinance in which a  
 salary is dealt with in a provision to sub-sec-  
 tion (1) and a gratuity is dealt with in sub-  
 section (2). Moreover, both the Plaintiff and  
 Mr. Kranenburg agreed that even if the salary  
 of \$11,280: had been approved the Governor-in-  
 Council was at liberty to approve a gratuity in  
 addition. I need only refer to what Brett,  
 L.J. said in R. v. Postmaster General (1878) 3  
 Q.B.D. 428 at p. 431:

20 "That annual emolument is the value of his  
 appointment ..... if he receives a  
 salary and something additional by way of  
 remuneration, the value of the appointment  
 must be the salary and anything which he  
 gains by the remuneration."

30 A clear distinction must be drawn between, re-  
 munerations, salary, gratuity, and emoluments.  
 The emoluments are the gross value of the  
 appointment and comprise salary, gratuity and  
 remuneration. Salary is the reward monthly or  
 annually for the service to be rendered, and  
 includes reward during periods of leave.  
 Gratuity is an acknowledgment of service and is  
 the pensionable element of a salary which in  
 this case can only accrue on completed quar-  
 terly periods of service. Remuneration includes  
 free furnished quarters, travelling allowances  
 and other benefits of a money value.

40 Mr. Luckhoo urged that the Defendant Cor-  
 poration did not plead the failure to perform  
 the condition precedent and therefore by virtue  
 of rule 14 of Order 17 of the Rules of the  
 Supreme Court, the performance of that condi-  
 tion must be implied. This proposition is  
 without merit. There is a world of difference  
 between a condition precedent to the existence  
 of a cause of action and a condition precedent  
 to the exercise of a right of action. The  
 former is a matter of substantive law and the  
 latter a matter of adjective law. The one a  
 matter of substance in the formation of a per-  
 sonal right the other a matter of procedure in

In the Supreme  
 Court of  
 British Guiana

—————  
 No.13

Judgment  
 19th March 1962  
 continued

In the Supreme  
Court of  
British Guiana

No.13

Judgment  
19th March 1962  
continued

the vindication of the right in a court. This view is supported by the Annual Practice in a note on rule 14 of Order 19 which is the same in working as rule 14 of Order 17. It is there stated:

"But an allegation which is of the  
"essence of the cause of action is not  
"a condition precedent within the mean-  
"ing of this Rule, and must still be  
"pleaded in the statement of claim."

10

I must find that the contract, if it was made, is ultra vires the Defendant Corporation and is therefore void and wholly unenforceable for the reason that the prior approval of the Governor-in-Council was not obtained for the assignment of the salary of \$11,280 per annum to the post of General Manager as prescribed in the proviso to section 6(1) of the Ordinance. The condition precedent was not fulfilled.

20

On the question of costs I should have felt constrained to deprive the Defendant corporation of its costs if the Plaintiff was a person unconnected with the corporation. The facts disclose a miserable lack of courtesy on the part of the Defendant Corporation. They disclose a disregard for administrative propriety. No replies had been sent to the Plaintiff's letter nor to the letter by the Plaintiff's solicitor. Indeed, the last communication received by the Plaintiff was the letter informing him of his selection for the post of General Manager. These circumstances are, however, not meet to be considered in awarding costs unless they can be said to have contributed to the Plaintiff's position. The Plaintiff was a member of the Defendant Corporation throughout the material period and was in part responsible for its omissions. It was his duty to ascertain whether the condition had been fulfilled - see Pacific Coast Coal Mines v. Arbuthnot, supra. To say that the Plaintiff was entitled to assume that things were properly done is to misjudge the position. Wright, J., said in Liggett v. Barclay Bank (1928) 1 K.B. 48 at p.56:

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"Whatever may be the exact scope of the rule in Turquand's case I think it is quite clear on principle and on the authorities I have already referred to that it can never be relied upon by a person who is put on enquiry."

In the Supreme  
Court of  
British Guiana

No.13

Judgment  
19th March 1962  
continued

10 Having regard however to the issues raised and to the presentation of those issues before the Court I consider that justice would be served by disallowing a portion of the Defendant's costs.

The action is therefore dismissed. The Plaintiff is ordered to bear his own costs and to pay one half of the taxed costs of the Defendant Corporation certified fit for counsel.

H.A. Fraser  
Puisne Judge

Dated this 19th day of March, 1962.

SOLICITORS:

20 Evelyn A. Luckhoo for the Plaintiff  
Sase Narain for the Defendant.

NO.14

(Title as NO.1)

FORMAL JUDGMENT

No.14

Formal Judgment  
19th March, 1962

BEFORE THE HONOURABLE MR. JUSTICE FRASER.

Monday the 19th day of March, 1962.

Entered the 7th day of April, 1962.

30 THIS ACTION having come on for hearing on the 28th day of February, the 1st, 2nd, 6th, 8th and 12th days of March, 1962 and on this day AND UPON HEARING Counsel for the Plaintiff and for the Defendant and the evidence adduced and the Court having ordered that judgment be entered for the Defendant for one half ( $\frac{1}{2}$ ) costs of Defence THEREFORE IT IS THIS DAY ADJUDGED that the Plaintiff recover nothing against the Defendants and that the Defendants do recover against the Plaintiff one half ( $\frac{1}{2}$ ) of their costs of Defence to be taxed certified fit for Counsel.

40

BY THE COURT  
ADITYA T. SINGH  
DEPUTY REGISTRAR.

In the Federal  
Supreme Court

NO. 15

NOTICE OF APPEAL

No. 15

IN THE FEDERAL SUPREME COURT

Notice of  
Appeal  
28th April 1962

APPELLATE JURISDICTION

Territory: BRITISH GUIANA

CIVIL APPEAL NO.25 of 1962.

BETWEEN: CLEMENT HUGH Da SILVA (PLAINTIFF)  
APPELLANT

- and -

BRITISH GUIANA CREDIT CORPORATION (DEFENDANTS) 10  
RESPONDENTS.

NOTICE OF APPEAL

TAKE NOTICE that the Appellant (Plaintiff) being dissatisfied with the whole decision in action numbered 2079 of 1960, Demerara, more fully stated in paragraph 2 hereof of the Supreme Court contained in the judgment or order of the Honourable Mr. Justice Fraser dated the 19th day of March, 1962, doth hereby appeal to the Federal Court upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4. 20

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

2. Decision complained of: The whole decision, namely :-

- (a) that there was a lack of mutuality between the parties in that there was no enforceable offer or acceptance made by the Defendant Corporation; 30



In the Federal  
Supreme Court

No. 15

Notice of  
Appeal  
28th April 1962  
continued

Defendants on the 22nd September, 1960, as minuted by the Defendants was not an offer to the Plaintiff but was an acceptance by the Defendants of Plaintiff's offer and the minutes of the Defendants Board reads as follows:-

"(iii) Appointment of General Manager, vice Mr. W.G. Carmichael: As the Secretary was one of the applicants for the position, he withdrew from the meeting while this item was being considered. 10

All applications which had been received as a result of the advertisement published locally and in the West Indies were then carefully considered, and Mr. Clement Hugh Da-Silva, now Deputy Financial Secretary and Official Member of the Board, was chosen for the appointment. It was decided that Mr. Da Silva be notified and Government be advised of the appointment; all the unsuccessful applicants to be notified that the position had been filled." 20 30

These said Minutes were confirmed by the Defendants' Board and signed by the Chairman and the Secretary.

(iv) In the circumstances of the case the Defendants' letter of acceptance could not be avoided because it did not bear the seal of the Defendants and the Plaintiff could not in law be prejudiced thereby. The said letter of appointment was an authorised communication authorised by the Board. 40

(v) Section 7 of the Ordinance No. 13 of 1954, does not make it

obligatory for all documents issued by Defendants to carry the seal.

In the Federal  
Supreme Court

No.15

Notice of  
Appeal  
28th April 1962  
continued

- 10 (vi) The Secretary of the Defendants' Corporation gave evidence and stated that the Board meeting of the 22nd September, 1960, directed and authorised him to issue the said letter. Such special authority issued by the Board would not necessitate the placing of a seal on the letter which the Secretary wrote.
- 20 (vii) The acceptance of the Plaintiff's services as General Manager was an acceptance by the Board which the Defendants have not challenged or questioned and in law it is not permissible for the Defendants to set up or rely on any technical defect or omission (if there has been such an omission) such as the placing of a seal on a letter intimating the Board's acceptance.
- 30 (viii) There was no necessity for the letter of the 26th September, 1960, to be executed in any particular manner, since this letter was not a formal contract and was a letter of acceptance or appointment duly authorised by a Meeting of the Board held on the 22nd September, 1960, with authority to the Secretary to communicate to the Plaintiff the decision reached.
- (b) The learned trial Judge erred in finding that the appointment was ultra vires the Defendant Corporation, because:
- 40 (i) Section 6(1) of Ordinance, No.13 of 1954, gives full and unfettered powers to the Board to appoint a General Manager. The only provision is that no salary in excess of the rate of four thousand eight hundred dollars (\$4,800:) per annum shall be assigned to any



In the Federal  
Supreme Court

No.15

Notice of  
Appeal  
28th April 1962  
continued

post without the prior approval  
of the Governor-in-Council.

- (ii) The Defendants never raised in their defence nor at any stage sought an amendment to their defence to challenge the legality of the Salary which was advertised by the Defendants, and were, and having regard to the circumstances estopped from raising any such issue of the case. 10
- (iii) On the pleadings and on the evidence the salary advertised by the Defendants must be presumed to be regular and intra vires and the Defendants have failed to show anything to the contrary.
- (iv) The vacancy document which sets out particulars of the post was drafted by a Member of the Governor-in-Council and it must be presumed that such salary stated therein was duly authorised. 20
- (v) The Governor-in-Council by letter dated 18th October, 1960, had received and considered the appointment of the Plaintiff to the post of General Manager and had seen and considered the terms under which the Plaintiff was appointed as General Manager and the Governor-in-Council did not object to or question the salary and must be presumed to have approved of the salary. 30
- (vi) The Defendants did not plead any failure to perform any condition precedent and by virtue of rule 14 Order 17 of the Rules of The Supreme Court the performance of any such condition must be implied. 40
- (vii) There was approval by the Governor-in-Council to pay the gross amount

of \$11,280:per annum and this was the amount advertised as salary. The amalgamation of two amounts \$10,560: per annum approved salary, and \$180.00, per quarter approved gratuity giving the gross sum of \$11,280:- "non pensionable" did not affect a basic difference to make the gross sum offered ultra vires.

In the Federal  
Supreme Court

                      
No.15

Notice of  
Appeal  
28th April 1962  
continued

10           (viii) In the absence of positive evidence to the contrary, and there is no such positive evidence, the Court must presume that approval was duly given and authorised for the payment of the gross amount of \$11,280.00 per annum as salary.

20           (ix) The Plaintiff stated that to the best of his knowledge he did not know if the Governor-in-Council had given approval for the amalgamation of the salary and gratuity, and the Defendants' witness Jaisar Girdhar was in no position to give any evidence from which the contrary could be inferred as he was not at the material times the Chief Accountant or the Chief Clerk.

30           (c) The learned trial Judge on the admission on the pleadings and on the evidence led was bound in law to find that there was a legally enforceable contract between the Plaintiff and the Defendants and that the Defendants had committed a breach thereof and/or a breach of warranty of authority and that the Plaintiff was entitled to damages in respect thereof.

40           (d) The learned trial Judge erred in finding that the Plaintiff was in part responsible for the Defendants' omissions and ordered that he should pay one half of Defendants' costs because :-

(i) the Plaintiff did not participate in any matters dealing with his appointment;

In the Federal  
Supreme Court

                      
No.15

Notice of  
Appeal  
28th April 1962  
continued

(ii) the Plaintiff left the meeting or absented himself whenever there was any discussion relating to the appointment of General Manager and was not shown to have been blame-worthy in any way whatever.

4. That the Judgment of the Court below be set aside and Judgment be entered in favour of the Appellant, (Plaintiff).

5. Persons directly affected by the Appeal. 10

NAMES

ADDRESSES

1. Clement Hugh Da Silva	196 Camp and Murray Streets, Georgetown.
2. The British Guiana Credit Corporation	41 Brickdam, Georgetown.

DATED AT GEORGETOWN, DEMERARA,

THIS 28TH DAY OF APRIL, 1962.

Vivian C. Dias

SOLICITOR FOR APPELLANT  
(PLAINTIFF)

20

Lionel Luckhoo  
OF COUNSEL.

To: The Respondents (Defendants)

- and -

To: Sase Narain, Esq.,

Lot 217 South Street, Lacytown,

Solicitor for the Respondents (Defendants).

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105.

No. 16.

NOTICE OF LEAVE TO RESPONDENTS TO ARGUE  
GROUNDS OF APPEAL

In the  
British  
Caribbean  
Court of  
Appeal

No.16.

Take notice that the (Defendants)  
Respondents have been granted leave to argue the  
following :-

Notice of  
Leave to  
Respondents  
to argue  
Grounds of  
Appeal

1. That there was no concluded contract  
in that:-

10

(a) There was no consensus ad idem;

(b) The (Plaintiff) Appellant's letter  
of the 3rd October 1960, was a  
counter-offer which destroyed the  
offer contained in the letter of  
26th September 1960; the letter of  
the 3rd October 1960 having intro-  
duced terms and conditions which  
were not part of the advertisement.

18th June,  
1963.

Georgetown, Demerara,

20 Dated this 18th day of June, 1963.

S. Narain

Solicitor to(Defendants)  
Respondents.

OF COUNSEL

C.A.F. HUGHES.

No.17.

J U D G M E N T

No.17.  
Judgment  
19th July,  
1963.

30

This is an appeal from the decision of a  
judge of the Supreme Court of British Guiana who  
dismissed an action by the appellant in which he  
asked inter alia for a declaration that he is the  
General Manager of the respondent Corporation, and  
in the alternative damages in the sum of \$100,000  
for breach of contract.

In the  
British  
Caribbean  
Court of  
Appeal

The grounds of appeal may be summarised thus:-

That the learned trial judge -

No.17.

Judgment  
19th July,  
1963.

continued.

(a) erred in finding that there was a lack of mutuality between the parties on the ground that no enforceable offer or acceptance was made by the defendant Corporation for the reason that the document dated 26th September, 1960, was not executed by the Corporation in the manner required by section 7 or section 13 of the Ordinance.

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(b) erred in finding that the appointment was ultra vires the defendant corporation based on his conclusion that there was no doubt that the Governor-in-Council never approved the salary of \$11,280 which the defendant corporation assigned to the post of General Manager in the advertisement of 6th August, 1960.

(c) on the admission on the pleadings and on the evidence led was bound in law to find that there was a legally enforceable contract between the plaintiff and the defendant Corporation and that the Corporation had been in breach thereof.

20

(d) erred in finding that plaintiff was in part responsible for the defendant corporation's omissions and thereby ordered that he should pay one half of the defendant Corporation's costs.

It was urged by Counsel for the appellant that section 7 of the British Guiana Credit Corporation Ordinance, 1954, did not make it obligatory for a seal to be affixed on a document but that the section was only directory, and further that the corporation was a trading one and as such was exempted from putting a seal on contracts and other documents. He referred to section 14 which sets out the general functions and orders of the Corporation and to section 15 which deals with the general powers of the corporation to transact business.

30

In view of the conclusion at which I have arrived on this latter issue it is unnecessary for me to discuss the arguments advanced for and against the contention that a true interpretation of sections 14 and 15 would place the respondent corporation under the head of trading corporations and so relieve

40

the Corporation of the necessity to use the seal.

Section 7 of the Ordinance is as follows:-

"7. (1) The seal of the Corporation shall be kept in the custody of the Chairman or the Deputy Chairman or the Secretary of the Corporation and may be affixed to instruments pursuant to a resolution of the Corporation in the presence of the Chairman or Deputy Chairman and the Secretary.

10

(2) The seal of the Corporation shall be authenticated by the signature of the Chairman, or Deputy Chairman and the Secretary.

(3) All documents, other than those required by law to be under seal made by, and all decisions of, the Corporation may be signified under the hand of the Chairman or Deputy Chairman or General Manager and the Secretary."

20

Section 13 of the Ordinance as amended is as follows:-

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"13. Any transport mortgage, lease, assignment, transfer, agreement or other document requiring to be executed by the Corporation, or any cheque, bill of exchange or order for the payment of money requiring to be executed by the Corporation shall be deemed to be duly executed if signed by a person or persons specially or generally authorised by resolution of the Corporation so to sign."

The judge having considered section 7 which deals with the affixing of the seal of the Corporation to instruments, and section 13, said:-

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"Having considered those two sections the position seems to me to be this: In order to bind the defendant Corporation the letter of 26th September should bear the common seal in manner provided by section 7 or should be signed by some person or persons specially or generally authorised by a resolution of the Corporation. There is nothing to indicate that Mr. L.E. Kranenburg was ever alone specially authorised to sign for the Corporation. On the contrary the copies of the

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two letters tendered by the defendant corporation show that the Secretary and the Chief Accountant were given special authority."

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The reference to the two letters is irrelevant for those were letters to the Manager of Barclays Bank authorising the Bank to transfer some money from the Corporation's Account to the current account of Mr. W.G. Carmichael who was then General Manager of the Corporation.

Continued.

The first case A.R. Wright and Son Limited v. Romford Corporation (1956) 3 All. E.R. 785 referred to by the learned judge is equally inappropriate; there was in that case an agreement not under seal which was executed not according to the provisions of the statute but in accordance with the corporation's standing orders. The language of Lord Goddard at p. 788 quoted by the trial judge in support of his contention does not help here:

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"..... but section 74 (2) of the Act of 1925 cannot in my opinion in any way validate an agreement which is not under seal and does not fall within the recognised exceptions, unless, indeed, it be made under some authority conferred by statute on the particular corporation." The particular power under standing orders was not authorised by statute. The second case Cope v. Thames Kaven Dock and Railway Company (1849) 3 Ex. R. 841 is in no better category.

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In the case now under review the statute specifically provides that a document shall be deemed to be executed by the Corporation if signed by a person or persons specially or generally authorised by resolution so to sign.

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The confirmed minutes of the meeting of 22nd September, 1960, record:-

"(iii) appointment of a General Manager, vice Mr. W.G. Carmichael: As the Secretary was one of the applicants for the position, he withdrew from the meeting while this item was being considered. All applications which had been received as a result of the advertisement published locally and in the West Indies were then carefully considered, and Mr. Clement H. Da Silva, now Deputy Financial Secretary and official Member of the Board, was

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chosen for the appointment. It was decided that Mr. Da Silva be notified and Government be advised of the appointment; all the unsuccessful applicants to be notified that the position has been filled."

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What better authority is required for the purpose of communicating to Mr. Da Silva the information that he was selected? Further evidence is that of Mr. Kranenburg, the Secretary who stated:-

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"I was also an applicant for the post of General Manager. On 22.9.60 a meeting was held in connection with the appointment. The minutes Exhibit "D" are correct. When I returned to the meeting the Chairman informed me that Mr. Da Silva had been selected for the appointment. This was done in the presence of the whole Board. In the presence of the whole Board I was instructed to inform Mr. Da Silva accordingly and all applicants that the appointment had been filled. No member of the Board objected to these instructions. I carried out these instructions. I see Exhibit "E" dated 26.9.60. I signed the letter. I wrote it. I showed it to the Chairman before I despatched it."

Continued.

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It is my opinion that the Corporation resolutely determined that appellant had been selected for the appointment, and that it was with the unanimous approval of the members of the Corporation at that meeting that the Secretary was charged with the duty of conveying the news to the appellant; this he did. This is in compliance with the statute. I have dealt with this on the assumption that the letter had to be signed in accordance with the terms of section 13 to be effective. On the other hand I am not convinced that the statute could be interpreted to mean that a letter by the Secretary under proper direction at a meeting of the Corporation conveying information of a result of a ballot or intimation that someone was selected for appointment or any other such information, should be under seal or would require a resolution strictly formal. Such a letter would not in my view fall within the ambit of section 7 or 13. If it did, then as stated above the requirements of the statute have been satisfied.

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The information brought an acceptance by  
the appellant in his letter dated 3rd October, 1960.  
The text is:-

"64 Brickdam,  
British Guiana.  
3rd October, 1960.

"Dear Sir,

Appointment as General Manager

I thank you for your letter of 26th September, informing me of my selection for appointment as General Manager. I enclose a draft agreement of service which I shall enter in with the Corporation. I accept the appointment.

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I am reporting the position to the Government with a view to release as early as possible. Meanwhile I would ask that no official announcement be made by the Corporation.

Yours sincerely,

C.H. Da Silva."

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A draft agreement was attached; this agreement carried a schedule of terms.

Counsel for the defendant corporation submitted that the appellant was selected on the terms and conditions as advertised and that the schedule contain terms which are of variance with the terms advertised. He urged that the letter having regard to the circumstances and the correspondence could only be regarded as a counter or a conditional offer; the acceptance was not unreserved.

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The paragraphs attacked in the schedule of terms as derogating from the advertisement are three in number, paragraph 1, 3, and 5; the corresponding ones in the advertisement are 6 and 5.

Advertisement

paragraph 5

"5. The post carries a salary of B.W.I.

\$11280 (equivalent at the current rate of exchange to £2,350 sterling) per annum, a free, partly-furnished house and leave facilities in accordance with the Government's General Orders and Regulations in force at the time (now five days leave for each completed month of resident service, accumulative to a maximum of six months, with leave passages to a maximum of B.W.I. \$2500).

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Continued.

- 6. The appointment is non-pensionable and will normally be for three years in the first instance, but the duration of the initial contract is subject to variation to meet individual circumstances. The Corporation has under consideration a contributory pension scheme for its employees."

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Schedule

paragraph 1

- "1. (1) The engagement of the person engaged is for a period of six years' resident service comprising two tours of three years each commencing from the date of assumption of duty which term may be extended as provided for in clause 8.
- (2) .....
- 3. A free, partly-furnished house will be provided or an allowance in lieu.
- 5. (1) The Corporation may at any time determine the engagement of the person engaged on giving him twelve months' notice in writing or on paying him six months' salary.
- (2) The person engaged may, at any time after the expiration of three months from the commence-

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ment of any residential service,  
determine his engagement on giving  
the Corporation three months' notice  
in writing or on paying to the  
Corporation one month's salary.

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- (3) If the person engaged terminates his engagement otherwise than in accordance with this agreement he shall be liable to pay the Corporation as liquidated damages three months' salary.

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Before the merits of the submission are considered reference will be made to the circumstances which prompted the appellant to submit a draft agreement. They are found in the evidence of the appellant (Da Silva) and the Secretary of the Corporation, Mr. Kranenburg. Counsel for respondent urged that only the documentary evidence should be considered and the oral testimony of appellant and Mr. Kranenburg should be avoided. This attempt to exclude from consideration admissible evidence received at the trial and which is relevant must be rejected.

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Da Silva stated:

"About a week later (i.e. after the 26th September, 1960,) while speaking to the Secretary over the telephone, he again asked me how soon would I be going over. I was waiting on the Financial Secretary and suggested to him that in the meanwhile he should prepare the usual agreement of service. The Secretary informed me that he did not have the agreement of service of the previous General Manager and asked me to get out one of the standard Crown Agents and Colonial Office forms of agreement for his use as a draft. I wrote the letter exhibit "F". I got one of the Crown Agents and Colonial Office Forms and I attempted to modify it and sent it across to the Secretary for his use.

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.....

In my draft agreement I made certain additions which were clauses in the standard Crown Agents agreement of

service which I used as a draft at the invitation of the Secretary to help him. I have a copy of the Crown Agents form.

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I wrote the Corporation a letter on 3.10.60. When I said that I would enter into agreement with the Corporation on the draft I meant that I would have entered into the terms of my draft or alternatively if the Corporation had amended the draft to comply with the terms of the advertisement. I would have entered into such agreement as modified by the Corporation."

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Kranenburg stated:

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"When I gave Da Silva the letter Exhibit "E" I asked him how soon he thought he could assume duty. Da Silva said around the middle of December when he was finished with the Budget. D'Andrade was in office at the same time. This conversation took place in D'Andrade's office. I think I said that would be all right.

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About one week later Da Silva telephoned me. In the course of the conversation he said that he hoped that I would prepare the service agreement for his appointment early. My recollection is that I told him that I did not have a copy of the agreement signed by Carmichael but that I knew it was in the form used by the Crown Agents. I told him he could get a copy of the form from the Colonial Secretariat. I asked him to get a copy and put up a rough draft of the terms of his appointment for my consideration.

Re-Examination

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I was appointed Secretary on 11.12.56. In July, 1959, I signed a service agreement. It was a considerable time after the appointment. It had retrospective effect."

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The testimony of the appellant and the Secretary of the Corporation discloses the reason for the draft which accompanied the appellant's letter of 3rd October, 1960, and that it was specially requested from him by the Secretary for use as a guide. It is manifest that it cannot sensibly be considered as containing a counter offer or as a document purporting to impose conditions alien to those in the advertisement. Again the word "shall" which is used there with the first person expresses simple futurity, whereas if "will" had been employed instead that might have tended to express a resolute determination or a fixed intention. An examination of paragraph 1 of the schedule shows that it is not repugnant to paragraph 6 of the advertisement; for the latter states that the duration of the initial contract is subject to variation to meet individual circumstances. The complaint made against paragraph 3 of the schedule is that it refers to an allowance in lieu of a free, partly furnished house, since there was not mentioned an alternative in the advertisement. Paragraph 5 of the advertisement stated that the post carries .....  
"a free partly furnished house and leave facilities in accordance with the Government's General Orders and Regulations in force at the time ....."

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General Order 209 states:-

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"209. A House allowance is an allowance granted to an officer who is entitled, by virtue of the appointment he holds, to free quarters, but for whom quarters are not available."

This objection is therefore untenable. It is not disputed that at that time the General Manager's house was occupied by a tenant.

The last complaint is about paragraph 5 of the schedule which refers to determination of the engagement. It is not suggested that a termination of engagement clause is not required nor that such a term is not in the Crown Agents' model.

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I have taken pains to refer to the objections and to compare the terms in the advertisement with the terms in the schedule.

The objection in my opinion cannot find support in a comparison of the two documents. In the light however of the evidence my conviction is that the letter did not contain a counter offer but is in effect an unqualified acceptance. Several cases were cited on the question of conditional acceptance of an offer and on a counter offer in a letter of acceptance by an offeree but the facts in those cases are fundamentally dissimilar to those giving rise to this case.

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Counsel for respondent corporation asked leave to submit that the proviso to section 6(1) of the Ordinance was not complied with by the Corporation and therefore any contract entered into, if at all, between the Corporation and the appellant would be ultra vires.

Appellant's counsel submitted that the first time this question was raised was by the respondent's counsel during his final address at the trial; that the respondent did not plead it and that should preclude any argument on that basis as there was no compliance with Order 17 rule 14 of the Rules of the Supreme Court, 1955. The leave sought was granted.

The respondent corporation in the defence pleaded that the plaintiff's appointment was ultra vires the provisions of the British Guiana Credit Corporation Ordinance, 1954, and before us counsel endeavoured to sustain that plea on the basis of section 6(1) of the Ordinance which reads as follows:-

"6(1) The Corporation shall appoint and employ at such remuneration and on such terms and conditions as they think fit a General Manager, a Secretary and such other officers and such servants as they deem necessary for the proper carrying out of the provisions of this Ordinance:

Provided that no salary in excess of the rate of four thousand eight hundred dollars per annum shall be assigned to any post under this subsection without the approval of the Governor-in-Council."

This plea found favour in the Court below and the

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trial judge expressed his acquiescence in these terms:

"I must find that the contract, if it was made, is ultra vires the defendant corporation and is therefore void and wholly unenforceable for the reason that the prior approval of the Governor-in-Council was not obtained for the assignment of the salary of \$11280 per annum to the post of General Manager as prescribed in the proviso to section 6(1) of the Ordinance. The condition precedent was not fulfilled."

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The approach to this question may be better appreciated if a chronological account of events pertaining thereto is shown.

The Financial Secretary in a letter under date 22nd May, 1957, to the General Manager of the Corporation said,

"With reference to your letter dated 4th April, 1957, in connection with increases in the salaries of the General Manager, the Secretary and the Chief Accountant, I have to inform you that the Governor in Council has approved the revised salaries as follows:-

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- (a) General Manager - £2200 per annum with effect from 29th January, 1957.
- (b) Secretary - .....
- (c) Chief Accountant ....."

In addition, from March, 1957, a gratuity of £37.10s. was paid to the General Manager for every completed 3 months' service, thus making the total annual emoluments (£2200 + £150) £2350 i.e. \$11280.

30

On 4th August, 1960, a letter was written by the Deputy Financial Secretary to the Chief Secretary, who was a member of the Governor-in-Council, asking him to cause to be published in newspapers in Jamaica, Trinidad and Barbados, advertisement for the post of General Manager of the Corporation. This advertisement had previously been drafted by the Financial Secretary, a member of the Governor-in-Council.

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On 6th August, 1960, an identical advertise-

ment appeared in the local press for the post of General Manager. The text of this advertisement was drafted by the Financial Secretary who was a member of the Executive Council.

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Paragraph 5 of the advertisement stated that the post "carries a salary of B.W.I. \$11280 (equivalent at the current rate of exchange to £2350 sterling) per annum, a free, partly-furnished house Leave facilities in accordance with the Government's General Orders and Regulations in force at the time (now five days leave for each completed month of resident service, accumulative to a maximum of six months, with leave passages to a maximum of B.W.I. \$2,500). A motor car allowance of \$25 a month for official journeys within the limits of Georgetown and of 28 cents a mile for official journeys outside of Georgetown will be paid. An overseas candidate will be provided with not more than five free sea passages to British Guiana for himself and his wife and children (under 18 years) if any, and on satisfactory completion of service return passages to his country of recruitment."

Paragraph 6 stated. "The appointment is non-pensionable and will normally be for three years in the first instance, but the duration of the initial contract is subject to variation to meet individual circumstances."

Paragraph 7 dealt with qualification: "Candidates for the post must have experience in business administration, banking or public administration, preferably on the industrial side. They must be capable of appraising the effects of the Corporation's policies on the economic feasibility and general loan worthiness of projects for which loan proposals are made."

On 24th August, 1960, the appellant as an applicant offered his services to the Corporation in the capacity of General Manager. At a duly constituted meeting of the Corporation on 22nd September, 1960, the appellant's offer was approved and he was chosen for the appointment as General Manager. It was decided that appellant should be notified and the Government be advised of the appointment. This was done. The unsuccessful candidates were also notified. It is interesting to note that there were 26 applicants; 23 were eliminated and three remained from whom the choice was made - Messrs. Da Silva, Persaud



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and Luck. Da Silva received 5 votes, Persaud 2 and Luck none.

Da Silva was later notified by the following letter bearing date 26th September, 1960, signed by the Secretary -

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"With reference to your letter of 24th August, 1960, applying for the vacant post of General Manager of this Corporation, I am pleased to inform you that a meeting of the Corporation held on Thursday, 22nd September, 1960, you were selected for the appointment on the terms and conditions as advertised: and I shall be glad to be informed as early as possible how soon you would be able to take up the appointment."

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Continued.

The Secretary delivered the letter in person. On 3rd October, 1960, appellant signified his acceptance of the appointment by letter of that date already set out above.

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By letter dated 12th October, 1960, from the Financial Secretary, the Chairman was informed that the membership of the Corporation had been re-constructed. The period of office of the previous members expired on 25th September, 1960; the members were eligible for re-appointment. Only three of the old members, the Chairman, the Deputy Financial Secretary and Mr. Gobin Biragie were re-appointed and Messrs. Andrew H. James, Peter Anderson, Joseph Jardim, Ivan Remington, Oswald H. Fisher, Jacob Bowman, and Muntaz Ali were the new members. Mr. Andrew James was to be Deputy Chairman of the Corporation.

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The Financial Secretary wrote to the Chairman of the Corporation on 18th October, 1960, the following letter -

"With reference to the Secretary's letter of 26th September and our subsequent conversation on the subject of filling the vacant post of General Manager of the Corporation, I am directed to inform you that the matter was considered by the Governor in Council.

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I am to ask the Board of the Corporation to re-examine the recommendation made as the Government is anxious that the best person available be obtained for the post. If the Board wishes to have the qualifications of any of the candidates residing in the West Indies further investigated, the Chief Secretary would be glad to enlist the aid of the Government of the territory in which the candidate is residing. If the Board is not satisfied that any of the persons who have so far applied is suitable, the vacancy should be re-advertised over a wider field.

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I should be grateful if you would put the matter to your Board accordingly."

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Appellant's letter of 3rd October was read at a meeting of the Corporation on 27th October, 1960. It was the first meeting attended by the new members. At the same meeting the Financial Secretary's letter of 18th October, was read to the newly constituted body when it was unanimously decided to reconsider the matter at a later date. Mr. James asked and it was agreed that members be furnished with (a) an up to date statement of the Corporation's financial position; and (b) particulars of the staff including pay and conditions of service.

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The information requested by Mr. James was supplied and recorded in the minutes of the meeting of 25th November, 1960 as follows:-

"British Guiana Credit Corporation

Authorised Establishment

<u>A. Head Office Staff</u>	<u>Salary Scale</u>
General Manager	\$11280 p.a.(fixed)
.....	.....
.....	....."

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The delay in supplying the information was due to the illness of the Secretary.

At a meeting on 11th November, 1960, Mr. Luck who had received no votes at the previous ballot when the appellant was selected, was considered suit-

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able. The minutes record:-

"The qualifications, training and experience of all the candidates were reviewed exhaustively by the Board who unanimously agreed that Mr. G.E. Luck, Permanent Secretary, Ministry of Natural Resources, British Guiana, was suitable for the post and should be appointed.

It was decided, however, not to offer Mr. Luck the appointment until the Governor-in-Council had been informed of the decision and had approved the selection."

10

By letter to the Corporation under date 7th December, 1960, appellant's solicitors wrote inter alia:-

"On the 3rd October, 1960, our client by letter of that date accepted the appointment. He intimated that he was seeking a release as early as possible from Government to take up the appointment which he had accepted.

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On the basis of the offer which had been made by the Corporation and following upon his acceptance our client treated his appointment as being truly made and effected and proceeded to make the necessary arrangements for his early take over as General Manager of the Corporation ..... Since the letter of offer and the acceptance by our client for the post of General Manager, our client has received no further communication or intimation from the Corporation and it was not until late in November when he received a copy of the minutes of the meeting held on the 11th November, 1960, that for the first time he became aware of efforts to replace him by another person for the post of General Manager.

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It is our client's claim that he is the duly appointed General Manager of the British Guiana Credit Corporation. He is ready and willing to take over and assume the responsibilities of his post within a reasonable short time ....."

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No acknowledgement or reply to this letter was ever made.

At a meeting of the Corporation on 9th December, 1960, the Chairman informed the members of the receipt and the contents of the letter from the solicitors; the meeting decided after discussion that the letter be sent to the Financial Secretary for his information.

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10 At the same meeting members were informed by the Chairman of the text of a statement "regarding the appointment of Mr. G.E. Luck as General Manager of the Corporation, which the Minister of Trade and Industry intended to release on 10th December, 1960, at his usual Saturday morning Press Conference."

20 On 11th December, 1960, there appeared in a newspaper, the Sunday Graphic, a picture of the Minister of Trade and Industry and Mr. Luck in a handshake, with comments indicating that the Minister was congratulating Mr. Luck on his new appointment.

The writ in this action followed on 13th December, 1960. On 16th December, 1960, the Secretary signed Mr. Luck's letter of appointment on the direction of the Corporation.

I revert to the subject of the objection raised by appellant's counsel.

Paragraph 19 of the defence is as follows:-

30 "(19) The defendants will contend that any purported selection of the plaintiff for appointment as General Manager of the Defendant corporation was invalid and bad in law because:-

(a) The advertisements for appointments were inserted in the newspapers in August, 1960, without the prior approval of the Governor-in-Council.

40 (b) The Secretary of the Corporation was not legally entitled to write the letter of 26th September, 1960, to the plaintiff.

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(c) No approval of the purported appointment of the plaintiff as a Civil Servant by the Governor-in-Council was ever obtained by the defendants; and

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(d) The plaintiff's alleged appointment was ultra vires the provisions of the British Guiana Credit Corporation Ordinance No. 13 of 1954"

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It is to be observed that it was not pleaded that no-approval of the salary was given by the Governor-in-Council. The gravamen of the complaints related to other aspects (a) (b) (c) and summed up in (d). 10

Order 17 rule 14 of the Rules of the Supreme Court states:

"Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be, and subject thereto, an averment of the performance necessary for the case of the plaintiff or the defendant shall be implied in his pleading." 20

The note of the trial judge of the address by respondent's (defendant's) counsel is as follows -

"Contract ultra vires. Even if there was a concluded contract the contract was ultra vires. 30

Figures of \$11280 was unauthorised merger of gratuity and salary or unauthorised figure.

Refers to section 6 of Ordinance 13 of 1954. Advertisement shows not only payment of salary but also of pension."

The judge found for the respondent on this issue and pronounced the contention for the appellant that on failure to comply with order 17 rule 14 the performance of the condition precedent must be implied, to be without merit. He purported to fortify this view thus:- 40

10 "There is a world of difference between a condition precedent to the existence of cause of action and a condition precedent to the exercise of a right of action. The former is a matter of substantive law and the latter a matter of adjective law. The one a matter of substance in the formation of a personal right, the other a matter of procedure in the vindication of the right in a court"

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He referred to the note to rule 14 of Order 19 in the Annual Practice (English R.S.C.).

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20 I do understand that "an allegation which is of the essence of a cause of action is not a condition precedent within the meaning of the rule and must still be pleaded." In this instance I am of opinion that even if there was want of approval of the sum of \$11280 that would not be the essence of the cause of action: the Corporation is empowered to make a contract without reference to the Governor-in-Council and does not need any approval for an appointment; it is only in respect of an excess in remuneration over \$4800 that approval from the Governor-in-Council is needed. A sum exceeding \$4800 had already been approved since 1957.

30 Moreover I do not understand counsel for respondent to say in the court below or before us that the appellant had failed to plead that prior approval had been obtained but on the contrary appeared to rest respondent's case on this, that the evidence established that the approval had not been obtained; that there was no authority for merging the salary \$10560 with the gratuity \$720, that was the burden of his contention and was supposedly grounded on the evidence he sought to elicit from the appellant and to submit through the defence witness at the trial.  
40 Respondent tacitly accepted that the onus was on the defence to prove absence of authority and essayed to do just that.

That was the course the trial took and that fact is evidenced by the following observations by the judge: "There is no doubt whatever that the Governor-in-Council never approved of the salary of \$11280, which the defendant corporation assigned to the post of General Manager in the

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advertisement of 6th August, 1960, and in the statement of particulars. . . . .  
I must find that the contract, if it was made, is ultra vires the defendant corporation and is therefore void and wholly unenforceable for the reason that the prior approval of the Governor-in-Council was not obtained for the assignment of the salary of \$11280 per annum to the post of General Manager as prescribed in the proviso to 6(1) of the Ordinance. The condition precedent was not fulfilled."

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Continued.

I think it was right for respondent's counsel to be permitted by this Court to address on the question as to whether the approval was not given by the Governor-in-Council especially as there was some evidence on that subject admitted in the Court below without objection by appellant's counsel. I am however of opinion that in the circumstances as there was no averment by the appellant and in the absence of any allegation by the respondent that the approval was not obtained, the burden was on the respondent to establish that approval was not given. I regret that I do not share the certainty of the learned judge that it was proved that the Governor-in-Council never approved of the salary. The sum total of the appellant's evidence viewed from any angle was that he did not know whether a salary of \$11280 was approved by the Governor-in-Council for the post of General Manager; he knew that hitherto a salary of \$10560 and a gratuity of \$720 had been approved; in his view the two sums were "merged" but that was all. This guess was no doubt based on the fact that the two sums aggregate \$11280. The learned judge misunderstood the appellant's evidence to be that there was absence of approval by the Governor-in-Council, and found that fact to be supported by Jaisar Girdhar, the acting Chief Accountant of the Corporation. A reference to Girdhar's evidence discloses that he said in examination-in-chief: "I know there was an advertisement for a General Manager. There was no communication from the Government on the question of salary after exhibit "O" i.e. in May, 1957".

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Under Cross-examination he said:-

"In June - July 1960, I was a Grade A Clerk until September, 1961. After that

I was made accountant (acting). In 1960 the accountant was R. Yerrakadoo. In 1960, Mr. Yansen was Chief Accountant. They would be better acquainted with what happened in 1960 than I would.

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In March, 1957, a gratuity of £37.10s. was being paid for every completed 3 months of service."

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10 I would unhesitatingly say the evidence shows with irresistible clearness that the view of the learned judge in that respect is mistaken and his finding cannot be supported.

Continued.

20 The question whether approval had been obtained or not is one purely of fact. The knowledge on that score was peculiarly with the Corporation and the Governor-in-Council; the former, a party in the action, could easily have called the Financial Secretary, the Chairman of the Corporation or the Chief Accountant to depone positively that no approval was given; the Corporation avoided this but elected to present one who was only a grad A Clerk, a junior officer at the material time. He had perforce to confess he could not speak with any certainty or authority and to admit that the persons more qualified by knowledge on that score would have been the Chief Accountant or the Accountant. This attitude of the defence is in character with the flexible integrity mirrored by the Corporation and may be 30 others actively concerned with the shaping of its administration. Why was the Financial Secretary not called? Could this be due to an unfortunate timidity? He was the Government's Financial adviser. He was a member of the Governor-in-Council and used as the channel of communication or liaison officer between the Governor-in-Council and the Corporation. He personally drew up the 40 vacancy notice for advertisement with the aid of files at his disposal, perhaps secret ones for it is common and certain knowledge the Governor-in-Council's decisions are secret until revealed by words or action.

It is to be remarked that in 1957 the General Manager wrote to the Financial Secretary about his salary and that of other officers; he received a reply stating that the Governor-in-Council approved certain sums; but in 1960, action moved from the Governor-in-Council through the



In the  
British  
Caribbean  
Court of  
Appeal

No.17.

Judgment  
19th July,  
1963.

Continued.

Financial Secretary to the Corporation and the result was reflected in the draft advertisement. The Financial Secretary sent the draft advertisement for the appreciation of the Corporation. He was the person who inserted the salary to be paid, \$11280 per annum; he stated in paragraph 4 of the advertisement, "the General Manager is the chief executive officer of the Corporation appointed under section 6 of the Ordinance". He must have been acutely aware of the proviso. It was from his department a request with a copy of the vacancy notice was sent to the Chief Secretary, another member of the Governor-in-Council, to advertise abroad. The Financial Secretary sent the copy of the advertisement with salary inserted to the Corporation for acceptance; the Corporation approved. In essence that was the way the prior approval of the Governor-in-Council was signified. It was the fons et origo of the whole affair. It was the same Financial Secretary who after receiving the letter of the Corporation's Secretary advising the Government of appellant's selection for appointment wrote to the Chairman "I am directed to inform you that the matter was considered by the Governor-in-Council. I am to ask the Board of the Corporation to re-examine the recommendation as the Government is anxious that the best person available be obtained for the post," and also stated that if the persons who had so far applied had not been suitably qualified the vacancy should be re-advertised over a wider field. It is significant the re-advertisement was to be on the same terms including salary. Why had the word "recommendation" found a place in the Financial Secretary's letter? Was it by inadvertence or by design? The evidence is that intimation of the selection was sent and not a "recommendation". It was a necessary courtesy by the Corporation to intimate and nothing else. At whose direction was this letter sent? The obvious conclusion is that it expressed the view of the Governor-in-Council.

10

20

30

40

Between the 22nd September, 1960, when the Corporation at a meeting selected the appellant by a majority of votes as the most suitable candidate, and the 27th October the next meeting of the Corporation several events had occurred. All the members of the Corporation went out of office as stated earlier, three were re-appointed and seven new ones were appointed.

50

The Financial Secretary's letter of 12th October, 1960, was followed by another on 18th October, 1960, to which reference has already been made. The members were informed of both of these letters at the meeting of 27th October. At this meeting it was decided that a special meeting should be fixed for a reconsideration of the appointment in terms of the Financial Secretary's letter.

In the  
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Caribbean  
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No.17.

Judgment  
19th July,  
1963.

Continued.

10 It is noteworthy that the post of General  
Manager was not re-advertised nor were any new  
applications solicited. At a meeting of the 11th  
November it was unanimously agreed that Mr. Luck  
was suitable for the post and should be appointed.  
"It was decided however, not to offer Mr. Luck the  
appointment until the Governor-in-Council had been  
informed of the decision and had approved the  
selection." The Corporation has full power to  
appoint a General Manager without any approval of  
the Governor-in-Council and one looks in vain in  
20 the Ordinance to find anything which says the  
Governor-in-Council must approve the selection.

30 The appellant was never at any stage  
told that his appointment was cancelled or that  
steps were being taken or had been taken to review  
the question of the appointment of a General  
Manager. Added to this curious attitude by the  
Corporation no reply was afforded to the letter  
of the appellant's solicitors. In these times,  
sparse though the occasions may be when moral  
standards seem to be honoured, one immutable  
principle one would expect to prevail in the  
dealings of a corporation of such connexions is  
the observance of strict ethical conduct by which  
only, in my view, confidence can be maintained.  
This principle the Corporation has honoured in the  
breach.

40 The pleadings did not raise the question  
of approval of the salary by the Governor-in-Council  
as stated in the proviso to section 6(1). That  
seemed to be a closed chapter, in other words it  
was already settled and within the knowledge of  
the Financial Secretary, the mouthpiece of the  
Governor-in-Council for he was the author of the  
text of the advertisement which included the  
salary. The raising of the question at the hearing  
in the course of the address by counsel or in the  
late stages of the case seems only an afterthought.

Further the evidence is clear that a salary

In the  
British  
Caribbean  
Court of  
Appeal

No.17.

Judgment  
19th July,  
1963.

Continued.

of \$10560, a sum in excess of \$4800, had already been approved for the post of General Manager; the statutory requirements had therefore been complied with; the salary is attached to the post and not the officer. The respondent never sought to suggest that the approval had been revoked but the effect of the complaint was, that authority to call the \$720 salary was not approved by the Governor-in-Council. It seems idle to contend that that is the essence of a cause of action; this contention is more like a frantic search by an ill fated passenger in a dark and dismal night in stormy seas for a plank in a shipwreck. On an analysis of the established and admitted facts the conclusion that the Governor-in-Council did approve of the salary is inescapable.

10

On the question of damages it was submitted on behalf of the appellant that he must be placed in the same position as if the contract had been performed as far as money can do it; counsel amplified this by saying, that was equivalent to the amount appellant would have earned had the contract been observed, subject to a deduction in respect of any amount accruing from any other employment which the appellant in minimising damages could reasonably have obtained.

20

The claim, he submitted, should be calculated on the basis of the normal period of first employment, 3 years, as stated in the advertisement, in respect of the following items:-

30

- (a) Salary for that period at \$11280 per annum
- (b) Free partly-furnished house estimated at the rental value proved, \$2700 per annum
- (c) Leave passages as advertised and in accordance with the General Orders - \$2500
- (d) Injury done to the appellant's reputation which had resulted and may result in pecuniary loss by difficulty in getting employment.

40

It is convenient first to deal with the last item. This claim is in the teeth of a principle which is inveterate and has been hallowed by authority. The principle was clearly enunciated in Addis v. Gramophone Co. 1909 A.C. 488: 78 L.J.K.B. 1122.

In the  
British  
Caribbean  
Court of  
Appeal

10 In this class of case, breach of contract claims based on injury to reputation causing diminution of a claimant's chances to obtain new employment never as a rule sound in damages; there may be exceptional cases but the evidence has not disclosed anything that may be deemed exceptional to take this case out of the rule; the conduct of the respondent corporation might have left much to be desired but in a case of breach of contract damages are not awarded or aggravated for mere transgression of a moral code.

No.17.

Judgment  
19th July,  
1963.

Continued.

20 Respondent's counsel submitted that appellant was not in a position to take up his appointment about the middle of December as he had informed the Secretary, because he was not released from service in the Government.

30 Appellant had written to the Financial Secretary on 16th October, 1960, following his letter of acceptance of the new post dated 3rd October, 1960, but had received no reply. On 8th December he wrote to the Secretary, Public Service Commission (through the Financial Secretary) adverting to his previous letter and also for permission to accept paid employment during his pre-retirement leave "as is usual". He received a reply to this letter on 12th January, 1961. The Financial Secretary wrote then saying that his application for leave was approved as from 16th January, 1961, and that the request for permission to retire at the age of 50 years was under consideration. This permission was later given as was reasonably and correctly anticipated. On 7th November, 1945, the then Colonial Secretary of British Guiana, Mr. W.L. Heape wrote to the British  
40 Guiana Civil Service Association in these terms:-

"3. The Secretary of State agrees that the provisions of section 2 of the 1944 Ordinance, which amends section 8 of the Principal Ordinance of 1933, may be interpreted to provide for voluntary retirement at 50 with the approval of the Secretary of State. The view taken

In the  
British  
Caribbean  
Court of  
Appeal

by this Government is that an application to retire at 50 should normally be granted and not refused except for strong reasons of public interest and the Secretary of State endorses that view."

No.17.

Judgment  
19th July,  
1963.

Continued.

On 7th December, 1960, through his Solicitors appellant wrote to the respondent corporation emphasising his willingness and readiness to enter upon his new duties within a reasonably short time; this was an opportunity for the respondent corporation, if in doubt as to its truth, to take him at his word and test the genuineness of the statement. There was no response, and the repudiation by the respondent corporation of its obligations became progressively apparent and insistent. Is it open to the respondent who deliberately kept the appellant at bay despite his efforts to fulfil his part of the agreement in the known circumstances to submit in argument that the appellant was not in a position to take up his duties? I think not; such a submission in my view is of specious acceptability. 10 20

The appellant in his evidence stated that he had endeavoured to obtain suitable employment in and out of the Colony and had failed. He enumerated some of his efforts. This evidence was not contested. It was urged for the respondent, though with not much warmth or seriousness, that the appellant could have even at that late stage withdrawn his application for leave to retire in order to mitigate the damages. 30

Indeed the appellant recognised his duty to mitigate damages and endeavoured to satisfy this requirement by seeking employment elsewhere. The die was already cast so far as his employment in the Civil Service was concerned for he had already taken the final step. 40

The principal ground requiring active attention is what is a reasonable period within which the appellant would secure employment of a status not too distantly removed from the one of which he was deprived or in short when a man in his position could find reasonable employment. From the date indicated by the appellant that he would have been ready to take up employment, which

by mischance was the time Mr. Luck's letter of appointment was signed (16th December, 1960), to the time decision in the case was delivered, 19th March, 1962, the efforts of the Plaintiff to secure other employment had proved unrewarding even though some 15 months had expired. Avenues of like employment in the business world in these parts appear to be rare if one may judge from the failure of the appellant, a man undoubtedly well qualified for the purpose, who had occupied the High office of Deputy Financial Secretary in the Government of this colony. I think it would be a just appraisal to set the period for necessary compensation to 2 years with the following result:

In the  
British  
Caribbean  
Court of  
Appeal

No.17.

Judgment  
19th July,  
1963.

Continued.

10

- (a) Salary at \$11280 per annum - \$22,560
- (b) In lieu of partly-furnished quarters at \$2700 per annum - 5,400
- (c) The equivalent of leave passages - 2,500

20

Total \$30,460

Counsel for respondent contended that whatever damages, if any, may be awarded should be reduced by the sum appellant received from his accumulated leave, a benefit which had been previously earned but had to be deferred on account of the exigencies of the service. I do not accept this contention. It does not comment itself to me any more than it would if the submission included the absorption of the sum the appellant received as gratuity after his 28 years' service.

30

For the reasons I have given I would allow the appeal, reverse the judgment and order appealed from, and order that judgment be entered for the plaintiff (appellant) in the sum of \$30,460 with costs here and in the Court below.

Sgd. Donald Jackson  
PRESIDENT

I concur.

40

Sgd. J.A. Luckhoo  
JUSTICE OF APPEAL

I agree.

Sgd. W.A. Date  
JUSTICE OF APPEAL

Dated this 19th day of July, 1963.

In the  
British  
Caribbean  
Court of  
Appeal

No. 18.  
O R D E R

BEFORE:

No.18.

THE HONOURABLE THE PRESIDENT

Order  
19th July,  
1963.

THE HONOURABLE SIR JOSEPH LUCKHOO; and

THE HONOURABLE MR. JUSTICE DATE

DATED THE 19TH DAY OF JULY, 1963

ENTERED THE 24TH DAY OF JULY, 1963

UPON READING the notice of appeal filed  
on behalf of the appellant on the 28th day of  
April, 1962 and the judgment hereinafter  
mentioned and the judge's notes herein:

10

AND UPON HEARING Mr. L.A. Luckhoo, Q.C.  
and Mr. J. Carter, Q.C. of counsel for the  
appellant and Mr. F.H.W. Ramsahoye of counsel  
for the respondents;

IT IS ORDERED that this appeal be  
allowed and that the judgment of the Honourable  
Mr. Justice Fraser dated the 19th day of March,  
1962 in favour of the respondents be set aside  
and that judgment be entered for the appellant  
in the sum of \$30,460.00:

20

AND IT IS FURTHER ORDERED that the  
respondents do pay the appellant his costs both  
in this court and in the court below.

BY THE COURT

G.A.S. Van Sertima

DEPUTY REGISTRAR (AG.)

---

No. 19.

ORDER GRANTING CONDITIONAL LEAVE  
TO APPEAL TO HER MAJESTY IN COUNCIL

In the  
British  
Caribbean  
Court of  
Appeal.

BEFORE THE HONOURABLE SIR DONALD JACKSON (IN  
CHAMBERS)

No.19.

DATED THE 6TH DAY OF SEPTEMBER, 1963

Order  
granting  
conditional  
leave to  
appeal to  
Her Majesty  
in Council.  
6th  
September,  
1963.

ENTERED THE 12TH DAY OF SEPTEMBER, 1963

10 UPON the petition of the abovenamed  
petitioners (respondents) dated the 22nd day of  
July, 1963, for leave to appeal to Her Majesty  
in Council against the judgment of the Court  
comprising the Honourable the President, the  
Honourable Sir Joseph Luckhoo and the Honourable  
Mr. Justice Date delivered herein on the 19th day  
of July, 1963:

AND UPON READING the said petition and  
the affidavit in support thereof sworn to by their  
solicitor on the 25th day of July, 1963 and filed  
herein:

20 AND UPON HEARING Mr. F.H.W. Ramsahoye of  
Counsel for the petitioners (respondents) and Mr.  
L.A. Luckhoo, Q.C. of Counsel for the respondent  
(Appellant):

30 THE COURT DOTH ORDER that subject to  
the performance by the said petitioners (respondents)  
of the conditions hereinafter mentioned and subject  
to the final order of this Honourable Court upon due  
compliance with such conditions leave to appeal to  
Her Majesty in Council against the said judgment  
of the British Caribbean Court of Appeal be and  
the same is hereby granted to the petitioners  
(respondents).

40 AND THIS COURT DOTH FURTHER ORDER that  
the petitioners (respondents) do within ninety  
days from the date hereof enter into good and  
sufficient security to the satisfaction of the  
Deputy Registrar of this Court in the sum of  
\$2,400.00 with one or more sureties or deposit  
into Court the said sum of \$2,400.00 for the due  
prosecution of the said appeal and for the pay-  
ment of all such costs as may become payable by  
the petitioners (respondents) in the event of the  
Petitioners (Respondents) not obtaining an



In the  
British  
Caribbean  
Court of  
Appeal

order granting them final leave to appeal or of the appeal being dismissed for non-prosecution or for the part of such costs as may be awarded by the Judicial Committee of the Privy Council to the respondent (appellant) on such appeal as the case may be.

No.19.

Order  
granting  
conditional  
leave to  
appeal to  
Her Majesty  
in Council.

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

10

6th  
September,  
1963.

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

20

continued.

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

30

AND THIS COURT DOTH FURTHER ORDER that judgment not including costs of this Court and the Court below be stayed pending the hearing and determination of this appeal to Her Majesty in Council.

AND THIS COURT DOTH FURTHER ORDER that the costs of and incidental to this application be the costs in the cause.

LIBERTY TO APPLY.

40

BY THE COURT

S. Mansoor Nasir

DEPUTY REGISTRAR (AG.)

No. 20.

ORDER GRANTING FINAL LEAVE TO  
APPEAL TO HER MAJESTY IN COUNCIL

In the  
British  
Caribbean  
Court of  
Appeal

IN THE FEDERAL SUPREME COURT

No.20.

APPELLATE JURISDICTION

Order  
granting  
final  
leave to  
appeal to  
Her Majesty  
in Council.  
22nd  
November,  
1963.

C I V I L

TERRITORY: BRITISH GUIANA

CIVIL APPEAL No. 25 of 1963

BETWEEN:

10

CLEMENT HUGH DA SILVA,

Respondent  
(Appellant)  
(Plaintiff)

- and -

BRITISH GUIANA CREDIT CORPORATION,  
a body corporate, incorporated by  
Ordinance No.13 of 1954 whose office  
is situate at lots 20 and 21 Water  
Street, Georgetown, Demerara.

20

Petitioners  
(Respondents)  
(Defendants)

BEFORE THE HONOURABLE SIR DONALD JACKSON (IN  
CHAMBERS)

DATED THE 22ND DAY OF NOVEMBER, 1963

ENTERED THE 25TH DAY OF NOVEMBER, 1963

30

UPON the application of the abovenamed British  
Guiana Credit Corporation preferred unto this  
Court on the 14th day of November, 1963 for final  
leave to appeal to Her Majesty in Her Majesty's  
Privy Council against the judgment of this Court  
dated the 19th day of July, 1963:

AND UPON READING the said petition and

In the  
British  
Caribbean  
Court of  
Appeal

the order of this Court dated the 6th day of  
September, 1963:

No.20.

AND UPON HEARING Mr. C.A.F. Hughes of  
Counsel for the petitioners and Mr. V.C. Dias  
solicitor for the respondent and upon being  
satisfied that the terms and conditions imposed  
by the said order dated the 6th day of September,  
1963 have been complied with:

Order  
granting  
final  
leave to  
appeal to  
Her Majesty  
in Council.  
22nd November,  
1963.

THIS COURT DOTH ORDER that final leave  
be and is hereby granted to the said petitioners  
to appeal to Her Majesty in Her Majesty's Privy  
Council.

10

BY THE COURT

S. Mansoor A. Nasir

DEPUTY REGISTRAR (AG.)

Continued.

Plaintiff's  
Exhibits

E X H I B I T S

"T"

"T"

Extract  
from letter  
Colonial  
Secretary  
to Secretary  
B.G. Civil  
Service  
Association  
7th November  
1945.

Extract from letter Colonial Secretary  
to Secretary, British Guiana Civil  
Service Association

20

7th November, 1945.

C.101/7/1/5:

Sir,

XX XX XX XX XX XX

3. The Secretary of State agrees that  
the provisions of section 2 of the 1944 Ordinance,  
which amends section 8 of the Principal Ordinance  
of 1933 may be interpreted to provide for volun-  
tary retirement at 50 with the approval of the  
Secretary of State. The view taken by this  
Government is that an application to retire at  
50 should normally be granted and not refused  
except for strong reasons of public interest

30

and the Secretary of State endorses this view.

xx xx xx xx xx xx

I have the honour to be,  
Sir,  
Your obedient servant,  
  
(Sgd) W.L. Heape  
Colonial Secretary.

The Honourary Secretary,  
British Guiana Civil Service Association,  
Georgetown.

10

Plaintiff's  
Exhibits

"T"

Extract  
from letter  
Colonial  
Secretary  
to Secretary  
B.G. Civil  
Service  
Association  
7th November  
1945.  
Continued.

"B"

CIRCULAR OF B.G. CREDIT CORPORATION  
FOR VACANCY OF GENERAL MANAGER.

BRITISH GUIANA CREDIT CORPORATION

Vacancy for General Manager

\*\*\*\*\*

The Corporation wishes to consider applications by suitably qualified persons for appointment as General Manager.

20 2. The constitution and functions of the Corporation are laid down in the British Guiana Credit Corporation Ordinance, No. 13 of 1954. Its purpose broadly is "to promote the economic development of the Colony and with that object provide financial credits where necessary and desirable and to stimulate and facilitate private investment in the Colony by local and external capital". The Corporation consists of a Chairman, Deputy Chairman, one official member and not less than five other members appointed by the Governor.

30 3. The Corporation's present capital resources of \$11 mn. are being expanded. The staff is 100 and the Head Office is in Georgetown. There are 26 branch offices throughout the Colony. Its credit activities now include loans for housing and for agricultural and industrial

"B"

Circular of  
B.G. Credit  
Corporation  
for vacancy  
of General  
Manager.

Plaintiff's Exhibits

"B"

Circular of B.G. Credit Corporation for vacancy of General Manager.

Continued.

development. It will be increasingly concerned with the stimulation of industrial development.

4. The General Manager is the chief executive officer of the Corporation appointed under section 6 of the Ordinance. He is responsible to the Corporation for the day-to-day management of its business in accordance with the provisions of the Ordinance and its administrative directions. He has the duty of advising the Corporation in its functions.

10

5. The post carries a salary of BWI \$11,280 (equivalent at the current rate of exchange to £2350 sterling) per annum, a free, partly-furnished house and leave facilities in accordance with the Government's General Orders and Regulations in force at the time (now five days leave for each completed month of resident service, accumulative to a maximum of six months, with leave passages to a maximum of BWI \$2,500). A motor car allowance of \$25 a month for official journeys within the limits of Georgetown and of 28 cents a mile for official journeys outside Georgetown will be paid. An overseas candidate will be provided with not more than five free sea passages to British Guiana for himself and his wife and children (under 18 years) if any, and on satisfactory completion of service return passages to his country of recruitment.

20

6. The appointment is non-pensionable and will normally be for three years in the first instance, but the duration of the initial contract is subject to variation to meet individual circumstances. The Corporation has under consideration a contributory pension scheme for its employees.

30

7. Candidates for the post must have experience in business administration, banking or public administration, preferably on the industrial side. They must be capable of appraising the effects of the Corporation's policies on the economic development of the country and assessing the economic feasibility and general loan-worthiness of projects for which loan proposals are made.

40

8. The applicant should give full particulars of his qualifications, training and experience.

9. Applications should be addressed in plain sealed envelopes marked "Confidential - Application for appointment as General Manager" to the Chairman the British Guiana Credit Corporation, 20-21 Water Street, Georgetown to reach him not later than Thursday, 15th September, 1960.

Plaintiff's Exhibits.

"B"

Circular of B.G. Credit Corporation for vacancy of General Manager.  
Continued.

"BB"

EXTRACT FROM MINUTES OF BRITISH GUIANA CREDIT CORPORATION

Defendant's Exhibit

"BB"

10            XX        XX        XX        XX        XX        XX        XX

Extract from Minutes of B.G. Credit Corporation. 26th March, 1957.

J.H.B.    STAFF MATTERS: The salary of Mr. W.G. Carmichael  
M        General Manager, and his conditions of service and  
         the salaries of Messrs. Kranenburg and Yansen,  
         Secretary, Chief Accountant, respectively were  
         reviewed and it was unanimously decided to recommend  
         to the Governor-in-Council.

20        (1) that the salary of the General Manager be  
         increased from £2,000: to £2,200: per annum and  
         that his present contract which expires on the  
         28th May, 1958 should be renewed for a further  
         period of three years as from the 26th March,  
         1957. The increase of salary to be payable as  
         from the 29th January, 1957, the date when he took  
         over full executive responsibility from the retiring  
         Chairman. Three months' leave in the United Kingdom,  
         excluding travelling, to be given in 1958 and three  
         months at the end of the contract. Gratuity to be  
         the same as that in the first contract, that is  
         £37.10s.0d. for each three months completed service.  
30        An acknowledgment of the very efficient service  
         rendered by the General Manager since the formation  
         of the Corporation was placed on record.

(2) that the salary of the Secretary be increased  
from £1,000: to £1,150: per annum, the increase to  
be payable as from the 11th December, 1956, the  
date when he was appointed Secretary.

(3) that the salary of the Chief Accountant be  
increased from £1,000: to £1,150: per annum, the  
increase to be payable as from the 11th November,

Defendant's Exhibit

"BB"

Extract from Minutes of B.G. Credit Corporation 26th March, 1957. Continued.

1956, the date when he was appointed Chief Accountant.

The sterling work of the Secretary and the Chief Accountant was referred to in appreciatory terms by the Members.

(4) It was also agreed that a gratuity of £200: be given to Mr. Yansen for his work in connection with the Corporation's accounts.

XX XX XX XX XX XX

Confirmed

10

J.H. McB. Moore.  
Chairman.

4th June, 1957.

Plaintiff's Exhibits

"O"

Certificate Finance Secretariat Fixing salary of General Manager. 22nd May, 1957.

"O"

CERTIFICATE FINANCE SECRETARIAT (TREASURY) FIXING SALARY OF GENERAL MANAGER.

FINANCE SECRETARIAT,  
Public Buildings,  
Georgetown, Demerara.

20

II

No. F.S.G.283/55

BRITISH GUIANA

22nd May, 1957.

Sir,

With reference to your letter dated 4th April, 1957, in connection with increases in the salaries of the General Manager, the Secretary and the Chief Accountant, I have to inform you that the Governor in Council has approved the revised salaries as follows:-

30

- (a) General Manager - £2,200 per annum with effect from 29th January, 1957;
- (b) Secretary - £1,150 per annum with effect from 11th December, 1956; and

(c) Chief Accountant - £1,150 per annum with effect from 11th December, 1956.

Plaintiff's Exhibits

I have the honour to be,  
Sir,  
Your obedient servant,

"O"  
Certificate  
Finance  
Secretariat  
Fixing  
salary of  
General  
Manager.  
22nd May,  
1957.  
Continued.

C.M. Fraser  
Financial Secretary.

The General Manager,  
B.G. Credit Corporation,  
20-21 Water Street,  
Georgetown.

10

"Y"

LETTER B.G. CREDIT CORPORATION TO  
BARCLAYS BANK, D.C.O.

"Y"  
Letter  
B.G. Credit  
Corporation  
to Barclay's  
Bank D.C.O.  
26th February  
1958.

26th February, 1958.

LEK/ep

The Manager,  
Barclay's Bank, D.C.O.,  
Water Street,  
Georgetown.

20

Dear Sir,

You are hereby requested to arrange for the sum of \$880 to be transferred on the last business day of each and every month commencing on the 28th February, 1958, from this Corporation's general account with your Bank, to the credit of Mr. George William Carmichael's current account with your Bank, until otherwise instructed.

Yours faithfully,  
BRITISH GUIANA CREDIT CORPORATION

30

.....??  
By Special Authority

.....??  
By Special Authority



Plaintiff's Exhibits

"N"

Extract from Minutes B.G. Credit Corporation 26th June, 1959.

"N"  
EXTRACT FROM MINUTES B.G. CREDIT CORPORATION

BRITISH GUIANA CREDIT CORPORATION

Executive Committee Meeting, 2.30 p.m. Friday.

26th June, 1959.

PRESENT:

Mr. J.H. Mc.B.Moore, Chairman

Mr. W.P. D'Andrade, Deputy Financial Secretary Official Member 10

Mr. C.P.B. Melbourne, M.B.E.

Mr. V.H. Willems,

Mr. W.G. Carmichael, General Manager,

with Mr. L.E. Kranenburg, Secretary

XX XX XX XX XX

9. Staff: The Draft Form of Service Agreement for the Secretary and the Chief Accountant, embodying the conditions of employment approved by the Committee at the meeting of 12th and 19th September, 1958, was approved with retrospective effect as from 1st July, 1958. 20

XX XX XX XX XX

Confirmed,

J.H. McB. Moore.

Chairman.

3rd July, 1959.

"Z1"

ORDER FOR PAYMENT OF GRATUITY

BRITISH GUIANA CREDIT CORPORATION.

Apr. 30

CHEQUE REQUISITION.

BRANCH

ACCOUNT Head Office, Salaries A.

DATE	DETAILS	AMOUNT
1960 Apr.7	Cheque in favour of W.G.Carmichael for Gratuity payment to 31.3.60	

10

Seven Hundred and Twenty  
Dollars ...\$720.00

P.Y.

Cheque No. F. 17455

Date 1.4.60

D. Forbes

Entd. C.B. 175.

20

"Z2"

RECEIPT FOR GRATUITY

Georgetown, Demerara,  
7th April, 1960.

Received from the British Guiana Credit  
Corporation 20-21 Water Street, George-  
town, Cheque No. F 17455 for the sum of  
Seven Hundred and Twenty dollars in

Plaintiff's  
Exhibits

"Z1"

Order for  
payment of  
Gratuity.  
7th April,  
1960.

"Z2"

Receipt for  
Gratuity 7th  
April, 1960

Plaintiff's Exhibits

respect of Gratuity payment to 31.3.60.

"Z2"

Receipt for Gratuity 7th April 1960. Continued.

Signature: W.G.Carmichael.

\$720.00

"X"

Letter B.G. Credit Corporation to Manager, Barclays Bank, D.C.C. 22nd April, 1960.

"X"

LETTER, B.G. CREDIT CORPORATION TO MANAGER, BARCLAYS BANK, D.C.C.

22nd April, 1960.

LEK/ep

The Manager, Barclays Bank D.C.C., Water Street, Georgetown.

10

Dear Sir,

With reference to our letter to you of 26th February, 1958, you are hereby requested to transfer immediately from the British Guiana Credit Corporation's current account to Mr. W.G. Carmichael's current account with your Bank, the sum of \$3,530 representing the transfers which would normally have been made at the end of the months of April, May, June and July, 1960.

With this transfer, the instructions contained in our letter of 26th February, 1958, referred to above, is to cease.

20

Yours faithfully,

BRITISH GUIANA CREDIT CORPORATION

.....??  
By Special Authority

.....??  
By Special Authority

"V1"  
EXTRACT FROM MINUTES OF B.G. CREDIT CORPORATION

Plaintiff's Exhibits

BRITISH GUIANA CREDIT CORPORATION

"V1"

Minutes of the proceedings at a meeting of the Members of the Corporation held at Head Office, 20-21, Water Street, Georgetown, on Tuesday, 26th April, 1960, commencing at 9.30 a.m.

Extract from Minutes of B.G. Credit Corporation 26th April, 1960.

PRESENT:

- 10 Mr. J.H. McB. Moore, O.B.E. Chairman
- Mr. W.M. Green, Deputy Chairman
- Mr. Vincent Roth, O.B.E.
- Mr. C.P.B. Melbourne, M.B.E.
- Mr. Gobin Biragie
- Mr. V.J. Willems
- Mr. E.C. Rodrigues
- Mr. C.H. Da Silva, Acting Official  
Deputy Financial Secretary Member
- with
- 20 Mr. W.G. Carmichael General Manager
- Mr. L.E.Krananburg & Secretary

XX XX XX XX XX XX XX

7. General Manager's House, 274 Peter Rose Street, Queenstown: It was agreed that pending the appointment of a new General Manager, the house should be rented.

8. General Manager's motor-car: It was agreed that the car should be advertised for sale.

XX XX XX XX XX XX XX

30 Confirmed:

August, 1960. Chairman.

"V2"

EXTRACT FROM MINUTES OF B.G. CREDIT CORPORATION

BRITISH GUIANA CREDIT CORPORATION

"V2"  
Extract from Minutes of B.G. Credit Corporation 10th June, 1960.

Plaintiff's Exhibits

Executive Committee Meeting, 2.30 p.m. Friday, 10th June, 1960.

"V2"

PRESENT:

Extract from Minutes of B.G. Credit Corporation. 10th June, 1960.

Mr. J.H.McB.Moore, O.B.E. Chairman.  
 Mr. W.M. Green, Deputy Chairman.  
 Mr. C.P.B.Melbourne, M.B.E.  
 Mr. C.H. Da Silva, Acting Deputy Financial Secretary  
 with  
 Mr. L.E. Kranenburg, Secretary.

10

Continued.

xx xx xx xx xx xx xx

5. Appointment of a General Manager: The Chairman informed the meeting that the question of a successor to Mr. W.G. Carmichael was still under consideration by His Excellency the Governor.
6. General Manager's Quarters: Referring to the question of renting these quarters Mr. Da Silva explained that Government would definitely like to have them for a member of a Mission of Experts who will be arriving in the Colony shortly, and would be prepared to pay the Corporation an economic rent for it.

20

Members pointed out however, that until the question of the appointment of a new General Manager of the Corporation was settled, it would not be possible to enter into a Tenancy Agreement for the quarters other than on a month-to-month basis.

30

xx xx xx xx xx xx xx

June, 1960.

"V3"

Plaintiff's Exhibits

EXTRACT FROM MINUTES OF B.G. CREDIT CORPORATION

BRITISH GUIANA CREDIT CORPORATION

Executive Committee Meeting, 3.30 p.m. Friday, 1st July, 1960

"V3"  
Extract from Minutes of B.G. Credit Corporation. 1st July, 1960.

PRESENT:

10	Mr. W.M. Green,	Deputy Chairman
	Mr. E.C. Rodrigues,	
	Mr. C.H. Da Silva, Deputy	
	Financial Secretary, (ag.)	Official Member
	with	
	Mr. L.E. Kranenburg,	Secretary.

In the absence from the Colony of the Chairman (Mr. J.H. McB. Moore, O.B.E.) Mr. Green the Deputy Chairman, presided.

xx      xx      xx      xx      xx      xx      xx

20      4. General Manager's Quarters: Mr. Green informed Members that the General Manager's house at 274, Peter Rose Street, Queenstown, had been let temporarily with effect from 23rd June, 1960, at a rental of \$225 a month, and that he had authorised the expenditure of \$400 for the provision of some necessary bedroom furniture. This was approved.

xx      xx      xx      xx      xx      xx      xx

Confirmed:

Chairman.

July, 1960.

Plaintiff's Exhibits

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EXTRACT FROM MINUTES OF B.G. CREDIT CORPORATION AND ANNEXURE

\*\*\*

Extract from Minutes of B.G. Credit Corporation and annexure 29th July, 1960.

BRITISH GUIANA CREDIT CORPORATION

Confidential Minutes of part of the proceedings of a meeting of the Executive Committee, held at Head Office, 20-21 Water Street, Georgetown, at 2.30 p.m. on Friday 29th July, 1960, and forming part of the business transacted at that meeting.

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PRESENT:

10

Mr. J.H. McB. Moore, O.B.E.	Chairman
Mr. W.M. Green,	Deputy Chairman
Mr. C.H. Da Silva, acting	Official
Deputy Financial Secretary	Member
Mr. E.C. Rodrigues	
Mr. Gobin Biragie	
with	
Mr. L.E. Kranenburg,	Secretary.

xx      xx      xx      xx      xx      xx      xx

1. Appointment of a General Manager: The attached draft of a notice inviting applications for the vacant post of General Manager, and setting out the terms and conditions attaching to the appointment was considered and approved. It was further agreed that Government should be requested to advertise the vacancy in British Guiana, Barbados, Jamaica, Trinidad and the United Kingdom immediately.

xx      xx      xx      xx      xx      xx      xx      30

Confirmed:

5th August, 1960. J.H. McB. Moore  
Chairman.

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BRITISH GUIANA CREDIT CORPORATIONVacancy for General Manager

\*\*\*\*\*

The Corporation wishes to consider applications by suitably qualified persons for appointment as General Manager.

2. The constitution and functions of the Corporation are laid down in the British Guiana Credit Corporation Ordinance, No. 13 of 1954. Its purpose broadly is "to promote the economic development of the Colony and with that object provide financial credits where necessary and desirable and to stimulate and facilitate private investment in the Colony by local and external capital". The Corporation consists of a Chairman, Deputy Chairman, one official member and not less than five other members appointed by the Governor.

3. The Corporation's present capital resources of \$11 mn. are being expanded. The staff is 100 and the Head Office is in Georgetown. There are 26 branch offices throughout the Colony. Its credit activities now include loans for housing and for agricultural and industrial development. It will be increasingly concerned with the stimulation of industrial development.

4. The General Manager is the chief executive officer of the Corporation appointed under section 6 of the Ordinance. He is responsible to the Corporation for the day-to-day management of its business in accordance with the provisions of the Ordinance and its administrative directions. He has the duty of advising the Corporation in its functions.

5. The post carries a salary of BWI \$11,280: (Equivalent at the current rate of exchange to £2,350 sterling) per annum, a free, partly-furnished house and leave facilities in accordance with the Government's General Orders and Regulations in force at the time (now five days leave for each completed month of resident service, accumulative to a maximum of six months, with leave passages to a maximum of BWI \$2,500). A motor car allowance of \$25 a month for official journeys within the limits of Georgetown and 28

Plaintiff's  
Exhibits

"FW"

Extract from  
Minutes of  
B.G. Credit  
Corporation  
and Annexure  
29th July,  
1960.

Continued.



Plaintiff's  
Exhibits

"W"

Extract from  
Minutes of  
B.G. Credit  
Corporation  
and Annexure.  
29th July,  
1960.

Continued.

cents a mile for official journeys outside Georgetown will be paid. An overseas candidate will be provided with not more than five free sea passages to British Guiana for himself and his wife and children (under 18 years) if any, and on satisfactory completion of service return passages to his country of recruitment.

6. The appointment is non-pensionable and will normally be for three years in the first instance, but the duration of the initial contract is subject to variation to meet individual circumstances. The Corporation has under consideration a contributory pension scheme for its employees. 10

7. Candidates for the post must have experience in business administration, banking or public administration, preferably on the industrial side. They must be capable of appraising the effects of the Corporation's policies on the economic development of the country and of assessing the economic feasibility and general loan-worthiness of projects for which loan proposals are made. 20

8. The applicant should give full particulars of his qualifications, training and experience.

9. Applications should be addressed in plain sealed envelopes marked "Confidential - Application for appointment as General Manager" to the Chairman, the British Guiana Credit Corporation, 20-21 Water Street, Georgetown to reach him not later than Thursday 15th September 1960. Late applications will not be considered. 30

"C"

Application  
by C.H. Da  
Silva for  
appointment  
as General  
Manager.  
24th August,  
1960.

"C"

APPLICATION BY C.H. Da SILVA FOR  
APPOINTMENT AS GENERAL MANAGER.

Finance Secretariat,  
Public Buildings,  
Georgetown.  
24th August, 1960.

40

The Chairman,  
British Guiana Credit Corporation,

Plaintiff's  
Exhibits

Sir,

Application for appointment as  
General Manager

In response to your advertisement in the Press, I hereby apply for appointment as General Manager.

"C"  
Application  
by C.H. Da  
Silva for  
appointment  
as General  
Manager.  
24th August,  
1960.

2. Particulars of me are as follows:-

Continued.

- 10 Qualifications: Cambridge School Certificate  
(Hons.) Distinction and 6  
Credits.  
Associate Member of the  
~~Chartered~~ Institute  
Secretaries Intermediate  
Certificate of the Association  
of Certified and Corporate  
Accountants.
- 20 Training: Completed one year of Oxford  
University's residential 2  
year course for the B. Litt.  
degree in Public Finance and  
the techniques of Loan-  
Capital and fixed capital  
development (Professor J.R.  
and Mr. U.K. Hicks.)
- 30 Experience: My public administration  
experience includes service in  
senior administrative posts  
such as Private Secretary to  
the Governor, Clerk to the  
Legislative Council, Clerk to  
the Executive Council, District  
Commissioner, Chief Establish-  
ment Office and Deputy Financial  
Secretary. (as Chief Establish-  
ment Officer, a staff of some  
60 came under my control for  
some years.)
- 40 My present duties include the  
assessing of industrial  
proposals for tax and customs  
duties concessions. These  
include projects for stockfeed

Plaintiff's ExhibitsExperience contd

"C"

Application by C.G. Da Silva for appointment as General Manager. 24th August, 1960.

Continued.

manufacture, metal and aluminum furniture, shirts and various others. This involves an economic profit assessment which is the same technique that would be used in ascertaining the loan-worthiness of proposals put to the Corporation for loans.

In 1949 I was specially appointed as Government Liaison Officer to Messrs. B.G. Airways Ltd. which then had lost over \$250,00 a year on its operations. I improved the business administration and developed the Company's operations to a point where four years later, the Company was making a substantial profit, before the Government purchased the undertaking.

10

My present duties include the preparation of the Colony's 1960-1964 Development Programme, which was publicly commended in the Legislative Council by the Financial Secretary. An extract of Hansard of 11th November, 1959, is reproduced:

20

"Further work was done by Mr. Da Silva of my office and he too has done an excellent job. He in particular had the task of re-writing and rearranging the layout of the paper, following the advice given by Mr. Berrill ....."

30

I am thus thoroughly familiar with the economic development proposals of the country and the Government's policy. I have also dealt successfully with overseas bodies such as the Colonial Office, the United Nations Special Fund and the International Bank for Re-construction and Development. I am accustomed to appraising the effects of the various Government Development Schemes on the economic development of the country and have done this in respect of very large drainage and irrigation and land

40

development projects.

Age: 48 years.

Plaintiff's Exhibits

"C"

Application by C.H. Da Silva for appointment as General Manager. 24th August, 1960.

Continued.

10 3. I believe that the Corporation is the most successful instrument for capital formation in the country and that its sound policies have already borne much fruit. My present salary (allowing for pensionability and increases proposed but not yet implemented) is not much less than that of the post of General Manager. However, I would prefer to have a hand in the development of the Corporation into the big national institution which it is destined surely to become.

I have the honour to be,  
Sir,  
Your obedient servant,

C.H. Da Silva

"V4"

EXTRACT FROM MINUTES OF B.G. CREDIT CORPORATION

BRITISH GUIANA CREDIT CORPORATION

20 Minutes of the proceedings at a meeting of the Members of the Corporation, held at Head Office, 20-21, Water Street, Georgetown, on Tuesday, 6th September, 1960, commencing at 9.30 a.m.

"V4"

Extract from Minutes of B.G. Credit Corporation 6th September, 1960.

PRESENT:

- |   |                 |
|---|-----------------|
| Mr. J.H. McB. Moore, O.B.E.                       | Chairman        |
| Mr. W.M. Green                                    | Deputy Chairman |
| Mr. Vincent Roth, O.B.E.                          |                 |
| Mr. C.P.B. Melbourne, M.B.E.                      |                 |
| Mr. Hamid Rahaman                                 |                 |
| Mr. E.C. Rodrigues                                |                 |
| Mr. Gobin Biragie                                 |                 |
| Mr. C.H. Da Silva, Deputy<br>Financial Secretary, | Official Member |
| with  |                 |
| Mr. L.E. Kranenburg                               | Secretary.      |

30

Plaintiff's Exhibits

"V4"  
 Extract from  
 Minutes of  
 B.G. Credit  
 Corporation  
 6th  
 September,  
 1960.

Continued.

ABSENT:

Mr. E.C. Grieve - Not in the Colony.  
 Mr. V.J. Willems - On leave.

-----

xx            xx            xx            xx            xx            xx

3. Matters arising out of the Minutes:

(e) General Manager's residence, 274  
 Peter Rose Street, Queenstown:

It was reported that the house had been  
 rented on a month-to-month basis at \$225 a month  
 with effect from 23rd June, 1960.

10

Mr. Green stated that he had learnt that  
 throughout the period of Mr. Carmichael's  
 tenancy of the house a night watchman had been  
 employed and his wages paid out of Corporation  
 funds. He was not aware that this arrangement  
 was known to Members or had their approval. He  
 suggested that the amount paid in watchman's  
 wages for the period Mr. Carmichael had actually  
 occupied the house should be ascertained, and a  
 motion by him, seconded by Mr. Roth, that the  
 matter be referred to the Corporation's Auditors  
 for their comments, was carried; the voting  
 being - 6 in favour and 2 against.

20

xx            xx            xx            xx            xx            xx

Confirmed

J.H. McB. Moore  
 Chairman

22nd September, 1960.

"J"  
 Letter  
 Secretary  
 B.G. Credit  
 Corporation  
 to C.H. Da  
 Silva  
 14th  
 September,  
 1960.

"J"

LETTER SECRETARY B.G. CREDIT CORPORATION  
 TO C.H. Da SILVA

30

BRITISH GUIANA CREDIT CORPORATION  
 (Incorporated by Ordinance No. 13 of 1954)

20-21 Water Street,  
 Georgetown, British Guiana.

14th September, 1960.

LEK/SeMc

Plaintiff's Exhibits

C.H. DaSilva Esq.,  
Deputy Financial Secretary,  
Finance Secretariat,  
Public Buildings,  
Georgetown.

"J"  
Letter  
Secretary  
B.G. Credit  
Corporation  
to C.H. Da  
Silva  
14th  
September,  
1960.

Dear Sir,

Continued.

10 You are invited to attend a meeting of  
the Members of the Corporation, to be held at  
Head Office at 9.30 a.m. on Thursday, 22nd  
September, 1960, to consider the application  
received for the vacant post of General Manager  
of the Corporation.

Yours faithfully,

L.E. Kranenburg

Secretary.

Not attended by me

C.P.

"D"

"D"  
Extract from  
Minutes of  
B.G. Credit  
Corporation  
22nd  
September,  
1960.

20

EXTRACT FROM MINUTES OF B.G. CREDIT CORPORATION

BRITISH GUIANA CREDIT CORPORATION

Minutes of the proceedings at a meeting of the  
members of the Corporation, held at Head Office,  
20-21, Water Street, Georgetown, on Thursday,  
22nd September, 1960, commencing at 9.30 a.m.

PRESENT:

30

- Mr. J.H. McB. Moore, O.B.E. Chairman
- Mr. W.M. Green, Deputy Chairman
- Mr. Vincent Roth, O.B.E.
- Mr. C.P.B. Melbourne, M.B.E.
- Mr. Hamid Rahaman,
- Mr. E.C. Rodrigues,

Plaintiff's Exhibits

Mr. Gobin Biragie,  
with  
Mr. L.E. Kranenburg, Secretary.

"D"

Extract from Minutes of B.G. Credit Corporation 22nd September, 1960.

ABSENT:

Mr. E.C. Grieve - Not in the Colony  
Mr. V.J. Willems - On leave of absence  
Mr. C.H. DaSilva - who asked to be excused from attending.  
Deputy Financial Secretary.

1. The Minutes of the previous meeting held on Tuesday, 6th September, 1960, were taken as read and were duly confirmed. 10

xx xx xx xx xx xx

3. (iii) Appointment of a General Manager vice Mr. W.G. Carmichael: As the Secretary was one of the applicants for the position, he withdrew from the meeting while this item was being considered.

All applications which had been received as a result of the advertisement published locally and in the West Indies were then carefully considered, and Mr. Clement H. Da Silva, now Deputy Financial Secretary and Official Member of the Board, was chosen for the appointment. It was decided that Mr. Da Silva be notified and Government be advised of the appointment; all the unsuccessful applicants to be notified that the position has been filled. 20

xx xx xx xx xx xx 30

Confirmed

J.H. McB. Moore

Chairman.

27th October, 1960.

"E"

LETTER SECRETARY B.G. CREDIT CORPORATION  
TO C.H. Da SILVA

Telephone: C 204 & C 205

Telegraphic Address: Credit,  
Georgetown, B.G.

BRITISH GUIANA CREDIT CORPORATION  
(Incorporated by Ordinance No.13 of 1954)

20-21 Water Street,  
Georgetown, British Guiana.

10

LEK/ep

26th September, 1960.

Mr. C.H. Da Silva,  
c/o Finance Secretariat,  
Public Buildings,  
Georgetown.

Dear Sir,

20

With reference to your letter of 24th August, 1960, applying for the vacant post of General Manager of this Corporation, I am pleased to inform you that at a meeting of the Corporation held on Thursday, 22nd September, 1960, you were selected for the appointment on the terms and conditions as advertised; and I shall be glad to be informed as early as possible, how soon you would be able to take up the appointment.

Yours faithfully,

L.E. Kranenburg  
Secretary

30

"F"

LETTER C.H. Da SILVA TO B.G. CREDIT  
CORPORATION AND DRAFT AGREEMENT OF  
SERVICE

64 Brickdam,  
British Guiana.

3rd October, 1960.

Plaintiff's  
Exhibits

"E"

Letter  
Secretary,  
B.G. Credit  
Corporation  
to C.H. Da  
Silva.  
26th  
September,  
1960.

"F"

Letter C.H.  
Da Silva to  
B.G. Credit  
Corporation  
and draft  
Agreement  
of Service  
3rd October,  
1960.



Plaintiff's  
Exhibits

Dear Sir,

Appointment as General Manager

Small  
LETTER C.H.  
Da Silva to  
B.G. Credit  
Corporation  
and draft  
Agreement of  
Service  
3rd October,  
1960.

I thank you for your letter of 26th September, informing me of my selection for appointment as General Manager. I enclose draft agreement of Service which I shall enter in with the Corporation. I accept the appointment.

I am reporting the position to the Government with a view to release as early as possible. Meanwhile I would ask that no official announcement be made by the Corporation.

Continued.

10

Yours sincerely,  
C.H. DaSilva.

---

BRITISH GUIANA

Agreement made the                    day of  
19    Between the British Guiana Credit  
Corporation, a statutory body set up by the  
British Guiana Credit Corporation Ordinance  
No. 13 of 1954 (hereinafter called "the  
Corporation"), and .....  
..... (hereinafter  
called "the person engaged")

20

1. The Person engaged agrees and under-  
takes that he will diligently and faithfully  
perform the duties of General Manager of the  
Corporation for the term of his engagement,  
and will act in all respects according to the  
instructions or directions given to him by the  
Corporation.

30

2. The salary of the office is at the  
rate of Eleven Thousand, two hundred and eighty  
dollars (\$11,280) a year fixed.

3. This Agreement is subject to the con-  
ditions set forth in the Schedule hereto  
annexed, and the Schedule shall be read and  
construed as a part of the Agreement.

As witness our hands the day and year  
above written.



Plaintiff's Exhibits

"F"

Letter C.H. Da Silva to B.G. Credit Corporation and draft Agreement of Service. 3rd October, 1960.

Continued.

Determination of engagement

Leave of Absence

Travelling allowance

Further Employment

or body, or rendering further efficient service, the Corporation shall pay him his salary up to the date of such resignation or certificate.

(2) A Certificate signed by a duly qualified medical officer employed by the Government shall be conclusive evidence on the question whether or not the person engaged was compelled to resign his office by reason of ill-health within the meaning of this clause.

5. (1) The Corporation may at any time determine the engagement of the person engaged on giving him twelve months' notice in writing or on paying him six months' salary. 10

(2) The person engaged may, at any time after the expiration of three months from the commencement of any residential service determine his engagement on giving to the Corporation three months' notice in writing or on paying to the Corporation one month's salary.

(3) If the person engaged terminates his engagement otherwise than in accordance with this Agreement he shall be liable to pay to the Corporation as liquidated damages three months' salary. 20

6. The person engaged shall not be entitled as of right to any leave of absence. But he will be eligible for leave under this Agreement in accordance with the Government's General Orders and Regulations in force at the time (now five days leave for each completed month of resident service, accumulative to a maximum of six months, with leave passages to a maximum of BWI \$2,500), provided that his work and conduct have been satisfactory. 30

7. A motor car allowance of \$25 a month for official journeys within the limits of Georgetown and of 28 cents a mile for official journeys outside Georgetown will be paid.

8. Three months prior to the completion of the period of service, the person engaged shall give notice in writing to the Corporation whether he desires to remain in its employment, and the Corporation shall thereupon decide whether it will offer him further employment. If the Corporation offer him further employment the 40

re-engagement will be on such terms and for such period as may be mutually agreed.

9. The marginal notes are for convenience only and do not form part of the Agreement.

Plaintiff's Exhibits

"F"

Letter C.H. Da Silva to B.G. Credit Corporation and draft Agreement of Service. 3rd October, 1960.  
Continued.

"K"

LETTER FINANCIAL SECRETARY TO  
CHAIRMAN, B.G. CREDIT CORPORATION

Finance Secretariat,  
Public Buildings,  
Georgetown.  
BRITISH GUIANA.

"K"

Letter  
Financial  
Secretary  
to Chairman  
B.G. Credit  
Corporation.  
18th October  
1960.

10

ERM.

II

No. F.S.G. 283/55

18th October, 1960.

Sir,

20

With reference to the Secretary's letter of 26th September and our subsequent conversation on the subject of filling the vacant post of General Manager of the Corporation, I am directed to inform you that the matter was considered by the Governor in Council.

30

2. I am to ask the Board of the Corporation to re-examine the recommendation made as the Government is anxious that the best person available be obtained for the post. If the Board wishes to have the qualifications of any of the candidates residing in the West Indies further investigated, the Chief Secretary would be glad to enlist the aid of the Government of the territory in which the candidate is residing. If the Board is not satisfied that any of the persons who have so far applied is suitable, the vacancy should be re-advertised over a wider field.

3. I should be grateful if you would put

Plaintiff's  
Exhibits

"K"

Letter  
Financial  
Secretary  
to Chairman  
B.G. Credit  
Corporation.  
18th October,  
1960.  
Continued.

the matter to your Board accordingly.

I have the honour to be,  
Sir,  
Your obedient servant,

W.P. D'Andrade  
Financial Secretary.

The Chairman,  
The B.G. Credit Corporation,  
20-21 Water Street,  
Georgetown.

10

"G1"

Extract from  
Minutes of  
B.G. Credit  
Corporation  
27th October,  
1960.

"G1"

EXTRACT FROM MINUTES OF B.G.  
CREDIT CORPORATION

BRITISH GUIANA CREDIT CORPORATION

Minutes of the proceedings at a meeting of the  
Members of the Corporation held at Head Office,  
20-21, Water Street, Georgetown, on Thursday,  
27th October, 1960, commencing at 9.30 a.m.

1. MEMBERSHIP

The Chairman intimated that he had received  
a letter dated 12th October, 1960, from the  
Hon. The Financial Secretary, notifying him  
of -

20

(a) the re-appointment of the Deputy  
Financial Secretary and Mr. Gobin Biragie as  
Members of the Corporation;

(b) the appointment of Mr. Andrew H. James  
as a Member and Deputy Chairman of the Corpora-  
tion;

(c) the appointments of Mr. Peter Andersen,  
Mr. Joseph Jardim, Mr. Ivan Remington, Mr.  
Oswald H. Fisher, Mr. Jacob Bowman and Mr.  
Muntax Ali, as Members of the Corporation;

30

and that the re-appointment and appointments

were for 2 years beginning 26th September, 1960.

He welcomed the new Members and expressed the hope that they would co-operate with him in carrying out the functions of the Corporation. All members of the Board were present.

2. DECLARATION OF SECRECY:

10 Section 9 of the British Guiana Credit Corporation Ordinance (No. 13 of 1954) was read, and the new Members, Mr. James, Mr. Andersen, Mr. Jardim, Mr. Remington, Mr. Fisher, Mr. Bowman and Mr. Muntaz Ali made the necessary Sworn Declarations before Mr. Herman DeFreitas, Commissioner of Oaths.

The Chairman also directed Members' attention to the provision of Section 10 of Ordinance No. 13 of 1954.

3. CONFIRMATION OF THE MINUTES:

20 The Minutes of the previous meeting held on 22nd September, 1960, were read by the Secretary and were confirmed by the Chairman. It was noted that of the Members present, only Messrs. Moore and Biragie were at the last meeting.

7. At this stage of the proceedings Mr. C.H. Da Silva was granted permission to leave and the Secretary withdrew temporarily.

8. APPOINTMENT OF A GENERAL MANAGER

30 The Chairman read (a) C.H. DaSilva's letter dated 3rd October, 1960, accepting the Board's offer to him of the post of General Manager, and (b) a letter dated 18th October, 1960, from the Financial Secretary intimating that it was the wish of the Governor in Council that the Board re-examine the recommendation made for filling the post of General Manager.

It was unanimously decided that the matter should be considered at a special meeting to be called for the purpose; the date of the special meeting to be fixed when the Board meet on Friday, 4th November, 1960.

40 9. Mr. James asked, and it was agreed, that

Plaintiff's Exhibits

"G1"  
Extract from Minutes of B.G. Credit Corporation. 27th October 1960.

Continued.

Plaintiff's Exhibits

"G1"

Extract from Minutes of B.G. Credit Corporation. 27th October, 1960. Continued.

Members be furnished with (a) an up-to-date statement of the Corporation's financial position; and (b) particulars of the staff, including pay and conditions of service.

Confirmed:

(sgd) J.H. Mc B. Moore

Chairman.

4th November, 1960.

"G2"

Extract from Minutes of B.G. Credit Corporation. 11th November 1960.

"G2"

EXTRACT FROM MINUTES OF B.G. CREDIT CORPORATION

10

BRITISH GUIANA CREDIT CORPORATION

Minutes of the proceedings at a meeting of the Corporation, held at Head Office, 20-21 Water Street, Georgetown, on Friday, 11th November, 1960, commencing at 3.00 p.m.

PRESENT:

Mr. J.H. McB. Moore, O.B.E.	Chairman	
Mr. A.H. James	Deputy Chairman	
Mr. P. Andersen		20
Mr. M. Ali		
Mr. J. Bowman		
Mr. O.H. Fisher		
Mr. J. Jardim		
Mr. I. Remington		
Mr. C.H. DaSilva, Deputy Financial Secretary	Official Member	
with		
Mr. E.S. Douglas, Assistant to the Secretary		30
Mr. L.E. Kranenburg (indisposed)		

ABSENT:

Mr. Gobin Biragie

xx            xx            xx            xx            xx            xx

Plaintiff's Exhibits

2. The Minutes of the previous meeting held on Friday, 4th November, 1960, were confirmed and signed by the Chairman after the following amendments had been made:-

"G2"  
Extract from Minutes of B.G. Credit Corporation. 11th November, 1960.

(a) the insertion of "on 29th October, 1960" between the words "Resources" and "a" in the third line of paragraph 4;

Continued.

10 (b) the substitution of "tractor-bulldozer" for "tractor, bulldozer" in the sixth line of the second sub-paragraph of paragraph 6(b)(3).

3. Matters arising out of the Minutes

(a) .....

(b) The Chairman explained that the particulars about the Staff including pay and conditions of service were not yet ready because of the Secretary's indisposition.

xx            xx            xx            xx            xx            xx

20 9. At this stage of the proceedings Mr. DaSilva was granted permission to leave. The Assistant Secretary also withdrew.

10. Appointment of a General Manager: The matter was considered in terms of the Financial Secretary's letter No. F.S.G.283/55<sup>II</sup> dated 18th October, 1960 (see paragraph 8 of the Minutes of Members meeting, 27th October, 1960).

30 The qualifications, training and experience of all the candidates were reviewed exhaustively by the Board who unanimously agreed that Mr. G.E.Luck, Permanent Secretary, Ministry of Natural Resources, British Guiana, was suitable for the post and should be appointed.

It was decided, however, not to offer Mr. Luck the appointment until the Governor in Council had been informed of the decision and had approved the selection.

Confirmed:  
(sgd) J.H. Mc B. Moore  
Chairman.

40 18th November, 1960.



Plaintiff's Exhibits

"G3"  
 Extract from Minutes of B.G. Credit Corporation.  
 18th November 1960.

*EXTRACT FROM* "G3"  
 X MINUTES OF B.G. CREDIT CORPORATION

BRITISH GUIANA CREDIT CORPORATION

Minutes of the proceedings at a meeting of the Members of the Corporation, held at Head Office 20-21 Water Street, Georgetown, on Friday, 18th November, 1960, commencing at 3 p.m.

-----

PRESENT:

Mr. J.H. Mc B. Moore O.B.E.	Chairman	10
Mr. Andrew H. James	Deputy Chairman	
Mr. P. Andersen		
Mr. Muntaz Ali		
Mr. Jacob Bowman		
Mr. O.H. Fisher		
Mr. Joseph Jardim		
Mr. Ivan Remington		
Mr. Gobin Biragie		
Mr. C.H. Da Silva, Deputy Financial Secretary	Official Member	20
with		
Mr. L.E. Kranenburg, Secretary.		

-----

1. Before dealing with the Minutes of the previous meeting the Secretary not being present - The Chairman informed the Members that he had received from the Deputy Chairman, a draft of a proposed Press Release, copies of which it appeared to him had been circulated to all Members. He pointed out that great care had to be taken in making statements to the Press and he read to them what he considered to be the sort of statement that should be released. This he felt varied in but few respects from what the Deputy Chairman had suggested. 30

A general discussion took place and it was decided that some amendments should be made in the draft release proposed by the Chairman - the Official Member to be consulted in this respect. 40

2. The Minutes: of the previous meeting held on Friday 11th November, 1960, were confirmed and signed by the Chairman, after the following amendments had been made:

Plaintiff's  
Exhibits  
"G3"

Extract from  
Minutes of  
B.G. Credit  
Corporation.  
18th November  
1960.

Continued.

(a) the insertion of the words "to the" between the words "Assistant" and "Secretary", appearing after the words "Mr. E.S. Douglas" in the list of names of the persons present at the meeting;

10 (b) the insertion of the words "attached herewith", between the words "statement" and "for" in the third line of paragraph 8;

(c) the insertion of the word "unanimously" between the words "who" and "Agreed" in the sixth line of paragraph 10; and

(d) the insertion of the word "most" after the word "was" at the end of the seventh line of paragraph 10.

20 Members asked that their appreciation of the early issue to them of copies of the Minutes be recorded.

3. Matters arising out of the Minutes:

xx xx xx xx xx xx

(d) Particulars of Staff and conditions of Service: See paragraph 3(b) of the Minutes: The Secretary explained that the statement should be ready by next meeting.

xx xx xx xx xx xx

30 5. At this stage of the proceedings Mr. Da Silva was granted permission to leave as he had to attend another meeting.

xx xx xx xx xx xx

Confirmed

J.H. McB. Moore.

Chairman

25th November, 1960.

Plaintiff's Exhibits

"M"  
EXTRACT FROM MINUTES OF B.G. CREDIT CORPORATION

"M"  
Extract from Minutes of B.G. Credit Corporation. 25th November 1960.

Minutes of the proceedings at a meeting of the Members of the Corporation, held at Head Office, 20-21, Water Street, Georgetown, on Friday, 25th November, 1960, commencing at 3 p.m.

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XX XX XX XX XX

3. (b) Particulars of Staff and Conditions of Service - see paragraph 3(d) of the Minutes: 10

Copies of the document were distributed to the Members present.

BRITISH GUIANA CREDIT CORPORATION

AUTHORISED ESTABLISHMENT

A. HEAD OFFICE STAFF

	<u>Salary Scale</u>
GENERAL MANAGER	\$11,280: p.a. (fixed)

XX XX XX XX XX 20

Confirmed

J.H. McB. Moore  
Chairman

2nd December 1960.

-----

"H"  
Letter Defendant's Solicitors to Chairman B.G. Credit Corporation. 7th December 1960.

"H"  
LETTER DEFENDANT'S SOLICITORS TO CHAIRMAN, B.G. CREDIT CORPORATION

Chambers,  
"WHITEHALL,"  
2 Croal Street,  
Georgetown.  
LUCKHOO & LUCKHOO  
Legal Practitioners. BRITISH GUIANA.

30

7th December, 1960

The Chairman,  
British Guiana Credit Corporation,  
Incorporated by Ordinance No. 13 of 1954,  
c/o B.G. Mutual Insurance Co., Ltd.,  
Georgetown.

Dear Sir,

We are acting on behalf of Mr. Clement  
Hugh Da Silva of 64 Brickdam relative to the  
following matter.

Plaintiff's  
Exhibits

"H"  
Letter  
Defendant's  
Solicitors  
to Chairman  
B.G. Credit  
Corporation.  
7th December  
1960.

Continued.

10           Following upon an advertisement con-  
taining terms and conditions by the British Guiana  
Credit Corporation published in the daily news-  
papers for the vacant post of General Manager, our  
client on the 24th August, 1960, made application  
offering himself for appointment as General  
Manager.

20           In view of the fact that he was a member  
of the Corporation, our client abstained from  
participating in the consideration of any of the  
applications and indeed withdrew from the meetings  
whenever this item came up for consideration.

On the 26th September, 1960, our client  
received a letter from the British Guiana Credit  
Corporation signed by the Secretary, Mr. L.E.  
Kranenburg, which reads as follows:-

"Dear Sir,

30           With reference to your letter of  
24th August, 1960, applying for the  
vacant post of General Manager of this  
Corporation, I am pleased to inform  
you that at a meeting of the Corpora-  
tion held on Thursday, 22nd September,  
1960, you were selected for the appoint-  
ment on the terms and conditions as  
advertised; and I shall be glad to be  
informed as early as possible, how soon  
you would be able to take up the  
appointment.

40                           L.E. Kranenburg  
Secretary."

On the 3rd October, 1960, our client by  
letter of that date accepted the appointment. He  
intimated that he was seeking a release as early

Plaintiff's Exhibits

as possible from Government to take up the appointment which he had accepted.

"H"  
Letter  
Defendant's  
Solicitors  
to Chairman  
B.G. Credit  
Corporation.  
7th December,  
1960.

On the basis of the offer which had been made by the Corporation and following upon his acceptance our client treated his appointment as being truly made and effected and proceeded to make the necessary arrangements for his early take over as General Manager of the Corporation. Our client wrote to Government seeking permission to retire from the Service as early as possible since he had reached the age where this was his right so to do. His accumulated leave was sufficient to take him to the age of voluntary retirement. He further gave up his own house and rented the same to live with relatives, as the Office of General Manager carried with it a free house to which he proposed to remove. He so organised his domestic affairs to enable him to take over in accordance with his aforementioned acceptance after selection by the Corporation.

10

Continued.

20

Our client as a member of the Corporation received a copy of the minutes of a properly constituted meeting of the Members of the Corporation held on the 22nd September, 1960, and in the said minutes the following appears:-

"3. (iii) Appointment of a General Manager, vice Mr. W.G. Carmichael.

As the secretary was one of the applicants for the position, he withdrew from the meeting while this item was being considered.

30

All applications which had been received as a result of the advertisement published locally and in the West Indies were then carefully considered, and Mr. Clement H. Da Silva, now Deputy Financial Secretary and Official Member of the Board, was chosen for the appointment. It was decided that Mr. Da Silva be notified and Government be advised of the appointment; all the

40

unsuccessful applicants to be notified that the position has been filled."

Plaintiff's Exhibits

These minutes were subsequently confirmed at a meeting of the members of the said Corporation held on the 27th October, 1960.

"H"  
Letter  
Defendant's  
Solicitors  
to Chairman  
B.G. Credit  
Corporation.  
7th December  
1960.

10

Since the letter of offer and the acceptance by our client for the post of General Manager, our client has received no further communication or intimation from the Corporation and it was not until late in November when he received a copy of the minutes of the meeting held on the 11th November, 1960, that for the first time he became aware of efforts to replace him by another person for the post of General Manager.

Continued.

20

It is our client's claim that he is the duly appointed General Manager of the British Guiana Credit Corporation. He is ready and willing to take over and assume the responsibilities of his post within a reasonably short time. If any attempt is made to revoke or cancel the said appointment, our client will have no alternative but to file a Writ immediately in the Supreme Court of this Colony, seeking a declaration that he has been well and truly appointed General Manager of the said Corporation; that he is the de facto and de jure Manager of the said Corporation.

30

Our client will resist any effort or efforts by whomsoever made or wherever made to deprive him of his legal rights and status following his said appointment. We hope that you will have this matter urgently considered by your Board especially having regard to the legal implications and we feel sure that you will be forced to one conclusion and that is, that no other person could properly replace our client as General Manager of the said Corporation in the light of the foregoing.

40

Yours faithfully,  
Luckhoo & Luckhoo.

Plaintiff's Exhibits

"S1"

LETTER C.H. DaSILVA TO SECRETARY  
PUBLIC SERVICE COMMISSION.

"S1"  
Letter  
C.H. Da Silva  
to Secretary  
Public  
Service  
Commission.  
8th December,  
1960.

FINANCE SECRETARIAT,  
Public Buildings,  
Georgetown.

8th December, 1960.

Sir,

With reference to my minute of 16th October addressed to the Financial Secretary informing him of my appointment as General Manager of the British Guiana Credit Corporation and of my proposal to retire from the Service to accept this appointment, I hereby apply for 10 months and 25 days vacation leave due to me which I should like to begin from 19th January 1961, and for permission to retire from the Service at the expiry thereof. I shall be fifty years of age on 12th March, 1961: my birth certificate is attached.

10

20

2. I shall also be glad to receive permission to accept paid employment during my leave as is usual.

I have the honour to be,  
Sir,  
Your obedient servant,

C.H. Da Silva  
Deputy Financial Secretary

The Secretary,  
Public Service Commission (Establishment),  
Georgetown.  
(through Financial Secretary.)

30

"G4"

Extract from  
Minutes of  
B.G. Credit  
Corporation  
9th December  
1960.

"G4"

EXTRACT FROM MINUTES OF B.G. CREDIT  
CORPORATION

BRITISH GUIANA CREDIT CORPORATION

Minutes of the proceedings at a meeting of the Members of the Corporation, held at Head Office, 20-21 Water Street, Georgetown, on Friday, 9th December, 1960, commencing at 3 p.m.

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Plaintiff's Exhibits

"G4"

Extract from Minutes of B.G. Credit Corporation 9th December 1960.

PRESENT:

Mr. J.H. McB. Moore, O.B.E. Chairman  
 Mr. Andrew H. James Deputy Chairman  
 Mr. J. Jardim  
 Mr. P. Andersen  
 10 Mr. M. Ali  
 Mr. J. Bowman  
 Mr. G. Biragie  
 Mr. O.H. Fisher

Continued.

Mr. C.H. DaSilva was absent

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1. Appointment of A General Manager

(a) The Chairman informed the meeting that he had received a letter dated 7th December, 1960, from Luckhoo & Luckhoo, Legal Practitioners acting on behalf of Mr. C.H. Da Silva, intimating  
 20 that it was their client's intention to take action in the Supreme Court of the Colony if the Corporation attempted to revoke or cancel their offer to him of the post of General Manager of the Corporation, which he had already accepted.

After discussion it was unanimously decided that a copy of the letter should be forwarded to the Honourable, the Financial Secretary for his information.

(b) The Chairman also informed Members  
 30 of the receipt by him on his arrival for the meeting, of a letter dated 9th December, 1960, from the acting Permanent Secretary to the Ministry of Trade and Industry enclosing for his advance information a copy of a statement regarding the appointment of Mr. G.E. Luck as General Manager of the Corporation, which the Minister of Trade and Industry intended to release on 10th December, 1960, at his usual Saturday morning Press Conference.

The letter and statement were taken for



Plaintiff's Exhibits

"G4"  
Extract from Minutes of B.G. Credit Corporation 9th December, 1960.

Continued.

notification.

The Secretary joined the meeting during the discussion of the above items and apologised to the Chairman and Members for being half an hour late, owing to his having accepted Government's invitation to be present at the opening of the Legislative Council at 2 p.m.

Mr. Remington also joined the meeting while the above items were under discussion.

2. The Minutes: of the previous meeting held on Friday, 2nd December, 1960, were confirmed and signed by the Chairman. 10

xx xx xx xx xx xx

4. At this stage of the proceedings Mr. James asked permission to withdraw, stating that he was not prepared to consider applications for loans until the new General Manager was appointed and had assumed duty. Permission to withdraw granted by the Chairman.

xx xx xx xx xx xx 20

Confirmed

J.H. McB. Moore.  
Chairman.

6th January, 1961.

"S2"  
Letter Financial Secretary to C.H. Da Silva 12th January, 1961.

"S2"  
LETTER FINANCIAL SECRETARY TO C.H. Da SILVA

FINANCE SECRETARIAT,  
P.O. Box 757,  
Georgetown,  
Demerara,  
BRITISH GUIANA

DED

A  
No. 298 /59 12th January, 1961.

Sir,

I refer to your letter of 8th December

to the Secretary, Public Service Commission, applying for vacation leave and for permission to retire from the Service at the expiry of your leave.

2. I am to inform you that your application for vacation leave of 10 months 25 days has been approved with effect from 16th January, 1961.

10 3. Your application for permission to retire at the expiry of your vacation leave is under consideration and you will be informed of the decision in due course.

I have the honour to be,  
Sir,  
Your obedient servant,

W.P. D'Andrade  
Financial Secretary.

20 Mr. C.H. Da Silva,  
Deputy Financial Secretary,  
Public Buildings,  
GEORGETOWN.

Plaintiff's Exhibits

"S2"  
Letter  
Financial  
Secretary  
to C.H. Da  
Silva.  
12th January,  
1961.

Continued.

"Q"

LETTER FINANCIAL SECRETARY TO C.H.  
Da SILVA

FINANCE SECRETARIAT,  
P.O. Box 757,  
Georgetown, Demerara,  
BRITISH GUIANA.

2nd March, 1961.

ERM. A  
T. 298 /59

30 Sir,

40 With reference to your letter of the 22nd February regarding your application for permission to accept paid employment during your pre-retirement leave, in the absence of a request from you for permission to accept specific employment during this period His Excellency the Governor regrets that he is unable to grant permission as sought by you. If and when however you have employment in view you should seek permission to accept such employment, in which event your request

"Q"

Letter  
Financial  
Secretary to  
C.H. Da Silva

2nd March,  
1961.

Plaintiff's Exhibits

"Q"  
Letter  
Financial  
Secretary  
to C.H. Da  
Silva.  
2nd March,  
1961.  
Continued.

will be sympathetically considered.

I have the honour to be,  
Sir,  
Your obedient servant

??

for Financial Secretary.

Mr. C.H. Da Silva,  
A 181 Barima Avenue,  
Bel Air Park.

"R"  
Letter C.H.  
Da Silva to  
Financial  
Secretary  
9th March,  
1961.

"R"

10

LETTER C.H. Da SILVA TO FINANCIAL  
SECRETARY

A 181 Barima Avenue.

9th March, 1961.

Sir,

Please refer to your letter T.298<sup>A</sup> /59  
of 2nd March.

2. With respect, I thank His Excellency  
the Governor for the sympathetic consideration  
offered to any request I may make when I have  
employment in view. I am aware of the need in  
accordance with section 19 of the Pensions  
Ordinance for specific approval in each case of  
employment by a company.

20

3. -- The work I propose engaging in is the  
part-time secretarial duties in the formation  
of new limited liability companies before they  
are registered, the costing of new manufacturing  
processes and the improvement of systems of  
owner-managed small Business, the valuation of  
securities etc. and weighing and gauging work (I  
am a sworn licensed weigher and gauger). I  
propose to establish my own small office and to  
build up a practice. Already I can receive two  
briefs - one for costing a small catering bus-  
iness and the other for valuing securities of  
an individual.

30

4. This type of work does not relate to the Civil Service. Other skills than those needed in the Civil Service are involved. Like Mr. J.I. Ramphal, retired Commissioner of Labour, whom I have seen practising in the Courts as a lawyer - surely with His Excellency the Governor's permission - I would wish to practise my secretarial profession in the same way.

Plaintiff's Exhibits

"P"

Letter C.H. Da Silva to Financial Secretary 9th March, 1961.  
Continued.

10

I have the honour to be,  
Sir,  
Your obedient servant.

(sgd) C.H. Da Silva.

The Hon. Financial Secretary.

"P"

LETTER FINANCIAL SECRETARY TO  
C.H. DaSILVA

FINANCE SECRETARIAT,  
P.O. Box 757,  
Georgetown, Demerara  
BRITISH GUIANA.

"P"

Letter Financial Secretary to C.H. Da Silva. 24th March, 1961.

20

A  
T 298 /59

24th March, 1961.

Sir,

With reference to your further letter of the 9th March regarding your accepting paid employment during your pre-retirement leave, in the circumstances mentioned therein approval has been given for you to accept paid employment during this period.

30

I have the honour to be,  
Sir,  
Your obedient servant,

??  
for Financial Secretary

Mr. C.H. Da Silva,  
A 181 Barima Avenue,  
Bel Air Park.

Plaintiff's Exhibits

"AA"

LETTER FINANCIAL SECRETARY TO SECRETARY B.G. CREDIT CORPORATION

"AA"  
Letter  
Financial  
Secretary to  
Secretary  
B.G. Credit  
Corporation.  
6th April,  
1961.

FINANCE SECRETARIAT,  
P.O. Box 757,  
Georgetown,  
Demerara,  
BRITISH GUIANA

6th April, 1961.

III

NO. G.360/54

10

Sir,

I have the honour to inform you that Mr. J.H. McB. Moore, O.B.E., and Mr. O.H. Fisher resigned from the Corporation by letters addressed to the Governor's Secretary on the 18th and the 24th of March, 1961, respectively.

I have the honour to be,  
Sir,  
Your obedient servant,

20

??  
for Financial Secretary.

The Secretary,  
B.G. Credit Corporation,  
Brickdam & Boyle Place,  
Georgetown.

"U"

Extract from  
records of  
New Widows  
& Orphans'  
Fund.  
2nd March,  
1962.

"U"

EXTRACT FROM RECORDS OF  
NEW WIDOWS & ORPHANS'  
FUND

30

COPY

Name of	Date of Birth	Date of Joining Fund Death etc.	Date of Marriage.	Plaintiff's Exhibits
Contributor: Da Silva, Clement H.P.	12.3.11	1.10.35		"U" Extract from records of New Widows & Orphans' Fund. 2nd March, 1962. Continued.
10 Wife: Margaret Mary	15.12.14		26.7.47	
Children: Clive Hugh Paul Peter	29.10.48 14. 6.50 6. 6.55			

I hereby certify that the above is a true copy of the records of the New Widows and Orphans' Fund.

R.A. Charles

20

Secretary.

New Widows & Orphans' Fund.  
2.3.62.

ON APPEAL  
FROM THE BRITISH CARIBBEAN COURT OF APPEAL

B E T W E E N :-

BRITISH GUIANA CREDIT CORPORATION  
a body corporate, incorporated by  
Ordinance, No. 13 of 1954 whose  
Office is situate at Lots 20 and  
21 Water Street, Georgetown,  
Demerara (Plaintiffs) Appellants

- and -

CLEMENT HUGH Da SILVA  
(Defendant) Respondent

---

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

---

CHARLES RUSSELL & CO.,  
37 Norfolk Street,  
London W.C.2.

Solicitor for the Appellants.

GOODMAN, DERRICK & CO.,  
30 Bouverie Street,  
Fleet Street,  
London E.C.4.

Solicitor for the Respondent.