COLLINS v County Cork VEC. 1978 1785P

THE HIGH COURT

PATRICK COLLINS

Plaintiff

-and-

COUNTY CORK VOCATIONAL EDUCATION COMMITTEE, MINISTER FOR EDUCATION, MINISTER FOR THE ENVIRONMENT, MINISTER FOR FINANCE, ATTORNEY GENERAL, IRELAND, CORK COUNTY COUNCIL AND ROBERT BUCKLEY

Defendants

Judgment of Mr. Justice Murphy delivered on the 27th day of May 1982.

As originally pleaded this was a claim by the Plaintiff for a declaration that a resolution of the Cork County Vocational Education Committee (C.C.V.E.C.) made on the 20th October 1977 purporting to suspend the Plaintiff from the performance of the duties of his office as headmaster of Mitchelstown Vocational School (otherwise known as the John Sarsfield Casey Memorial Vocational School and hereinafter referred to as "The Mitchelstown School")under Section 7 of the Vocational Education (Amendment) Act 1944 (hereinafter referred to as the "1944 Act") was null and void. The basis of that claim may be summarised by saying that the Plaintiff contended that the C.C.V.E.C. had failed to vindicate the Plaintiff's constitutional rights and, in passing the

resolution aforesaid, had failed to apply the principles of natural or constitutional justice.

Subsequently the Plaintiff dispensed with the services of his Solicitors and Counsel and drafted himself the further pleadings and conducted the case on his own behalf. Pursuant to the Order of the Court the Ministers for Education, the Environment and Finance as well as the Attorney General, Ireland, Cork County Council and Robert Buckley were added as Defendants. The Plenary Summons and the Statement of Claim were amended and the ambit of the claim extended. The issues raised by the pleadings may be summarised as follows:-

1. (a) Whether a Mr. Niall O'Donoghue was disqualified from holding office as a member of the C.C.V.E.C.

(b) Whether the Cork County Council in electing, or the Minister for the Environment in permitting the election, of a disqualified person as a member of the C.C.V.E.C. had acted wrongfully or in breach of any statutory or constitutional duty.

(c) Whether the election of a disqualified person to the Committee invalidated all or any of the acts of the C.C.V.E.C.

2. Whether the decision of the C.C.V.E.C. made on the 20th of October 1977 to suspend the Plaintiff was null and void by reason of:-

   (a) The failure of the C.C.V.E.C. in reaching their decision to comply with the rules of natural or constitutional justice or,

   (b) the C.C.V.E.C. included amongst its membership a person or persons who was or were prejudiced against the Plaintiff.

3. Whether the decision by the C.C.V.E.C. to suspend the Plaintiff was the result of a wrongful conspiracy between the Defendants or one or more of them.

4. (a) Whether the Minister for Education was bound to hold an enquiry into the purported suspicion of the Plaintiff "as soon as conveniently may be after the date of the suspension."

   (b) If so whether the Minister failed to discharge that duty.

5. Whether the Defendants or any of them wrongfully permitted monies properly under the control of the State to be misapplied to or by the C.C.V.E.C. or any purported sub-committee thereof.

6. The damages (if any) to which the Plaintiff is entitled as a

result of any wrong-doing suffered by him.

It was not contended by the Plaintiff that any of the legislation governing the operation of the C.C.V.E.C. or the removal of any officer or employee thereof was unconstitutional.

In addition it was agreed by all parties that any question of damages should be postponed until the issue of liability had been determined.

The Plaintiff had served the C.C.V.E.C. as a teacher since 1939. He became headmaster of Castletownbere Vocational School in 1947. He was promoted to headmaster of Coachford Vocational School in 1952 and his appointment as headmaster of Mitchelstown School commenced in October 1956. Apparently the Mitchelstown School had been built in 1952. At the time of the Plaintiff's appointment as headmaster the school consisted of some five classrooms; six teachers and about eighty pupils. By 1974 the school had grown to one consisting of some twenty-seven classrooms; thirty one teachers and five hundred and twenty four pupils. All of the evidence indicated that the school had developed very successfully under the guidance of the Plaintiff between 1956 and 1974. In that period it achieved an excellent reputation both for its academic attainments and the appointments obtained by its graduates.

The substantial contribution made by the Plaintiff as headmaster during that period was fully and fairly acknowledged by Mr. Robert Buckley the Chief Executive Officer of the C.C.V.E.C. in the course of the evidence given by him.

Mr. Robert Buckley, (to whom I shall refer as the C.E.O.) who is the eighthly named Defendant, had been appointed Chief Executive Officer in October 1973. In 1974, subsequent to the local elections of that year, the new Vocational Education Committee was elected for the Cork County area. The Cork County Council purported to elect, as a member of the C.C.V.E.C., Mr. Niall A. O'Donoghue who was at that time a teacher at the Mitchelstown School.

In 1974 there commenced a series of disputes between the Plaintiff and other teachers at the Mitchelstown School. These disputes were subsequently reflected in complaints made by the Plaintiff to the C.E.O. and recorded in voluminous correspondence passing between the Plaintiff and the C.E.O. and other interested parties. In turn these complaints and other issues arising from them were the subject matter of numerous discussions and meetings involving the C.C.V.E.C. and various sub-committees of that body; the Teachers Union of Ireland (the T.U.I.), the Department of Education and its officers. This correspondence and the minutes recording the decisions taken at various meetings of the

numerous committees involved were explored in detail in the hearing before me.

It appears that the breakdown in the good relationships which had previously existed had its origin in a circular issued by the Minister for Education on the 15th July, 1974 in which he recommended that ever Vocational Education Committee should avail itself of the powers conferred on it by Section 21 of the Vocational Education Act 1930 (th 1930 Act) to set up a sub-committee in respect of every Vocational School in its scheme which sub-committee would act as a board of management of that school. Whilst the circular from the Minister was merely advisory the memorandum annexed thereto set out detailed provisions with regard to the composition of such boards if and when set up. In particular the memorandum expressly provided as follows:-

"No person employed for the purposes of the school shall be a member of the board of the school."

Notwithstanding that provision the C.E.O. informed the Plaintiff by letter dated the 23rd October, 1974 that the C.C.V.E.C. had approve of a proposal that teachers should be represented on the boards of management and requested the Plaintiff to make immediate arrangements with his teaching staff for the nomination of one teacher to the school board. At the same time Mr. William Murphy a teacher in Mitchelstown School received a letter dated the 25th October, 1974 in his capacity

as T.U.I. representative in the school from a Mr. Sean Cooney the Branch Secretary of the union requesting him, Mr. Murphy, to hold a T.U.I. meeting at the school for the purpose of electing a teacher representative to the board. Subsequently on the 28th October, 1974, Mr. Cooney informed Mr. Murphy that the teacher representative must be a member of the T.U.I. and furthermore that it was the function of the T.U.I. within the school to elect the member and the duty of the school representative (Mr. Murphy) to call the meeting and preside thereat.

There was, therfore, a clear conflict between the views of the C.E.O. and those of the T.U.I. as to how the meeting to elect a teacher representative should be convened and held. As it turned out the Plaintiff convened the meeting of teachers for the 18th November, 1974 and presided at it. At that meeting a Mr. O'Neill was elected as the teacher's representative on the school board. It is the Plaintiff's contention that the T.U.I. were frustrated by him in their efforts to achieve what he contended was an illegal representation on the school board and from that point onwards that the union adopted a hostile attitude to him.

The Murphy Dispute.

Mr. William Murphy, who had been in conflict with the Plaintiff as

a result of the disagreement as to the procedure to be adopted in electing teacher representation to the school board, wrote two letters to the Plaintiff on the 30th November, 1974. In these letters he informed the Plaintiff that at meetings of the T.U.I. members of Mitchelstown school resolutions had been passed one of which recorded the objection of the members of the T.U.I. to the manner in which he Mr. Murphy had been publicly insulted by the Plaintiff and calling for an apology from Mr. Collins for his action. The second resolution resolved that the Plaintiff be informed that the teaching staff were of opinion that there had been a definite lack of courtesy in the manner in which staff administration relations had been conducted on a number of occasions.

Apparently this complaint related to the attitude adopted by the Plaintiff at a meeting of the teaching staff which had been held earlier. Mr. Murphy had protested at the short notice given of the meeting and the Plaintiff had explained that it was not union business that he the Plaintiff was not prepared to take instructions from a teacher who was only one year at the school. This is the point from which, Mr. Collins contends, the whole tone of the school changed.

In any event Mr. Collins made it clear that he did not apologise and that he would not apologise and that in fact he had nothing to apologise for. He did have a meeting with Mr. Murphy some weeks after the 30th November, 1974 and made it quite clear that he had nothing for which to apologise.

The Plaintiff forwarded the letters of complaint to the C.E.O. and at the end of January, 1975 asked what action was being taken in relation to the matter. By letter dated the 6th February, 1975 the C.E.O. indicated that he would take up the matter with Mr. Murphy on his next visit to Mitchelstown.

On the 19th February, 1975, Mr. Murphy repeated the demand of the members of the T.U.I. at Mitchelstown School for an apology.

On the 22nd February 1975 Mr. O'Donoghue directed an appeal in the form of a letter to his fellow teachers and to the Plaintiff for an improvement in relations between the staff. On its face that letter would appear to be a sincere and well balanced attempt to secure some improvement in the situation. However the Plaintiff dismissed it as a ploy on the part of Mr. O'Donoghue. His attitude with regard to that letter was that it was a repetition of alleged grievances with a view to creating problems where none existed.

On the 25th March, 1975 a letter was sent to the C.E.O. signed by some twenty teachers at Mitchelstown School - including Mr. William Murphy and Mr. Niall O'Donoghue,-calling upon the C.E.O. to convene a meeting at the school for the purpose of discussing staff administration relations in the school and requesting the C.E.O. to invite the headmaster to attend. It is not without significance that the C.E.O. replied to the staff on the 11th April, 1975 informing them that all meetings must be arranged through the headmaster. This is indicative of the support which the C.E.O. was giving to the Plaintiff at that time.

By letter dated the 9th May, 1975 the Plaintiff requested the C.E.O. to write to each of the 20 teachers who had signed the letter of the 25th March 1975 requesting each of them to state in writing their personal grievance or dissatisfaction concerning staff/administration relations in the school on or before the 19th May. Apparently in response to that request the C.E.O. wrote on the 14th May, 1975 asking the teachers concerned to outline the problems arising out of staff/administration relations in the school. By letter dated the 16th May 1975 Mr. Murphy replied informing the C.E.O. that all matters relative to the grievances must be discussed openly with all union members in the school. The teachers maintained throughout that they would not

individually give particulars of any complaints but would deal with the matter only as a group.

On the 20th May, 1975 the C.E.O. informed Mr. Collins that a committee had been set up to investigate "staff matters". As it will be necessary to consider in some detail the workings of the various committees concerned in investigations from time to time I will pass from that aspect of the matter and continue the history of the "Murphy Dispute".

On the 11th September, 1975 Mr. O'Donoghue wrote to the Plaintiff informing him of a resolution passed by the T.U.I. members of Mitchelstown School recording a decision to withdraw the letters of the 30th November, 1974 (i.e. the letters demanding an apology from the Plaintiff) and the letter of the 19th February, 1975. The Plaintiff forwarded a copy of that letter to the C.E.O. informing him that the contents of the letter were unacceptable to him. Subsequently the C.E.O. informed the Plaintiff that the school staff had withdrawn the letters of the 30th November, 1974, the 19th February, 1975 without any reservation. On the 6th November, 1975 the Plaintiff sought by letter of the 7th November, 1975 to obtain from Mr. Buckley a copy of a letter from Mr. O'Donoghue in which Mr. O'Donoghue said that the school committee of the T.U.I. were of opinion that there were no conditions attached to the withdrawal of the letters of the 30th

November, 1974 or 19th February, 1975 and that those letters were withdrawn unconditionally. In subsequent correspondence Mr. Collins made it clear to Mr. Buckley that he was still not satisfied that the withdrawal was complete, satisfactory or without qualification.

By letter dated the 5th February, 1976 Mr. O'Donoghue - again at the instigation of the C.E.O. - confirmed that the letters of the 30th November, 1974 and 19th February, 1975 had been withdrawn unconditionally. This did not satisfy the Plaintiff who pressed for a withdrawal from each of the teachers involved.

Mr. O'Donoghue's absence from duty.

On the 18th March, 1975 the Plaintiff wrote to the C.E.O. protesting against Mr. O'Donoghue absenting himself from duty in order to attend a headmasters meeting without giving prior notice to the Plaintiff. This topic was the subject matter of correspondence between the Plaintiff and the C.E.O. and Mr. O'Donoghue. The Plaintiff insisted that he was entitled to receive - and did ultimately receive - from the C.E.O. copies of all correspondence that were passed between the C.E.O. and Mr. O'Donoghue in relation to the complaint.

The O'Sullivan Complaint:

On the 3rd June, 1975 the Plaintiff wrote to the C.E.O. complaining

of the behaviour and attitude of Mr. Michael O'Sullivan a teacher at Mitchelstown School. The Plaintiff claims that on three specific occasions the behaviour of Mr. O'Sullivan had been intolerable and that on one occasion he had threatened the Plaintiff with physical violence. On the two other occasions the teacher had failed to obey specific instructions.

Apparently Mr. O'Sullivan was afforded an opportunity of withdrawing accusations which he had made but neglected to do so and in those circumstances the Plaintiff "reactivated" his original complaint by letter dated the 22nd October, 1975 addressed to the C.E.O.

In November/December 1975 the Plaintiff amplified the complaints which he had against Mr. Michael O'Sullivan - who was by that stage the school representative of the T.U.I. - and on the 28th January, 1976 requested the C.E.O. to place the matter before the next meeting of the C.C.V.E.C. In his reply of the 29th January 1976 the C.E.O. declined to accede to that request.

In February 1976 the Plaintiff placed the matter of the complaint against Mr. O'Sullivan in the hands of his solicitors Messrs Eugene P. Finn who wrote on the 2nd February 1976 insisting that the complaint be referred for investigation to the C.C.V.E.C.

On the 5th February, 1976 the C.E.O. assured the Plaintiff's then

solicitors that the matter would be referred for investigation to the committee.

On the 26th May, 1976 the Plaintiff complained further of the conduct of Mr. O'Sullivan saying that he had disobeyed a specific instruction which he the Plaintiff had given to Mr. O'Sullivan concerning remaining in the school after official closing time at 5.30 p.m.

School Statistics.

On the 4th June, 1975 the Department of Education issued a directive to the Chief Executive Officer of each Vocational Education Committee explaining that there was no change in the then existing procedures for the filling in of the day school registers in use in Vocational Schools and Colleges and that those procedures should continue to be followed in full.

Nevertheless on the 9th June, 1975 the T.U.I. issued a directive to their members unequivocally directing them not to complete school registers except for the marking of the students present and the total of those present for each day and that notwithstanding the letter from the Department dated the 4th June, 1975 which was expressly adverted to in the T.U.I. circular.

On the 9th June, 1975 the Plaintiff referred these conflicting directives to the C.E.O. On the 10th February 1976 the Plaintiff wrote

further to the C.E.O. about the matter complaining that the completion of the registers was part of the duties assigned to two teachers, namely, Mr. O'Donoghue and Mrs. Pyne each of whom stated that they had not completed the registers because of the directive issued by the T.U.I. Apparently the information ordinarily contained in those registers was required for the purposes of completing a questionnaire sent by the Department of Education to the Plaintiff on the 5th February, 1976. That questionnaire was forwarded to the C.E.O. at his request and subsequently sent by him to Mr. O'Donoghue on the 13th April, 1976 with a request to complete the same. The information required by the questionnaire was ultimately provided.

Appointment of Miss O'Donoghue.

On the 7th November, 1975 the Plaintiff wrote to the Minister for Education querying the validity of the appointment of a Miss O'Donoghue to a teaching post in the Mitchelstown School. The Plaintiff drew the Minister's attention to the minutes of a meeting of the C.C.V.E.C. of September 1975 from which it appeared that Miss O'Donoghue had not been recommended by the interview board. After some delay and a number of reminders from the Plaintiff the Minister on the 21st March, 1976 confirmed that Miss O'Donoghue had been validly

appointed. On the 9th April, 1976 the Plaintiff repeated his complaint to the Minister to the effect that Miss O'Donoghue was not eligible for appointment as she had not been recommended by the interview board and there were other suitable candidates available. On the 23rd June, 1976 the Minister explained that a statement contained in the C.E.O.'s letter of 14th July, 1975 to the effect that Miss O'Donoghue had not been recommended by the interview board was incorrect and that she had in fact been so recommended and that accordingly the appointment was in order and duly sanctioned by the Department.

The Coakley Dispute.

In November, 1975 the Plaintiff requested Mr. Coakley a teacher at Mitchelstown School, to take a class to cope with an emergency that had arisen. Even thought taking that class would not have involved Mr. Coakley in more than the agreed maximum teaching hours for the week Mr. Coakley explained that he was unwilling to take the class until he had discussed the matter with his union representative. The Plaintiff sought a directive from the C.E.O. by a letter of the 18th December, 1975 in relation to the attitude adopted by Mr. Coakley with regard to that problem.

In December, 1975 the headmaster complained that Mr. Coakley had written to certain commercial establishments seeking their support

for a social function organised by the Teachers Union of Ireland for the 7th December, 1975 purporting to act as the organising secretary of the "Vocational School Staff" Mitchelstown without the authority of the C.C.V.E.C., the Plaintiff or a majority of the teachers at the Mitchelstown School.

On the 26th February, 1976 the Plaintiff repeated his request to the C.E.O. for a directive in regard to the conduct of Mr. Coakley.

By letter dated the 13th May, 1976 the Plaintiff reported to the C.E.O. that he had heard much noise and laughter emanating from a classroom where Mr. Coakley was teaching and that Mr. Coakley stated that he was in fact doing psychology and IQ tests with the class. Mr. Collins complained that Mr. Coakley had no qualifications in psychology or IQ testing and sought the authority of the C.E.O. to direct Mr. Coakley to adhere to his subjects as per his timetable.

In September, 1976 the Plaintiff informed the C.E.O. that the services of Mr. Coakley were not longer required as a Rural Science teacher but the C.E.O. advised the Plaintiff by letter of the 20th September, 1976 to allocate teaching hours to Mr. Coakley. In his reply dated the 21st September, 1976 the Plaintiff maintained that the transferring of Mr. Coakley to another school was the problem of the C.E.O. and that Mr. Coakley was in fact supernumerary.

By letter of the 23rd September 1976 Mr. Collins confirmed that he was unwilling to release a Mrs. Hennessy who had been employed subsequent to Mr. Coakley, rather than make Mr. Coakley redundant. However by a letter of the 24th of September 1976 the C.E.O. informed the Plaintiff that he had advised Mrs. Hennessy that she would be assigned to another school and that the Plaintiff's proposal to release Mr. Coakley was unacceptable.

Miscellaneous Complaints.

In addition to the foregoing matters some measure of controversy was also raised in relation to disputes or proposals in relation to the installation of a coin box telephone; the teaching of Irish and the teaching of Religious Knowledge by Clergy rather than lay teachers. Furthermore in relation to all of the communications it is significant to note the tone of the correspondence and the detailed particulars which the Plaintiff thought it necessary to obtain and the specific assurances and guidance which he sought in relation to the issues which arose.

The Investigations.

On the 9th of May 1975 the Plaintiff requested the C.E.O. to obtain a statement in writing from each of the twenty teachers who had

signed the round robin, of his or her personal grievances or dissatisfactions concerning staff - administration relations in the school.

On the 14th May 1975 the C.E.O. wrote to each of the teachers concerned requesting an outline of any problems so arising.

On the 20th May 1975 the C.E.O. informed Mr. Collins that a sub-committee had been set up to investigate staff matters. That sub-committee consisted of Mr. T.D.Burke, Canon Rea, Canon O'Sullivan and Monsignor Ronayne. In fact it would appear that this committee had been set up originally by the C.C.V.E.C. pursuant to a resolution passed on the 20th of February 1975 for the purpose of carrying out certain investigations at schools in Dunmanway and Bandon. Arrangements were made for this sub-committee to visit Mitchelstown School on the 6th of June 1975. The teachers concerned and the Plaintiff were invited to be present at the meeting of the sub-committee on that date.

On the 15th of June 1975 the sub-committee was informed that the teachers concerned would co-operate with the sub-committee only on the basis that the matters in issue would be discussed openly with all union members in the school. Apparently the T.U.I. were unwilling to permit individual teachers to be interviewed or express any grievances

which they might have individually.

On the 6th of June the sub-committee interviewed all twenty teachers concerned and a detailed summary of the questions submitted to the teachers and their answers to them was forwarded to the Plaintif on the 17th of June 1975. The Plaintiff immediately replied to the C.E.O. expressing his dissatisfaction with the document furnished to him maintaining that it was not a report and that what he required and was entitled to was a verbatim account of what took place at the meetin

Apparently the Plaintiff became aware that the sub-committee intended to hold a further meeting at the Silver Springs Hotel on the 1st of July 1975 and accordingly wrote on the 26th of June, 1975 to Canon O'Sullivan - a member of the sub-committed - requesting the opportunity of attending at that meeting for the purpose of providing further information. By letter of the 27th of June, 1975 Canon O'Sullivan acceded to that request and the Plaintiff did in fact attend at the meeting on that date.

Subsequently the Plaintiff was requested to attend at a further meeting of the sub-committee on the 9th of July, 1975 at New Jurys Hotel, Cork.

On the 11th of July, 1975 the C.E.O. furnished the Plaintiff with the verbatim account which he had sought of the meeting or

interviews held by the sub-committee with the staff on the 6th of June, 1975.

What the original report and the verbatim account show is that the teachers were unwilling to give any information whatever in relation to any dispute or difference in the school or any problem with regard to staff relationships. Indeed the Plaintiff draws attention to the statement attributed to Canon Rea in the terms "we still haven't got a single problem."

It seems that the teachers were taking the stand that they would not provide the information as the T.U.I. had directed them not to provide any information by that procedure. Whatever the justification or strategy involved in that decision it would seem that it was an extraordinarily unhelpful attitude to adopt. In fact one of the few teachers to make any specific comment was Mr. Coakley who when asked whether he had any particular problems answered "no".

On the 7th of January, 1976 the Plaintiff wrote to the C.E.O. seeking confirmation that the sub-committee aforesaid "was a properly constituted and officially appointed body." He went on to refer back to his own letter of the 26th of May, 1975 where he had sought a disciplinary committee and enquired "was the committee which visited

us on the 6th of May, 1975 a disciplinary committee? if not, kindly specify its correct designation."

In his reply of the 12th of January, 1976 the C.E.O. confirmed that that sub-committee was properly constituted and appointed on the 20th of February 1975 for the purpose of investigating problems arising from time to time in various schools. He went on to explain the term "disciplinary committee" had not been used in recent times and that the investigating committee did the work of enquiring into any problems that arose.

It is true that the minute of the 20th of February, 1975 did not in terms give to the sub-committee a roving commission to investigate problems as and when they arose but I am satisfied that the sub-committee which consisted exclusively of members of the C.C.V.E.C. acted with the full knowledge and approval of the main committee. On the 23rd of February, 1976 the C.E.O. wrote to the Plaintiff stating that the C.C.V.E.C. at a meeting on the 19th of February, 1976 had considered a report from the sub-committee and adopted the same. A copy of that report was furnished to the Plaintiff. The C.E.O. in his letter went on to state that the further complaint in relation to Mr. Michael O'Sullivan - which had in fact been placed on the agenda of the

sub-committee in July 1975 - was being referred back to the Mitchelstown School Board of Management for consideration by it.

The report of the sub-committee made it clear that they were dealing with what I have described as "the Murphy dispute". It noted that the letters demanding apology had been withdrawn and that one teacher - no doubt Mr. Murphy - had been transferred to another school. In those circumstances the sub-committee firmly recommended that the matter should be closed forthwith and that there should be no further discussion of it. At the same time the sub-committee recognised the time taken up with the investigation and indeed the need for harmonious relationships in the day to day running of the Mitchelstown School which was acknowledged as being one of the best in the county.

It is difficult to find any possible fault with that report. Indeed it would seem not merely unnecessary but undesirable for the parties concerned to enter into an academic debate on a dispute which appeared to have been so satisfactorily resolved. The Plaintiff contends that the report of the sub-committee was not in fact adopted by the C.C.V.E.C. at their meeting in Skibbereen on the 19th of February, 1976. Undoubtedly there is some ambiguity to say the least of it in the record of that meeting as to the intentions of the members present. The adoption of the report was proposed and some discussion arose on it

and at least one member present expressed certain misgivings. When they had been allayed to some extent the C.E.O. raised the point of further problems that had arisen with regard to what I have described as "the O'Sullivan complaint" and there was then a decision to refer the matters back to the board of management. The interpretation of the written record may in fact support the Plaintiff's contention on this point but I have no doubt at all but that the C.E.O. was bona fide in the statements which he made in his letter to the Plaintiff as to what the main committee had decided and I believe it is probable that his interpretation as stated in that letter more correctly represented the views of the main committee than did the minutes themselves. In any event I do not see that there is any great significance to be attached to whether or not the report was in fact approved formally by the main committee.

The Union Investigation

The Plaintiff in his capacity as a member of the T.U.I. envoked the assistance of his Union in September 1975. The Union set up a special sub-committee consisting of Messrs. McCarthy, O'Mathuna, Lysaght and Aherne to seek information in relation to the matter.

That sub-committee prepared a report which was forwarded to the

Plaintiff on the 14th of January 1976. In summary the report held that Mr. Murphy was fully justified in the attitude which he had adopted in relation to "the Murphy dispute" and not only critized the Plaintiff with regard to his handling of that matter but found that the particular incident was symtomatic of "the unfortunate atmosphere which existed within the school." The report went on to state, among other things, that the majority of the staff in the Mitchelstown School were in fear of the headmaster.

The Plaintiff in his evidence made it clear that he had declined to take any part in the investigations by the union's sub-committee even though they had been initiated as a result of his intervention.

Investigation by the Board of Management.

In accordance with the decision of the C.C.V.E.C. the O'Sullivan dispute was considered by the Board of Management at their meeting of the 27th February 1976 and adjourned for further consideration at a meeting of the 4th of March 1976. The matter was subsequently adjourned from time to time and apparently it was ultimately referred not by the Board of Management itself but by the Reverend Chairman thereof to the joint consultative committee. In any event the C.C.V.E.C. at its meeting of the 29th of April 1976 decided that problems which had arisen in one

of the schools - no doubt Mitchelstown school - should be investigated by the Joint Consultative Committee.

Investigation by Joint Consultative Committee.

In his evidence Mr. Buckley explained that the Joint Consultative Committee had been set up some years earlier to enable discussion to take place between representatives of the C.C.V.E.C. and representatives of the teacchers in relation to matters of common concern. It had not been formally sanctioned by the Minister. It had been assumed that any necessary sanction would be forthcoming.

At a meeting of the Joint Consultative Committee held on the 10th of May 1976 it was proposed by Mr. Kevin McCarthy of the T.U.I. and agreed that a sub-committee consisting of members of the T.U.I. and the V.E.C. should be set up to make a submission in connection with the staff problems in Mitchelstown school.

Investigation by Staff sub-committee.

By a resolution passed on the 20th of May 1976 the C.C.V.E.C. appointed six of its members who represented the committee on the Joint Consultative Committee to investigate all matters relating to staff. These included some but not all of the members of the C.C.V.E.C. who had sat on the original sub-committee who had visited the school on the

6th of June 1975.

In his evidence the Plaintiff drew attention to the fact that the T.U.I. were represented at a number of the meetings of this staff sub-committee. In some - but not all - of the minutes the T.U.I. representatives, who were Messrs McCarthy, Aherne and Lysaght, were described as observers. The Plaintiff contended that these representative were biased against him having regard to the highly critical report prepared by the T.U.I. in which they had participated.

In his evidence the C.E.O. explained that the T.U.I. representatives were permitted to attend as observers when teachers were represented before the committee and whilst they were permitted on occasions to express views that they did not take part in the decision making process of the committee.

Again the Plaintiff contends that the staff sub-committee so constituted was in substance the former Joint Consultative Committee but without the formal right of the T.U.I. representatives to attend coupled with their actual attendance in fact. In the same context the Plaintiff refers to the circumstances under which the new staff sub-committee was set up in pursuance apparently of a proposal made by the T.U.I. that a joint body should investigate the complaints.

Certainly it is clear that at these meetings where the T.U.I. representatives attended statements were made that were very critical of the Plaintiff in the performance of his duties. Many of these statements were made by Mr. Niall O'Donoghue who explained in evidence that as the union representative he was simply passing on complaints that had been made to him and that the particular allegations were not investigated by him and furthermore that he personally bore no ill will towards the Plaintiff. The Plaintiff also drew attention to the fact that the documents produced by the first-named Defendants included two separate records of the meeting of the staff sub-committee held on the 15th December 1976. Mr. Buckley was unable to give a completely satisfactory answer as to how this occurred but he expressed the view that a longer and a shorter set of minutes may have been prepared and that appears to have been the case. Certainly there is no distinction in substance as to the content of either set of minutes though there is a considerable body of details contained in one which is not in the other. As it was not the practice of the sub-commmittee to have the minutes signed by the chairman thereof it is understandable that the error was not detected.

In the summer of 1976 the Plaintiff was informed by the C.E.O. that various complaints which he made were being placed before the staff

sub-committee. In September 1976 the Plaintiff sought and obtained the names of the members of that committee. The C.E.O. advised the Plaintiff of the fact that teachers were being requested to attend before the staff sub-committees in December 1976. The nature of the matters to be discussed with these teachers was the subject matter of further correspondence between the Plaintiff and the C.E.O.

At their meeting on the 27th of January 1977 the staff sub-committee resolved to meet with other teachers in Mitchelstown school and to invite the Plaintiff to attend a meeting of the staff sub-committee to discuss "the whole business."

By letter dated the 1st February 1977 Mr. J. Long an administrative officer attached to the C.C.V.E.C. and apparently the Deputy to the C.E.O. requested the Plaintiff to attend a meeting of the staff sub-committee on the 9th of February 1977. In reply of the 2nd of February 1977 the Plaintiff informed Mr. Long that he could not accept his authority to request the Plaintiff's attendance at the meeting. In passing it may be said that it does seem unfortunate that the Plaintiff felt it necessary to adopt this very technical approach to what seemed a very reasonable communication. In any event a further letter was dispatched on the 3rd of February 1977 over the name of the C.E.O. repeating the request to the Plaintiff to attend the meeting on the 9th of February 1977. Whilst

the Plaintiff attended at the meeting of the 9th of February 1977 he left without discussing any part of the business intended to be discussed thereat. In his evidence he explained that he knew that the Committee had not been properly appointed. First of all it was, he says, the Joint Consultative Committee which was appointed to investigate and not the staff sub-committee and secondly that he had been informed on the telephone by the C.E.O. at an earlier date that the staff sub-committe consisted of a number of persons including a Mr. T.D. Burke. When he arrived at the meeting and found Mr. Burke was not there he enquired as to his absence and it was explained to him that Mr. Burke was not in fact on the Committee. The Plaintiff says that he sought an assurance, and indeed an assurance in writing, that the Committee had been properly and validly constituted. Whilst the chairman assured him that the Committee had been validly constituted this did not satisfy the Plaintiff and he left. In fact the Plaintiff goes further: in the course of his cross-examination he said that all of the people present at the meeting knew it was an illegal Committee and that they sought to deceive him.

If the Plaintiff was informed that the sub-committee consisted of seven persons or included Mr. T.D. Burke - and it is not necessary for me to decide whether he was so informed - this information was

incorrect. I am satisfied that Mr. Burke was not appointed to that committee. Moreover I reject entirely the suggestion that the members of the committee knew or even suspected that they might be illegally constituted or that they were in any way endeavouring to deceive or mislead the Plaintiff.

Subsequently the staff sub-committeee made arrangements to interview further teachers from the Mitchelstown school and furnished a questionnaire to a number of teachers including the vice principal Miss Patricia O'Donnell seeking their views on "the problem of staff relations in Mitchelstown Vocational School." Letters were written on the 28th of February 1977 by Miss O'Donnell and on the 3rd of March 1977 by the Plaintiff to Mr. Buckley asking him to specify the staff problems which had arisen in the school. On the 11th of March the C.E.O. in the course of a letter referring to the Plaintiff's letter of the 3rd March 1977 said "I am to ask you if you are unaware of staff problems which exist in your school."

The Plaintiff complains that no details were ever furnished to him of any allegations made about his conduct either at that stage or indeed at any time before the proceedings were instituted herein. On the other hand it is crystal clear that by March 1977 relationships between various members of the staff and between the teaching staff or some of them and

the administration had deteriorated to such an extent as to affect the proper management of the school and the due performance of its functions.

In March 1977 the staff sub-committee submitted a report to the C.C.V.E.C. which sets out the facts dealing with the various disputes enumerated above. There is no significant difference between the account of those events as provided by the Plaintiff and as set out in the report. The staff sub-committee then proceeded to set out their recommendations in six numbered paragraphs.

On the 24th of March 1977 the report was adopted by the C.C.V.E.C. and a copy thereof was forwarded to the Plaintiff on the 30th of March 1977. In the covering letter the C.E.O. drew the attention of the Plaintiff in particular to the recommendation that regular meetings should be held with the senior staff and requested the Plaintiff to arrang such a meeting and to inform him, the C.E.O., as soon as possible of the arrangements made.

The Plaintiff was extremely critical of the recommendations annexed to the report. He complained that they were based on hear-say and that they were grossly defamatory of him.

The Plaintiff was cross examined by Counsel for the C.C.V.E.C. in detail with regard to his reactions to each of the six recommendations.

He maintained that he was shocked by them. That the recommendations implied that he was placing restrictions on the teachers. That meetings of the nature proposed were unnecessary.:that the teachers were not inhibited in any way. The he was at all times approachable. That meetings would not encourage better staff relations. That in fact meetings were merely the life blood of trade unions. The Plaintiff was particularly concerned by recommendations five and six.

Those recommendations provided as follows:-

5. The sub-committee suspects from the interviews with the teachers that many members of the staff feel they have not adequate freedom to express their personal views or to have their views conveyed on matters concerning the general operation of the school. The sub-committee feels that not only should each teacher have complete freedom to express his views but the headmaster should actively encourage and solicit the views of his staff.

6. The sub-committee recommends that the senior staff members i.e. the headmaster, the vice-principal and the teachers with A posts of responsibility should have regular meetings to discuss and review school policy with the intention of improving the

"efficiency of the school from the administrative and educational point of view. Such meetings would encourage better staff relations by providing an opportunity for discussing school matters by giving senior members a chance of exchanging ideas and putting forward suggestions."

The Plaintiff contended vigorously that the proposal to give to each teacher "complete freedom to express his views" was contrary to the provisions of the Constitution and that he as headmaster could not be party to a proposal which, as he interpreted it, involved conferring a freedom of speech in excess of that provided for by the Constitution. In my view this argument was totally misconceived. In the context in which it was made I could not interpret this recommendation as being anything more than a suggestion that each and every teacher should be free to express his views with regard to matters appertaining to Mitchelstown school fully and freely but of course within the Constitution and the lawsmade thereunder. Furthermore, the only duty cast upon the headmaster was to encourage and solicit the views of his staff. I do not see how the performance of that duty could in any way impinge upon his constitutional rights.

In relation to recommendation number six the Plaintiff again argued vigorously that the requirement to hold meetings - apart from

the fact that such meetings were, in his view, both undesirable and unnecessary - involved a breach of his constitutional right of freedom of association. Again I am unable to find any substance in this argument. Under the conditions of his service the Plaintiff was bound (among other things) "to comply with every lawful order and advice of the committee and the Chief Executive Officer." If the Plaintiff was given a lawful order to attend a meeting with his fellow teachers - and to that extent to associate with them - it seems to me that this is an exercise rather than a deprivation of or interference with the rights conferred by Article 40 (6) (iii).

On the 4th of May 1977 the T.U.I. indicated their intention of instructing their members in the Mitchelstown school "to work to rule as and from the 11th of May 1977 because of their dissatisfaction with the recommendations made by the staff sub-committee and because of the failure of the V.E.C. to implement them." Perhaps the main feature of the "work to rule" was that it involved special restrictions on the T.U.I. members from co-operating with the Plaintiff in his capacity as head-master of the school.

On the 5th of May 1977 the C.E.O. informed the Plaintiff that as he, the Plaintiff, had failed to convene a meeting of the senior staff as directed in the C.E.O.'s earlier letter of the 30th of March that he the

C.E.O. was then calling a meeting to be held in Mitchelstown school on the 9th of May 1977 and informing the Plaintiff that the C.E.O. would attend. The Plaintiff was expressly requested to attend that meeting.

In an important letter dated the 6th of May 1977 the Plaintiff set out his reasons for refusing to accept the recommendations of the staff sub-committee and went on to say that he intended to institute legal proceedings to set aside the report and recommendations and that in the circumstances he could not accede to the request to attend the proposed meeting on the 9th of May 1977.

On the 9th of May the C.E.O. expressly directed the Plaintiff to attend the proposed meeting later on that date.

The period subsequent to the recommendations of the staff sub-committee.

On the 12th of May 1977 Mr. O'Donoghue as school representative of the T.U.I. gave formal notice of the work to rule to the teachers concerned and pointed out that any member of the T.U.I. ignoring or deviating from the directives of the T.U.I. must suffer the serious consequences of his action.

On the 18th of May 1977 the Plaintiff brought this letter to the attention of the C.E.O. and stated that he was worried concerning

the personal safety of the teachers to whom it was addressed. He asked the C.E.O. to place the matter before the meeting of the C.C.V.E.C. in Kinsale on Friday the 20th May. The Plaintiff complains that this was not in fact done.

On the 19th of May 1977 the Secretary of the Department of Education, Mr. Dominic O'Leary, called on the Plaintiff and offered his assistance in resolving the difficulties at Mitchelstown School. In a letter of the 21st of May 1977 to the Plaintiff he confirmed his proposal that there should be an informal visit by an Inspector of the Department to the school to see if any basis could be found for an amicable arrangement.

Again it is indicative of the attitude that the Plaintiff was adopting that when Miss Mary Murphy, who is described as the Personnel Officer in the C.C.V.E.C., acknowledged a letter from the Plaintiff to the C.E.O. dated the 14th June 1977, the Plaintiff promptly wrote to Miss Murphy stating that he had neither a recollection nor a record of any correspondence with her but that he had in fact written to the C.E.O. and was still awaiting a reply. Accordingly, Miss Murphy wrote again on the 22nd of June confirming that the C.E.O. had asked her to acknowledge the receipt of the letters addressed to him.

On the 29th of July 1977 the C.E.O. declined to provide the

Plaintiff with a copy of any minutes of meetings at the C.C.V.E.C.

On the 1st of September 1977 the Mitchelstown School was due to re-open after the summer vacation. As the teaching staff did not co-operate with the headmaster on that occasion having regard to the continuation of the work to rule the Plaintiff decided that there should be no school on that date and advised the pupils to go home and inform their parents. It was a matter of contention whether the Plaintiff should have taken that course or not. Whilst it is not necessary for me to decide that issue I think it must be recognised he was unquestionabl placed in certain difficulties as a result of the industrial action taking place.

On the 6th of September 1977 the C.E.O. once more requested the Plaintiff to convene a meeting of the staff at which he the C.E.O. would attend. In his letter the C.E.O. indicated the items which he wished to have included on the Agenda.

By letter of the 7th of September 1977 the C.E.O. requested the Plaintiff to arrange a meeting of the Principal, Vice-Principal and four Grade A posts of responsibility holders in Mitchelstown School for Monday the 12th September 1977 and again indicated the items to be included in the Agenda.

On the 8th of September the Plaintiff notified the C.E.O. that he the Plaintiff was unable to arrange the proposed meeting with the senior staff.

On the 14th of September 1977 Canon Garrett, who gave evidence on behalf of the C.C.V.E.C. and who was a member of that Committee, wrote to the Plaintiff confirming a conversation which they had had earlier on the telephone. The Plaintiff attaches significance to the fact that certain complaints made by him were not properly put before the Committee. In his letter Canon Garrett indicated the documentation which had been submitted to him and confirmed that letters from the Plaintiff to the C.E.O. were not read in full to Committee meetings. He explained that this was true in the case of correspondence from other sources. He indicated that the procedure was that the main points were raised and that the full documentation was available to the members of the sub-committee. I do not see how the Plaintiff could have any quarrel with that procedure and indeed his complaint in this connection seems to me negatived by the fact that the particular letter and earlier correspondence with other members of the C.C.V.E.C. indicates clearly how readily these members made themselves available to the Plaintiff and indeed their willingness to discuss any issue which he sought to raise.

On the 26th of September 1977 the C.E.O. wrote to the Plaintiff informing him that a meeting of the staff sub-committee had been arranged for Friday the 30th September 1977 at 11 o'clock in the County Hall, Cork, to discuss with the Plaintiff the staff problems which had arisen at Mitchelstown School and requesting the Plaintiff to attend at that meeting. By letter dated the 28th of September 1977 the Plaintiff declined to attend the proposed meeting and went on to say that what he described as "the deplorable and disastrous situation in the school" arose from the implementation of the work to rule enforced by the T.U.I. and that he the Plaintiff had no wish to be drawn into that dispute which he contended was not of his making. It was he said, a dispute between the V.E.C. and the T.U.I. Accordingly the Plaintiff explained that he could not accede to the request to attend the meeting.

On the 5th of October 1977 the Plaintiff wrote to the C.E.O. seeking particulars of complaints made by the teachers and contending that as headmaster he was entitled to be informed of all such complaints. The complaints made by the teachers were not in fact furnished to the Plaintiff. On the 30th September 1977 the staff sub-committee decided to hold a special meeting of the C.C.V.E.C. at which a history of the case would be given and certain recommendations put before it.

At the meeting of the C.C.V.E.C. held on the 6th of October 1977 the staff sub-committee presented a report which set out the history of the matter.

The report among other things contained a reference to a letter from the Department of Education dated the 5th of August 1977 which included the following advice:-

> "Your Committee will be aware of the provisions of Section 7 of the Vocational Education (Amendment) Act, 1944 and it is the Department's opinion that the Committee should take into consideration the question of exercising the power conferred on it by that Section if it is satisfied that there is sufficient evidence at its disposal to warrant such a course."

The report also set out in detail the failure of the headmaster to convene the meeting of the senior staff of the school as requested in the C.E.O.'s letter of the 7th of September 1977. The report concluded that in their opinion the headmaster over the past few years had become progressively unco-operative. The staff sub-committee recommended.

> "that the C.C.V.E.C., through the C.E.O. should issue a strict order to the headmaster to carry out the recommendations

contained in the report of the staff sub-committee adopted at the meeting of the committee held on the 24th of March 1977."

and went on:-

"The C.C.V.E.C. should direct the C.E.O. to immediately issue to the headmaster a warning similar to that suggested in the Department's letter of the 5th August 1977."

The C.C.V.E.C. unanimously agreed to adopt the report of the staff sub-committee and directed the C.E.O. to issue a strict order to the headmaster to carry out the recommendations contained in the report of the staff sub-committee adopted at the meeting of the committee held on the 24th of March 1977 with a warning similar to that suggested in the Department's letter of the 5th of August 1977 of the consequences of his failing to do so.

In pursuance of that decision the C.E.O. wrote to the Plaintiff on the 7th of October 1977 referring to the decision of the C.C.V.E.C. and stating that he had been directed to issue to the Plaintiff a strict order that he the Plaintiff was to carry out the recommendations adopted by the C.C.V.E.C. at its meeting of the 24th of March 1977 a copy of which was then enclosed. In particular the Plaintiff was once again directed to convene a meeting of the Principal, Vice-Principal and A post

responsibility holders on the 13th of October 1977. The letter went on to indicate the items which the C.E.O. wished to have included in the Agenda and expressly warned the Plaintiff that should he refuse to co-operate with the staff sub-committee and C.E.O. in the matter "the committee will take whatever action it deems appropriate without further notice." That letter was sent by registered post to the Plaintiff and acknowledged by him on the 10th of October 1977. In the course of his acknowledgment the Plaintiff sought a copy of the report to the C.C.V.E.C.; a copy of the order which the C.C.V.E.C. had directed the C.E.O. to issue to the Plaintiff and a copy of the official warning which the C.C.V.E.C. had directed the C.E.O. to issue.

On the 14th of October 1977 the C.E.O. wrote declining to furnish a copy of the report to the staff sub-committee and explained that the order and official warning of the C.C.V.E.C. was as contained in his letter of the 7th October.

When the Plaintiff neglected to convene a meeting of the senior staff of Mitchelstown School the, C.E.O. arranged the same for the 18th of October 1977 and notified the Plaintiff of the meeting by a further letter of the 14th October. That letter too was acknowledged by the Plaintiff on the 17th October 1977 who explained that he could not attend

at the meeting and again referred the C.E.O. to his, the Plaintiff's letter, of the 6th of May 1977.

In the meantime the T.U.I. had on the 10th October 1977 called off the work to rule.

On the 20th October 1977 the C.E.O. reported to the C.C.V.E.C. on his correspondence with the Plaintiff and of the refusal of the Plaintiff to convene the meeting as directed by reference to the reasons set out in the Plaintiff's previous letter of the 6th of May 1977. The C.E.O. expressed his personal opinion that the Plaintiff was then failing to perform satisfactorily the duties of his office and recommended his suspension. The C.C.V.E.C. then unanimously resolved:-

> "That Mr. Patrick Collins should be suspended under Section 7 of the Vocational Education (Amendment) Act, 1944 from the peformance of the duties of this office such suspension to take effect immediately."

It was further decided to invite the Vice-Principal to act as Principal but only on terms that she would provide a written guaranteethat she would co-operate fully with the Committee. As events turned out that undertaking was not forthcoming and Mr. O'Sullivan who was - according to the evidence of Mr. Buckley - the

next senior teacher was offered and accepted the post of acting Principal. He subsequently retired and the position of acting Principal was conferred on Mr. O'Donoghue.

On the 20th of October 1977 the Plaintiff was notified by Registered Post of his suspension and on the 21st of October the Plaintiff had a meeting with the C.E.O. at which he requested the C.E.O. to write down the comments which he was then making. The C.E.O. declined and the Plaintiff then recorded his statement to the effect that the suspension was unlawful.

On the 9th November 1977, Messrs Dermot G. O'Donovan & Co:, Solicitors wrote on behalf of the Plaintiff informing the C.E.O. that they had been instructed to institute proceedings and at the same time sought particulars of the grounds of the Plaintiff's suspension. On the 1st of November 1977 Messrs Michael Powell & Co., Solicitors on behalf of the C.C.V.E.C. informed Messrs Dermot G. O'Donovan & Co., that the Plaintiff had failed to obey the orders directed to him by the letter dated the 7th October 1977 and that the Plaintiff was unsatisfactory in the performance of his duty.

In the meantime the C.E.O. had on the 21st of October 1977 notified the Secretary of the Department of Education that the Plaintiff had been

suspended under Section 7 of the 1944 Act. On the 5th of December 1977 the C.C.V.E.C., on the recommendation of its legal advisers, passed a more detailed resolution in relation to the suspension of the Plaintiff and the reasons therefor a copy of which was furnished to the Secretary of the Department of Education on the 6th of December 1977.

On the 11th of January 1978 a meeting took place between Dr. O'Callaghan the Chief Inspector of the Department of Education and the Plaintiff. This meeting lasted more than four hours and entailed a full discussion of the suspension and the events leading up to it. The purpose of the meeting, as the Plaintiff explained, was to enable the Department to have his side of the story. Dr. O'Callaghan wanted to know whether it would be the end of the matter if the suspension was lifted and he was paid during the period of his suspension. The Plaintiff explained to Dr. O'Callaghan that that would be an end of the matter as far as the Minister was concerned but he could not guarantee that in relation to the C.C.V.E.C. it would end the matter.In February 1978 further efforts were made to negotiate a settlement of the dispute. Apparently the parents of a number of pupils at the Mitchelstown school were received as a deputation by the Minister for Education. The Minister indicated to the deputation that he was anxious to find a peaceable and

just means of resolving the problem. He was keen, as Mr. Leddy said, to get Mr. Collins back. One of the deputation a Mr. Phelan offered himself as a mediator and he wrote to Mr. Collins asking him to attend at a meeting with representatives of the C.C.V.E.C. and the Department of Education. The Plaintiff informed Mr. Phelan that his conditions for attending any such meeting were as follows:-

1. That first that he would be reinstated as headmaster.

2. That his legal expenses would be paid.

3. That the report of the 24th of March 1977 would be withdrawn.

The proposal by Mr. Phelan was put forward in the middle of March 1978 and as the terms stipulated by the Plaintiff were unacceptable as pre-conditions that concluded those negotiations.

On the 23rd of March 1978 the Plenary Summons herein was issued and on the 24th of April 1978 the Plaintiff was informed by the Department of Education that the Minister had directed a local inquiry to be held in relation to the Plaintiff's suspension and further informing him that he would be notified subsequently of the date and venue of the inquiry.

On the 15th of May 1978 Messrs Dermot G. O'Donovan & Co., wrote to the Department of Education informing the Secretary that the proceedings herein had been instituted and requesting the Minister to issue a further

order suspending for the time being any inquiry into the matter and submitting that such an inquiry would be inappropriate while the Action was pending before the Court.

On the 16th June the Minister notified the C.C.V.E.C. that he had decided to postpone the local inquiry sine die in the light of the proceedings initiated by Mr. Collins against the Committee.

It was the Plaintiff's evidence that he was unaware of the request by his Solicitors to seek a postponement of the local inquiry and that the request had been made without his authority. Mr. Collins' own evidence is that whilst he would have wished to have had a local inquiry immediately after his suspension that by the time he instituted proceedings in March 1978 he was not then nor subsequently interested in pursuing the matter through a Ministerial Inquiry.

I now turn to consider the questions of law which arise. The first question that arises concerns the qualification for membership of a Vocational Education Committee.

This is a matter which has caused some confusion and I think it is necessary to go back, as all parties have done, to the grounds of disqualification included originally in Article 12 of the Schedule (hereinafter referred to as "the 1898 Schedule") to the Local Government (Application of Enactments) Order 1898 (hereinafter referred to as "the 1898 Order") made under section 104 of the Local Government (Ireland) Act 1898 (hereinafter referred to as "the 1898 Act"). Article 12(3) of the 1898 Schedule provides as follows:-

> "It shall not be lawful to appoint any member of any county or district council or board of guardians or town commissioners or the partner in business of any such member, to any office or place of profit under the council, board or commissioners, the disqualification shall apply to any person and his partners in business during six months next after such person has ceased to be a member."

It will be clear, therefore, that that sub-clause has nothing to say to disqualification from membership of the council itself. It

presupposes valid membership but renders unlawful the appointment of a member to any office or place of profit under the council.

Sub-Article 4 of Article 12 of the 1898 Schedule then goes on so far as material to provide as follows:-

"A person shall be disqualified for being elected or chosen or being a member of a council of a county or of a district or of a board of guardians or of any town commissioners if he:-

(d) Holds any paid office or place of profit under or in the gift or disposal of the council, board, or commissioners, as the case may be, other than that of Mayor or Sheriff or

(e) Is concerned by himself or his partner in any bargain or contract entered into with the council, board or commissioners, or participates by himself or his partner in the profit of any such bargain or contract or of any work done under the authority of the council, or board, or commissioners, and for the purpose of this provision, any bargain or contract with a county council

in respect of any public work in any district shall be deemed to be also a bargain or contract with the council of that district".

Before considering those two separate headings of disqualification it must be noted that Article 1(1)(b) provides that expressions in that Schedule have the same meaning as in the 1898 Act. Referring then to section 109 of the 1898 Act

"The expression "office" includes any office, situation or employment, and the expression "officer" shall be construed accordingly".

It has been urged on me by the Plaintiff that paragraph (e) aforesaid is appropriate in its terms to capture any person who is employed by a council under a contract of service or on any contract relating to his terms of employment. In support of that argument attention is drawn to the word "any" as giving the widest possible import to the category of persons who are disqualified by that paragraph. Although this point is validly made, it seems to me that the words "bargain or contract" must be read in the light of the other words contained in paragraph (e) itself and more particularly in the light of the provisions contained in the immediately preceeding

paragraph. As paragraph (d) itself clearly captures every form of office and employment (other than those expressly excluded) it seems to me impossible to infer that the Legislature intended paragraph (e) to cover the same relationships. Moreover, the reference in paragraph (e) to a partner would seem more appropriate to a commercial relationship involving dealings in buying or selling or supplying services otherwise than as an office holder or employee. No cases were opened to me suggesting that it had ever been held that paragraph (e) applied to employees of any description. In my opinion paragraph (d) as originally enacted was intended to provide and did provide a complete code under which office holders and employees were disqualified from membership of local councils as then constituted and paragraph (e) was concerned with a separate and different category of relationships which involved continuing business dealings between the council and a party not employed by or an office holder under the council.

The Local Government Act 1925 (the 1925 Act) extended (without repealing) Article 12(3) of the 1898 Schedule by disqualifying any person from holding any office of profit or being employed for remuneration by or under any local authority while he should be or

within 12 months after he had ceased to be a member of such local authority.

The Vocational Education Act 1930 (the 1930 Act) defined various areas including every county (but excluding therefrom scheduled urban districts) as a county vocational education area and provided that every such area should have a Vocational Education Committee (see sections 6 and 7). It is further provided (see section 8) that a Vocational Education Committee for a county vocational education area should consist of 14 members elected by the council of the county which is or includes such county vocational education area of whom not less than 5 nor more than 8 should be persons who are members of such council. Sub-section 4 of section 8 expressly provided that the local authority in electing members to the Vocational Education Committee should have regard to the interest and experience in education of the person proposed to be so elected and to any recommendation made by interested bodies.

Section 26 of the 1930 Act extended certain provisions of the 1925 Act to Vocational Education Committees. In particular section 70, which restricted members of a local authority from holding an office of profit or being employed for remuneration <u>under</u> a local authority was applied to Vocational Education Committees.

The Local Government Act 1941 (the 1941 Act) repealed Article 12 (4)(e) of the 1898 Schedule, that is to say, the disqualification from membership of a council of persons concerned in a bargain or contract with that council.

The Vocational Education (Amendment) Act 1944 (the 1944 Act) section 2 (1) applied Article 12 (except sub-article 9) of the 1898 Schedule, as amended, to Vocational Education Committees. Having regard to the provisions of the 1941 Act the result of this was that Article 12 (4) (d), disqualifying holders of any paid office or place of profit (including employees), was applied for the first time to Vocational Education Committees.

In addition sub-section 2 of section 2 aforesaid went on to provide as follows:-

> "A person shall be disqualified for being elected or appointed or being a member of a Vocational Education Committee if he is concerned by himself or his partner in any bargain or contract entered into with such committee or participates by himself or his partner in the profit of any such bargain or contract or any work done under the authority of such committee".

Sub-section 3 went on to restrict in some measure the application of sub-section 2 aforesaid but essentially it can be seen that sub-sectio 2 was largely a re-enactment of the old paragraph (e) of Article 12 (4). It may be noted also that sub-section 4 extends the disqualification not only to the Vocational Education Committees themselves but to any sub-committee thereof.

For the reasons already mentioned it seems to me that the existence of these two headings of disqualification; the legislation from which they originated and the manner of their evolution, continued the distinction between what I would describe as contracts of employment or service on the one hand and contracts of a commercial nature not involving either an employment or an office on the other.

The Local Elections (Petitions and Disqualifications) Act 1974 section 24 so far as material provides as follows:-

"Each of the following disqualifications is hereby removed namely .....;

(b) The disqualification for membership of a Vocational Education Committee ..... of an alien or a person holding a paid office or place of profit under the Committee

and accordingly .....

(iii) Paragraph (d) of said Article 12(4) shall cease to have effect".

On that basis it seems to me that the disqualification for membership of a Vocational Education Committee based on the holding of an office or employment deriving from the 1898 Schedule and applied to Vocational Education Committee by the 1944 Act has been abolished.

The 1974 Act goes on in section 25 to deal with a different but allied topic. It enabled the Minister for Education by order to designate certain classes descriptions and grades of offices or employments and provided in sub-section 2(b) thereof that:-

"For so long as an order under this sub-section is in force, section 70(1) of the Local Government Act 1925 as applied by section 26 of the Vocational Education Act 1930 shall not apply as regards an office or employment which is of a class description or grade designated by the order."

Section 25 is, therefore, dealing with and enabling the Minister to extend the range of persons who may be qualified to accept an office or place of employment under a Vocational Education Committee; it has nothing to say - directly in any event - to the qualifications for membership of the Committee itself.

In fact an order was duly made under section 25 aforesaid entitled "Local Elections (Petitions and Disqualifications) Act 1974 (section 25) (No. 3) Order 1974 (S.I. No. 137 of 1974).

That order provided as follows:-

"The following classes, descriptions and grades of officers and employments are hereby designated as classes, descriptions, and grades of offices and employments for the purpose of section 25(2)(b) of the Local Elections (Petitions and Disqualifications) Act 1974, that is to say;

(a) All classes, descriptions and grades of employment as a servant,

(b) All classes, descriptions and grades of offices other than:-

(i) Offices to which the Act of 1926 applies,

(ii) Offices of a class, description or grade set out in the Schedule to this order.

As the 1926 Act, that is to say, the Local Authorities (Officers and Employees) Act 1926 defines the expression "office to which this Act applies" so as to exclude "an office or employment as a teacher" the exclusion contained in sub-paragraph (1) of paragraph (b) has no

application.

In so far as the Schedule limits the range of the designated classes the only material provision is that contained in the first paragraph of the Schedule in the following terms:-

"Every office the duties of which are wholly or mainly of an administrative, executive or clerical nature and the maximum remuneration for which exceeds the maximum remuneration for the office of clearical officer."

Whilst it was argued by the Plaintiff that a teacher - and in particular a teacher holding a post of responsibility - performed duties which were "wholly or mainly of an administrative, executive or clerical nature" no evidence was tendered in support of that contention and I may say that it is an argument which I would have found difficult to accept in the absence of coercive evidence.

I must conclude, therefore, that a member of a Vocational Education Committee is not now and has not been since the 1974 order disqualified from holding an office or employment as a teacher under that Committee.

The second question of law that arises concerns the proper interpretation of sections 7 and 8 of the 1944 Act - the sections

under which the C.C.V.E.C. purported to suspend the Plaintiff. The ascertainment of the proper construction of those sections is material first, in determining whether and to what extent the rules of natural justice are applicable to the procedures adopted by the C.C.V.E.C. in reaching their decision and secondly, in establishing by whom the post-suspension inquiry is to be held and the nature and extent of the obligation in that regard.

Section 7 deals with the suspension of officers and section 8 deals with their removal. The holder of an office under a Vocational Education Committee may be suspended by the Vocational Committee or by the Minister, in an appropriate case. In the event of the Vocational Education Committee suspending there is a positive duty cast upon them under subsection 2 of section 7 "forthwith report the suspension and the reasons therefor to the Minister". The power to suspend and the duty to report is the total extent of the duty expressly conferred on the Vocational Education Committee in relation to suspensions and the power to remove an officer is by section 8 conferred exclusively on the Minister. Section 7(1) provides as follows:-

"Whenever in respect of the holder of an office under a Vocational Education Committee there is, in the opinion of such Committee or of the Minister, reason to believe that such holder has failed to perform satisfactorily the duties of such office or has misconducted himself in relation to such office or is otherwise unfit to hold such office, such Committee or the Minister (as the case may be) may suspend such holder from the performance of the duties of such office while such alleged failure, misconduct, or unfitness is being inquired into and the disciplinary action (if any) to be taken in regard thereto is being determined and such inquiry shall be held as soon as conveniently may be after the date of the suspension."

Counsel on behalf of the Minister for Education contended that the inquiry referred to in section 7 (1) aforesaid might be conducted by either the Minister or by the Vocational Education Committee; that the section was silent as to which party should conduct the inquiry and that it was logical and appropriate that it should be conducted by the person who made the suspension. Counsel contended that the inquiry referred to in subsection 1 aforesaid was unrelated to the inquiry referred to in section 8 which in unquestionably an inquiry set up by the Minister. It was pointed out that the inquiry expressly referred to in section 8 is therein

described as "a local inquiry" which in turn clearly refers back to the form of inquiry authorised by section 105 of the 1930 Act.

I cannot accept that interpretation of the two sections. Where a Vocational Education Committee has suspended an officer and reported that suspension to the Minister, the Committee is in fact and in law functus officio. It was suggested by Counsel on behalf of the C.C.V.E.C. that C.C.V.E.C. were entitled to enquire further into the grounds for the suspension and if, for example, it should emerge that some error had been made that they could report the same to the Minister. I do not doubt the right or indeed duty of the C.C.V.E.C. to furnish information in their possession showing that an error has been made but there is clearly no statutory basis for making any such report and little practical value in that body conducting any further inquiry. When a suspension takes place (whether by the Minister or the Vocational Education Committee) the right to terminate the suspension is conferred (by section 7 subsection 3) exclusively on the Minister. Again the right to determine whether all or any part of the remuneration which would have been paid to the officer but for his suspension should be forfeited falls exclusively on the Minister (section 7 subsection 5). And finally as to the powers and duties consequent upon a suspension the vital fact is that the ultimate

decision whether to remove the office holder or not is clearly and exclusively the function of the Minister under section 8. Furthermore, the reference to "a local inquiry" in sub-section 2 of Section 8 seems to me to be distinguisable from the procedures which may be adopted by the Minister under subsections 3 or 4 of section 8 - and which might properly be described as inquiries - so that the reference in section 7 to an inquiry is appropriate to cover any type of inquiry which the Minister might make under Section 8.

It seems to me therefore that it would be illogical to interpret subsection 1 of section 7 otherwise than as imposing a duty upon the Minister to hold the statutory enquiry.

On the 21st April 1978 the Minister ordered a local inquiry to be held into the reasons for the suspension on the 20th day of October 1977 of the Plaintiff from his office as principal of the Mitchelstown School. On the face of it this is a delay of almost exactly six months. However, as already outlined it was the 21st October 1977 that the Minister was first informed of the suspension and it was on the 6th December that he was given details of the subsequent resolution setting out the reasons of the C.C.V.E.C. However, it is also important to note the meeting already referred to between the plaintiff and Dr. O'Callaghan of the Department of Education on the 11th January 1978. There were then the further efforts

at mediation supported by the Minister which were commenced in February 1978 and continued until March when the Plaintiff stipulated preconditions to negotiations which were unacceptable. Finally, the proceedings herein were instituted on the 23rd March 1978. In my view it was entirely proper for the Minister to postpone the making of the order as long as discussions or negotiations were taking place with the Plaintiff which might have been expected to lead to an amicable solution of the problem. The holding of inquiry was essentially an action in ease of the Plaintiff. To the extent to which he met or corresponded with the various intermediaries that I have mentioned it seems to me clear that he was assenting to a postponement of the inquiry and to that extent waiving his right to have such inquiry held at an earlier date.

The solicitors on behalf of the Plaintiff undoubtedly wrote on 15th May 1978 requesting the Minister to suspend the inquiry. The Minister in fact made an order postponing the inquiry on the 16th June 1978. Whether or not the solicitors on behalf of the Plaintiff had authority to write that letter the Minister was entitled to assume that it was written with the knowledge and authority of the Plaintiff. The Plaintiff has argued that irrespective of any request by his solicitor

or consent on his part- which he repudiates - the Minister had a statutory duty to hold the inquiry and this could not be abdicated. I think that this is a misinterpretation of the function of the Minister. Whilst the Minister could not release himself from his statutory duty the Plaintiff could and did by his conduct waive the right to have that duty performed for his benefit. Furthermore, it seems to me that the Minister acted entirely properly in postponing the inquiry when he was satisfied that the proceedings were in existence and being pursued with a view to challenging in this Court the validity of the order of suspension to which the inquiry related. In my view it would have been impracticable and perhaps improper to have proceeded with an inquiry and to have incurred the expense attendant thereon when this Court had seisin of an issue as to the actual validity of the order.

The third heading under which questions of law fall to be considered concerns the application of the rules of natural and constitutional justice to the decisions taken by the C.C.V.E.C.

By the last century it was well established that a Court or other tribunal exercising judicial functions was bound to apply the rules of natural justice. Again it was generally agreed that these

rules entailed the application of two principles first audi alteram partem and, secondly, nemo iudex in re sua. Whilst this may be a useful guide, the numerous cases both here and in other jurisdictions demonstrate clearly that the matter is considerably more complex than that statement would suggest.

The decided cases - of which there are many - establish that the principles of natural law are not limited in their application to bodies exercising what might be called strictly judicial functions. They were first extended to what was described as tribunals exercising a quasi judicial function and more recently to bodies of a purely administrative nature. That this is so was pointed out by Kenny J. in Glover and B.L.N. Limited 1973 I.R. 388 at 413 where the Court went on to hold that a decision by a Board of Directors to dismiss a director holding office as such under terms of a contract was bound to apply the rules of natural justice in reaching their decision as to the conduct of the office holder. This decision which demonstrates the wide range of tribunals to which the rules of natural justice may properly be applied was upheld by the Supreme Court and in delivering the majority decision Walsh, J. (at page 425 of the same report) provided the general statement of the law in the

following terms:-

> "This Court in In Re Haughey held that that provision of the Constitution (Article 40, Section 3) was a guarantee of fair procedures. It is not, in my opinion, necessary to discuss the full effect of this Article in the realm of private law or indeed public law. It is sufficient to say that public policy and the dictates of constitutional justice require that statutes, regulations or agreements setting up machinery for taking decisions which may affect rights or impose liabilities should be construed as providing for fair procedures".

Whilst the Courts have thus recognised the wide range of tribunals who are or may be bound by the rules of natural justice, further decisions have shown that the principles which justice may require to be applied do not invariably extend to the two principles enshrined in the maxims quoted above nor are they confined in every case to those principles. In some cases justice may require the tribunal to hold an oral hearing and in other cases it may be sufficient for the tribunal to decide the case on documentary material furnished to them

(see Williams and the Army Pensions Board and Ors. 1981 I.L.R.M. 379). Again depending upon the circumstances of the case justice might require the party affected to be afforded the opportunity of cross-examining witnesses and in other cases such a procedure would not be called for (see In Re Haughey 1971 I.R. 217 and the State (Boyle) and the General Medical Services (Payments) Board & Ors. 1981 I.L.R.M. 14). In the State (Healy) and Donoghue 1976 I.R. 325 the Supreme Court recognised that in certain circumstances constitutional justice required that the party affected by the decision of a tribunal should have legal representation provided him in the conduct of the proceedings before the tribunal. At the other end of the spectrum it was recognised in Ceylon University and Fernando 1960 1 W.L.R. 223 that the party to a domestic tribunal whose affairs were under consideration in that case was not entitled to examine witnesses giving evidence contrary to his interests and indeed in the State (Smullen) and Duffy and Ors. the learned President of the High Court in a judgment delivered on the 21st day of March 1980 held that there was no want of justice in the circumstances of that case where the Headmaster of a school suspended two pupils on the grounds of serious

misconduct in which they had been engaged without previously interviewing one of the two boys concerned. It must also be noted that the long established procedures of the High Court permit the granting of injunctions and other relief on a temporary basis without notice to the party affected. Indeed the Supreme Court have confirmed (see In the Matter of an Application by Cornelius Zwann & ors. 1981 I.L.R.M. 333 (at page 337)) that an absolute order of certiorari might be granted on an ex parte application albeit holding at the same time that the circumstances in which such an order would be made "must necessarily be extremely rare".

The effect of the many decisions on this branch of law is effectively summarised in a passage from the judgment of Tucker, L.J. in Russell and Duke of Norfolk 1949 1 A.E.R. 109 at 118 (which was cited with approval by Henchy J. delivering the judgment of the Supreme Court in Kiely and the Minister for Social Welfare 1977 I.R. 267 and applied by Keane, J., in the State (Boyle) and the General Medical Services (Payments) Board & Ors: that passage is as follows:-

> "There are, in my view, no words which are of universal application to every kind of enquiry and every kind of domestic tribunal. The requirements of natural justice

"must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth".

Again whilst there is undoubtedly a general and well established principle that a person must not act as a judge in his own cause (see the Veterinary Surgeons Act 1931 to 1960 and Lynch & Daly, I.R. 1970 1 and a decision of Mr. Justice Hutton delivered in Northern Ireland on the 6th January 1981 in the matter of John Snaith and furthermore that the principle ordinarily extends to debar persons whom a reasonable right-minded person would think were likely to be biased (see Metropolitan Properties and Lannon 1969 1 Q.B. 577). This principle is not of universal application. Of necessity there will be cases where the decision making body cannot decline to exercise the jurisdiction conferred on it because of any interest which they have or may appear to possess. For example, it was, if I may say so, the clear constitutional duty of the Supreme Court to hear and decide the constitutional issue with regard to judicial salaries raised in O'Byrne and Minister for Finance and Attorney General 1959 I.R. 1 notwithstanding the interest which the members of the Court had in the

outcome. It seems probable that the circumstances which existed in Glover and B.L.N. gave rise to a similar inescapable conflict. Whilst the matter was not convassed in that case I would readily assume that at least some members of the Board who "sat in judgment" on Mr. Glover had at one stage or another expressed an opinion, formed a view or developed a real or apparent prejudice in relation to the office holder whose conduct they, as the Board, were bound to review.

It seems to me that a distinction must be drawn between the application of the rules of natural justice where it is sought to set up an independent tribunal and other cases in which a particular function is by the terms of a statute, order or agreement conferred on a designated body. In those circumstances the body cannot decline to exercise its function and the most that justice can require, and all that fair play would dictate, would be that a member or members of the tribunal who had a particular interest of which their colleagues might not be aware should declare that interest before participating in any debate.

In attempting to apply the foregoing principles to the present case it seems to me that the actions of the C.C.V.E.C. must be considered in relation to two distinct phases. The first phase relates

to the period commencing with the Murphy dispute in 1974 and concluding about the month of September 1977. The other phase commenced then and concluded with the decision of the C.C.V.E.C. to suspend the Plaintiff on the 20th October 1977. In the first phase the function and purpose of the C.C.V.E.C. directly and through the medium of various committees and officers was to enquire into and inform themselves of problems with regard to staff relationships in the Mitchelstown school. It is quite clear that there were such problems; that they had manifested themselves in 1974; that they were increasing in the subsequent years and that they were having a detrimental effect upon the conduct of the school and the education of the pupils there. It was the clear statutory duty of the committee to inform themselves of those problems. I have no doubt that that was their purpose and I am convinced on the evidence that the Committee and in particular the Chief Executive Officer thereof made a strenuous patient and bona fide efforts to identify the problems and provide a solution thereto in the best interests of all concerned. The Plaintiff viewed the situation from his standpoint. As he saw it, his position and authority was being challenged by teachers at the school and their trade union. He maintained that there was a conscious

conspiracy to usurp his authority and transfer it to the union and its members. The disagreements which he had with the teachers resulted as he saw and described them from "rank insubordination". He detailed his complaints to the C.E.O. and called for action on them.

The purpose and policy of the Committee, at the early stages at any rate, can be gleaned from the report adopted by the C.C.V.E.C. on the 19th February 1976 which shows how the Committee or its representatives had procured the withdrawal of the apologies sought by Mr. Murphy and his transfer - apparently by agreement - to another school. What the Plaintiff seems to have sought at all times was a formal enquiry into his complaints and an official adjudication thereon vindicating his views and authority. What the Committee for its part were seeking to do was to identify and resolve problems. There is no indication whatever in the voluminous evidence produced before me that at any time before the 5th August 1977 the Committee had under consideration the suspension of the Plaintiff as Headmaster or indeed the removal of any other member of the staff. It is true that the C.C.V.E.C. through its officers sought information from all of the interested parties with regard to staff relations problems and

that in response information was received at various stages which was critical of the Headmaster. However, as I see it this was essentially an effort by the Committee to inform itself in relation to those problems and not part of any procedure to suspend or remove any office holder.

In relation to this aspect of the matter I think that some assistance may be derived from the judgment of the Supreme Court in the State (Duffy) and the Minister for Defence (delivered on the 9th May 1979). In that case a petty officer in the navy was discharged on the grounds that his commanding officer had directed his discharge for the stated reason of "not being likely to become efficient". It was quite clear from the facts of the case that reports were made to the Prosecutor's commanding officer and a firm decision taken to discharge the Prosecutor on the grounds of inefficiency before he was informed of the case against him. The Supreme Court pointed out that:-

> "The purpose of the operation of the audi alteram partem rule in the context of a situation such as this was to ensure that the Prosecutor, in full knowledge of his impending discharge and of the reason for it could make

"such representation as he thought fit".

Accordingly, as the Prosecutor was afforded an opportunity of being heard subsequent to the date of the decision and prior to his discharge, there was no breach of the rules of natural justice.

Whilst that case is distinguishable from others such as the State (Gleeson) and the Minister for Defence 1976 I.R. 280 where an office holder is discharged for misconduct rather than unfitness it does establish, as I understand it, that wide renging enquiries may take place involving the activities of office holders to which the rules of natural justice do not apply unless and until a decision affecting or prejudicing the office holder is impending. A fortiori the rules of natural justice have no application to enquiries, investigations or reports which are made at a stage when the suspension or removal of the office holder is not in contemplation. If the position was otherwise it seems to me that the supervision and administration of any organisation involving a number of office holders would be quite impossible.

In my view the enquiries and investigations carried out by the C.C.V.E.C. between 1974 and September 1977 did not entitle the Plaintiff to insist that the rules of natural justice or any of them were applied

thereto.

In relation to the second phase it might perhaps have been argued that the actions of the C.C.V.E.C. were not subject to the rules of natural justice as the extent of their jurisdiction was limited to effecting a suspension by way of a preliminary step and not by way of penalty. The not dissimilar circumstances which arose in Furnell and Whangarei High Schools Board 1973 A.C. 660 would offer some support for that argument. However, Counsel for the C.C.V.E.C. conceded, rightly in my view, that the tribunal was bound to apply the principles of natural justice although this concession was qualified, again I think rightly, by saying that it was only those particular principles of natural justice which were appropriate in all of the circumstances of the case which were applicable thereto.

The essence of the matter by September 1977 was that the C.E.O. was pressing the Plaintiff to arrange a meeting of the senior teachers in the Mitchelstown school on the basis that this was the best way forward to improve staff relationships. The Plaintiff declined to adopt this course. The C.E.O. requested the Headmaster to attend a meeting of the staff sub-committee and he declined. The position in

the school had reached a crisis situation. The matter was laid before the C.C.V.E.C. on the 6th October 1977 when, as far as the evidence goes, the letter from the Minister for Education dated the 5th August 1977 referring to the possibility of suspension, was mentioned for the first time to that Committee. The C.C.V.E.C. itself then decided to issue what has been described as the strict order requiring him to convene a meeting of the senior staff and warning him albeit in general and in certain respects inaccurate terms of the serious consequences of his failure to do so. It seems to me that the terms of that letter and the fact that it was sent by registered post indicated clearly that the debate - if it may be so described - was being raised to an entirely different level and that the Plaintiff was being given an effective warning that his position would be in jeopardy if he continued to disregard this injunction. When the Plaintiff neglected to convene that meeting it was convened by the Chief Executive Officer and the Plaintiff notified accordingly. Knowing of the seriousness of the matter the Plaintiff in his reply declined to attend the meeting and relied upon the reasons which he had furnished as far back as the 6th May 1977.

The Plaintiff was not informed that the C.C.V.E.C. intended to

proceed to consider the question of his suspension: the Plaintiff was not invited to attend the meeting at which the suspension was decided upon nor was the Plaintiff afforded the opportunity to express any further views on the matter.

However, as I have already pointed out, the decision of the C.C.V.E.C. was merely a preliminary step. The procedure envisaged by the Act, as part of the procedure itself and not merely by way of appeal, is that an independent enquiry would be held by the Minister covering the fundamental issue as to whether or not the office holder should be removed or the suspension lifted. The existenco of that second stage is undoubtedly an important factor to be taken into account in considering the extent of the enquiry to be undertaken by the Committee in the first instance and the procedures to be adopted in connection with it.

The only function of the C.C.V.E.C. was to form the opinion that there was reason to believe that the holder of the office had failed to perform satisfactorily the duties of his office or had misconducted himself in relation thereto. In that regard it may be noted that one of the express grounds for the removal of an office holder under Section 8 is where the office holder "has refused to obey or carry into

effect any lawful order given to him as the holder of such office".

On the face of it the strict order given by the C.C.V.E.C. to the Plaintiff falls within the terms of the conditions of his appointment. There was clear documentary evidence that the strict order had been given and received by the Plaintiff. It is common case that a situation in the Mitchelstown School had arisen which was detrimental to the interests of the pupils. The Plaintiff made it clear that he would not obey the strict order and his reasons for that refusal were available to the C.C.V.E.C. It seems to me that on the documentary evidence and the undisputed facts that the C.C.V.E.C. had before it sufficient evidence on which they could without any additional oral or other enquiry form the appropriate statutory opinion as they purported to do. Neither the rules of natural justice nor any requirement of fair play called for any further notice to or submission from the Plaintiff. Again I emphasise the word "could". It is not the function of this Court to review the preliminary decision made by the C.C.V.E.C. or to antipitate the decision ultimately to be made in the ministerial enquiry which presently stands adjourned.

The Plaintiff also submitted that the decision of the C.C.V.E.C. on the 20th October 1977 was invalid as the Committee was at that stage

composed of persons who were disqualified by bias from participating in any decision relating to his continuance in office. This submission was directed primarily to the fact that Mr. Niall A. O'Donoghue was a member of the tribunal making the decision. It was urged that Mr. O'Donoghue was in fact prejudiced by reason of his membership of the T.U.I. and the part which he played in presenting complaints made by other members of the staff of the Mitchelstown School about the conduct of the Plaintiff. Whilst I accept the evidence of Mr. O'Donoghue that he in fact bore no ill-will or malice towards the Plaintiff, I would accept that an independent observer might reasonably suspect from his position that there was a likelihood of bias. However, the argument put forward by the Plaintiff goes even further. He contended that all of the members of the C.C.V.E.C. were precluded from participating in the determination because, as he said, they had been exposed to hearsay evidence and one-sided accounts as to his, the Plaintiff's, conduct. Indeed the Plaintiff went so far as to say that a wholly independent tribunal could and should have been constituted to determine the issue. It seems to me that this very argument demonstrates the fact that in situations such as the present that some real or apparent conflict

of interest may arise and must be accepted as inherent in the discharge of the duties of the statutory body. The function of suspending an office holder is conferred by Statute on a Vocational Education Committee and that is a function which a committee must in a proper case discharge. Certainly there would be no justification or authority for transferring that function to another body even if it should have the merit of total independence and a demonstrable freedom from any form of bias.

In my view there was no want of natural justice in the decision taken by the C.C.V.E.C. in their decision to suspend the Plaintiff.

Whether the decision by the C.C.V.E.C. to suspend the Plaintiff was the result of a wrongful conspiracy between the Defendants or some two or more of them.

The Plaintiff concluded that the breakdown in harmonious relationships between himself and other teachers in the Mitchelstown School in 1974 was due to the rank insubordination of a number of teachers at that school. He believed that the Teachers' Union of Ireland in the same year were manoeuvring to achieve a power and authority to which they had no legal right. He maintained that the C.E.O. was restricting the right which he, as Headmaster, previously

enjoyed of communicating directly and fully with the C.C.V.E.C. itself. He pointed to the letter from the Department of Education of the 5th August 1977 as indicating that the Department was orchestrating his removal. He believed that Mr. O'Donoghue had from the outset the ambition to take over the position of Headmaster. Indeed he points to the fact that Mr. O'Donoghue is now acting Principal as being an application of the rule "res ipsa loquitur".

In my view these suspicions are wholly without foundation. What does appear to have happened is that the number of younger teachers in the school has increased significantly in the years prior to 1974 with the result that the manner in which authority was exercised and decisions taken changed. No doubt trade unions had been playing a more prominent role and seeking greater representation for themselves and their members. Whether these changes were for the better is not for me to decide. The suggestion that Mr. O'Donoghue sought the office of Headmaster was denied emphatically by him. He said that the thought had never entered his head and I accept his evidence in that regard completely. The complaint that the Plaintiff was shut out from contact with the C.C.V.E.C. is denied by the C.E.O. and in the teeth of the documentary

evidence. As I have already said it seems that not merely the Committee as a whole but the individual members of it made themselves fully available to the Plaintiff both in person and in correspondence. Again whilst the Department of Education undoubtedly drew attention to the powers of suspension vested in the C.C.V.E.C. all of the evidence shows that the Department and the Minister for the time being made every effort to co-operate with the Plaintiff and I believe were genuinely anxious to retain the services of a man who had rendered excellent service to the vocational schools.

Whether the Defendants or any of them wrongfully permitted monies properly under the control of the State to be misapplied to or by the C.C.V.E.C. or any purported sub-committee thereof?

In a reply dated the 3rd November 1981 to a letter seeking particulars, the Plaintiff provided a detailed analysis of the procedures by which State revenues are appropriated and accounted for.

Essentially the Plaintiff complains that the Minister for Finance in particular failed to procure an adequate audit of the accounts of the C.C.V.E.C. It was his contention that if a proper audit was carried out it would have disclosed that Mr. Niall

O'Donoghue was disqualified from holding office as a member of that Committee and in the process would also have detected what the Plaintiff described as "the attendant malfeasance, skullduggery, conspiracy and cover up". As I have already held that Mr. O'Donoghue was not disqualified from membership of the C.C.V.E.C. and that no such conspiracy or wrongdoing as aforesaid was perpetrated, there is in my view no substance in this contention. It is true that the regulations proposed by the Minister for the Board of Management of the vocational education schools did prohibit teachers from accepting appointment to the Board of Management of the school at which they were engaged and that regulation does not appear to have been observed. However, I do not think there was anything sinister in the failure to observe the particular ministerial regulation and there was, as I have already held, no legal prohibition on the appointment.

In any event it seems to me that no auditor, however diligent, would have investigated the legal issues surrounding the appointment of a teacher to the Board of the C.C.V.E.C. At most the duty of the auditor would be limited to establishing that the members of the Committee were formally returned as members of the Committee

unless there was some patent defect in their election. So far from that being the case I am satisfied that teachers are in fact qualified for membership of vocational education committees and of sub-committees thereof.

Unless the Plaintiff could show that there was a breach by the Minister of his statutory or constitutional duty which caused damage to the Plaintiff the Claim would fail in any event as the Plaintiff would have no locus standi to maintain the action. Even in constitutional issues it has now been established (see Cahill and Sutton, Supreme Court, 1980 I.R.) that a Plaintiff must show some right of his has been broken, endangered or threatened. And in the Irish Permanent Building Society .v. Cauldwell & ors. 1981 I.L.R.M 242 Barrington, J. entertained the Plaintiff's claim only on the basis that it was established at the stage when the matter came for hearing - unlike the position which had pertained when the Defendants had previously applied to have the matter struck out on the grounds that the pleadings disclosed no reasonable cause of action - and that the Plaintiffs were an aggrieved person who could show that the wrongdoing alleged would cause them financial loss. It seems to me that the Plaintiff in the present case has failed to

establish that he has or would suffer any special loss as a result of any alleged misapplication of funds by any of the Defendants.

In all of these circumstances it seems to me that the Plaintiff has not made out a case for relief under any of the headings pleaded.

Francis D. Murphy

27th May 1982