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## The Papar Land Protest, 1910–11

Danny Wong Tze Ken

*One of the recurring problems that emerged during the height of European expansion into Southeast Asia was the encroachment of European enterprises into indigenous lands. In most cases, problems existed especially in the manner that landholdings were understood by the natives vis-à-vis the new land laws introduced by the colonial powers. This often led to disputes which resulted in the natives being deprived of their rights. This paper looks into a case where the Dusun in Papar, North Borneo — an indigenous people — took the European colonial government to court over land rights which involved land encroachments by European enterprises and railways. The event took place barely 30 years after the first contact with European civilisation took place. The paper will examine the nature of the case and also investigate the role played by the Dusun and their fight against the government. The paper will also investigate the role of an English lawyer retained by the Dusun for the case, and that of the Roman Catholic Mission in championing the affairs of the indigenous people.*

In 1910, the British North Borneo (Chartered) Company Court of Directors received a report from its chief representative in North Borneo (present-day state of Sabah in the Federation of Malaysia), Acting Governor A.C. Pearson, that a group of Dusun from Papar had sent a petition to the British High Commissioner in Singapore, complaining of the failure of the Chartered Company administration to protect their rights by selling communal lands to the European-owned rubber estates in the area. It is important to note that this was barely 30 years after the North Borneo Company had taken charge of the area and that the Dusun's contact with Western culture was mainly limited to the three decades since the company had first established a base at Papar in 1878.<sup>1</sup> Thus the community's action against the Chartered Company was rather unusual.

This paper will investigate the origins of the dispute and how it resulted in the Dusun taking the initiative to petition against the government and, later, taking the government to court, both unprecedented moves by the community. In relation to this, external factors such as the role of the Catholic mission in Papar and the

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1 In 1878, the first European Resident, H.L. Leicester, was appointed to administer Papar and the adjacent area. He was replaced by A.H. Everett in 1879.

presence of an anti-government English lawyer in influencing the actions and decisions of the Dusun will be examined. Finally, this paper will evaluate the effect of this protest on later government policies, including the manner in which a new land ordinance was promulgated.

The North Borneo Company had acquired concessions for the territories that formed North Borneo (present-day Sabah in Malaysia) in 1877–78 from the sultanates of Brunei and Sulu. The Company was then granted a royal charter by the British government in November 1881, making it a British interest. Managed by a board of directors (also known as court of directors) in London, the Company administered North Borneo through its chief representatives, the Governor, who, in turn, ran a government that consisted of a central administration based in Sandakan and a system of outstation administration made up of several residencies, each with several districts. In 1888, the territory was granted the status of British protectorate. This new arrangement meant that, apart from being answerable to the directors, the Governor of North Borneo was also answerable to the Governor of Singapore who also acted as British High Commissioner for Southeast Asia. It was in this capacity that the petition was sent to Sir John Anderson.

In following a closer identification of the community at the time of the event, this paper uses the term ‘Dusun’, rather than the currently more accepted ‘Kadazandusun’.

### **Papar in 1910**

The district of Papar (see Figure 1) is one of the three earliest settlements where the North Borneo Company first established its rule; the others were Sandakan (also known as Elopura) and Tempasuk. The Company Residency was set up by the Papar River, the largest river on the west coast of the state. The district was (is) populated by two main ethnic groups, the Bajau and the Dusun. The former were distributed in villages along the coast, particularly on the western side of the Papar River. Two major Bajau villages were Pengalat Besar and Pengalat Kecil. Most of the Bajau, who were Muslims, were either fishermen or engaged in small-scale farming and gardening. Numerous Dusun villages were situated on the Papar plains on the southern side of the Papar River; others were on both sides of the Papar River in the interior section of the river. The Dusun were originally pagan or animistic. However, with the introduction of the Roman Catholic mission in that area in the last two decades of the nineteenth century, many of the Dusun converted to Christianity (Catholicism). The Dusun were mostly farmers, and well-known paddy planters. Their skills in rice cultivation had resulted in Papar being known as the ‘rice bowl’ of the territory. It also reflected the close association of the Dusun with their lands. In describing the Dusun, Owen Rutter remarks, ‘The Dusuns are the predominant race in the whole state and predominate in the administrative districts of Labuk and Sugut, Kudat, Marudu, Tempasuk, Tuaran, Papar and Tambunan, (...) The Dusun usually describes himself generically as a tulun tindal (landsman) or, on the West Coast, particularly at Papar, as a Kadazan.’<sup>2</sup> In describing the Dusun of

2 Owen Rutter, *The pagans of North Borneo* (Singapore: Oxford University Press, 1985 [1929]), pp. 30–1.

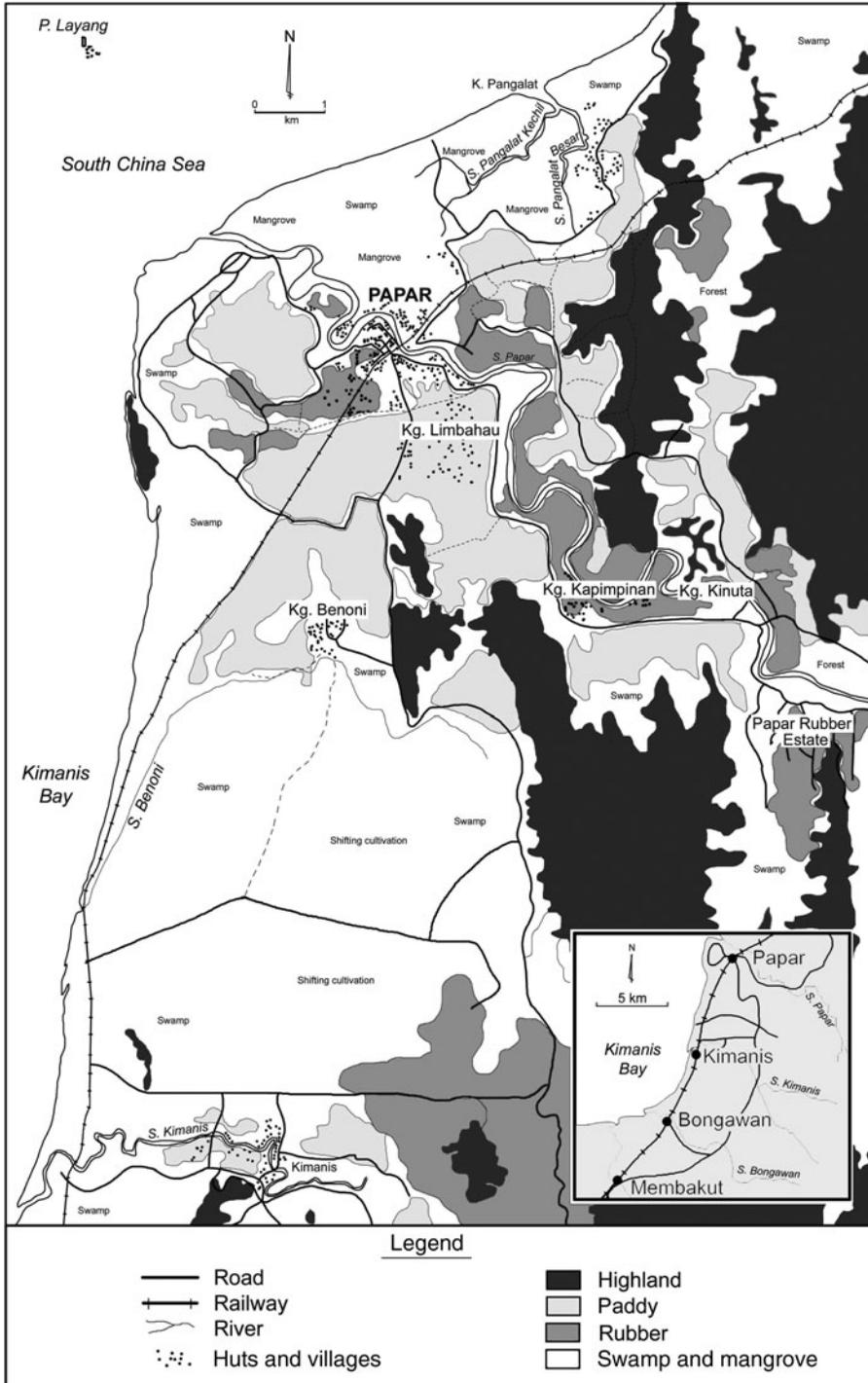


Figure 1. The district of Papar

Papar, Owen added, ‘This group embraces the Dusuns of Papar, Kimanis and Bongawan and is closely allied to the Membakut group.’<sup>3</sup>

As the district stretches to the south, one would encounter some Kedayan and Bisaya or even Brunei Malays, but their numbers remained small within the Papar district. The Chinese made up the third major group of the local population. Arriving *en masse* in the last decade of the nineteenth century, the Chinese were divided into three main groups. These were: first, shopkeepers who had followed the Company flag to establish themselves in Papar township; second, immigrant settlers who were brought into the state and given land for agriculture; and third, those brought in to work on the railway and, later, the rubber estates that sprang up in the area.

The opening of the area for the planting of cash crops such as rubber was directly associated with the advent of the North Borneo Company administration. It was mainly the opening of the rubber estates and the construction of the railway that brought the Dusun face-to-face with the question of encroachment and violation of their rights, especially pertaining to land and customary culture. The rubber estates and the railway were two major developments that significantly altered the administrative and economic landscape of the state. It is difficult to say which came first, for they were intertwined. The idea of railway construction was championed by a number of the major shareholders of the Chartered Company in London. Led by William Clarke Cowie, its managing director, the group believed that the construction of a railway would help to open up the west coast to British plantations and, at the same time, serve as an economic impetus for that part of the state. The idea was to construct a railway to eventually link the west and east coasts. This, however, failed to materialise. The railway started from Brunei Bay, at a small village later known as Weston, to Beaufort, before linking up with Papar and, finally, Jesselton in the north as the terminus. The project began in 1896 and was not completed until 1906.

Rubber seeds were introduced into the state during the 1890s. Among those responsible for helping to ensure that the crop would flourish was Henry Ridley, the very botanist who was known for his passion for rubber planting, earning him the title of ‘Mad Ridley’. Ridley also visited the state to provide advice to some rubber planters on the east coast.<sup>4</sup> The crop was first introduced at the experimental agricultural station at Silam, and later at Tenom. It came at a very crucial time when tobacco, once the mainstay of North Borneo’s economy, was suffering from a massive drop in demand as a result of protective tariffs introduced by several countries, including the United States. By the time the trees were growing at the stations, it was apparent that this was the crop that could perhaps save the plantation economy of the state. As a result of its successful introduction, rubber became the main plantation crop. The government began by offering land at a generous premium and low quit-rent. Throughout its 60 years of rule over North Borneo from 1881–1941, the Company constantly advertised the availability of land and the attractive land premium rates

3 *Ibid.*, p. 39.

4 *British North Borneo Herald*, 16 Dec. 1897.

as a way to attract investors. The *Handbook of British North Borneo* for 1890, for instance, had an entire chapter on land regulations.<sup>5</sup> As a result, many rubber companies began to take up land on the west coast, stretching from the Kudat Peninsula (Langkon Estate), to Bukit Padang Estate (which eventually emerged after the establishment of Jesselton in 1899), to Putatan and Lok Kawi estates, Papar Estate, Membakut Estate, and Mawao Estate in the south. From there, the railway turned towards Tenom and Melalap where huge estates such as the Manchester Rubber Estate, Melalap Estate and Sapong Estate had been established.

Most of the estates south of Jesselton were established along the railway line. Hence, when the Dusun of Papar began to feel that their land rights were being violated, they were, in many instances, facing the double menace of the rubber estates — whose owners constantly refused to listen to their appeals and reasoning — and the railway. They had no clue as to where to complain about the railway. But it was obvious that the Dusun of Papar felt that some of their lands had been forcefully taken away from them, either by the government or the estates. Those lands nearer the railway track were taken by the government and given to the railway. The estates had been granted land concessions which, in many cases, also included lands previously owned or used by the community, particularly for communal purposes, such as graveyards, grazing lands and for gathering. Others had had their land, usually planted with fruit trees, taken for failing to register it and have it surveyed as required by the 1903 Land Proclamation, a law which many simply did not understand.

### **The Chartered Company and its land law**

Among the first actions of the Chartered Company during the initial stage of its administration was to introduce a series of laws and regulations relating to land issues. Until 1913 all the land laws were issued as Land Proclamations, each with the effect and ingredients of a proper land law. In promulgating these land laws and their subsequent amendments, the Company adhered as best as it could to the various articles of the Royal Charter granted to the Company by the British government in November 1881, particularly on issues pertaining to the welfare and rights of the natives. In general, the statutory law introduced by the Company recognised the position of native customs and native rights to communal lands. Among the first laws introduced by the Chartered Company were the Land Proclamations of 1883, 1885 and 1889. These, especially the 1885 and 1889 editions, emphasised the protection of native rights to lands; they stipulated that

before any title-deed to land could be issued to a European the chiefs had to be informed of the area under consideration and the headmen or chiefs had to be shown the surveying marks erected for their information. The District Officer was not to leave it to the chiefs to bring forward any claims; he himself was to make careful inquiries aimed at protecting native rights.<sup>6</sup>

5 See *Handbook of British North Borneo, 1890* (London: William Clowes & Sons, 1890), pp. 143–54; *Handbook of British North Borneo, 1934* (London: British North Borneo [Chartered] Company, 1934), pp. 91–3.

6 See North Borneo Land Proclamation II, 1885 and K.G. Tregonning, *A history of modern Sabah* (Singapore: University of Malaya Press, 1965), p. 120.

These rights covered all lands under cultivation, fruit trees, grazing land, burial grounds, graves, native tracks and shrines. In the event of disputes, the rights were to be settled by either a reservation of land or payment of monetary compensation. The natives were granted the right to appeal to the Governor for compensation before the issue of the title deeds would be authorised.

While the Proclamations were favourable to the natives, the same could not be said of the attitude of the European planter community who had, since the turn of the century, begun to become increasingly influential, if not powerful. The planters formed the North Borneo Planters' Association, which was later given a place in the State Legislative Council. While it was very noble on the part of the North Borneo Company administration to safeguard the natives' rights to land based on customary rights, actual enforcement had caused many problems for the estates that were beginning to spring up in large numbers, particularly on the west coast. Many companies found the respect for customary native rights impractical under Western law; hence there was a tendency to ignore these rights. Such actions by the companies so worried the government, especially in the face of the rising number of plantation companies wanting to open up estates, that the government decided to act further to provide some safeguard of native rights.

In 1902, Governor Ernest Woodford Birch issued Proclamation IX of 1902, which was aimed at abolishing the poll-tax and establishing a system of native land tenure; the North Borneo Company administration introduced land titles for every landowner. 'In order to confirm Natives in their present holdings and to encourage them to take up land for permanent methods of cultivation there shall be issued upon application to every native owner a certificate of tenure in perpetuity.' Indigenous landowners were to make their applications to the District Officer or Land Officer, and 'shall be dealt with without delay and as far as possible in the order in which they are received'.<sup>7</sup> In 1903, Governor E.P. Gueritz introduced the Land Proclamation of 1903 (A Proclamation to Amend the Law Relating to Land) which aimed at providing further protection for native rights to lands by the issuance of written titles to natives who were holding land under customary tenure. 'The holders of land under customary tenure or under Proclamation IX of 1902, may exchange his title for one under the provisions of this proclamation on proof of his right and on payment of the fees prescribed for leases under this proclamation.'<sup>8</sup> More importantly, the same proclamation also further enhanced native rights to lands by stipulating, 'It shall be the duty of the collector upon the receipt of any application for land to satisfy himself that no existing native rights would be infringed by the granting of such application', and that 'Native claims shall be taken down in writing by the native headman or by the Collector, and shall be decided by the Collector.' The proclamation further explained the nature of native rights over lands, including burial grounds and shrines.<sup>9</sup> Gueritz's land proclamation also explicitly spelt out the terms which Europeans and foreigners should follow when dealing with natives over land issues by inserting two safeguards:

7 Clause 4 (i) and (ii) of the North Borneo Proclamation IX of 1902.

8 Clause 17 of North Borneo Proclamation XXIII of 1903.

9 See Clause 24 of North Borneo Proclamation XXIII of 1903.

26. All dealings in land between Europeans, Chinese and other foreigners, on the one hand, and Natives, on the other hand, are hereby expressly forbidden, and no such dealings shall be valid or shall be recognised in any court of Laws unless they shall have been entered into and concluded before the 16th day of January 1883, or in the terms of the next following clause.

27. Any European or other foreigner desirous of purchasing land from a Native shall address his application to the Collector or if he sees fit to sanction such purchase he shall, if the native owner consent, acquire the land on behalf of the Government and shall fix the premium and quit-rent at which the land shall be leased by the Government to the applicant and the land when so leased shall be deemed to be alienated under and be subject to the provision of this proclamation.<sup>10</sup>

Governor Gueritz also authorised the voluntary acceptance of a written title by any native holding land under customary tenure. Thus began the task of a land settlement scheme aimed at surveying the native lands and preparing for title deeds to be issued to the natives. The plan, however, was not immediately welcomed by the natives. When the first settlement scheme team had completed its land surveying and issuing of title deeds for the Putatan (inclusive of Penampang) area, 3,000 individual title deeds were prepared. Most of these were left unclaimed in the District Office.<sup>11</sup> This situation persisted for about two years before the natives began to take them seriously and claim the titles. Even though the alienation of land and the issuance of individual titles were initially resented, and in many ways contributed to the problems faced by the Dusun in Papar — the focus of this paper — they nevertheless had a lasting positive legacy. With the granting of individual titles, the North Borneo natives' ownership of lands was recognised. This was not the case in Sarawak, where the Brooke administration only recognised communal lands, not individual titles. In this sense the Chartered Company's policy was more enlightened.

This situation began to change when more planting companies began to apply to take up land on the west coast. Suddenly, the natives began to see the importance of having written title deeds as a safeguard to their lands. They were also slowly becoming more amenable to the idea of paying quit-rent, something which was rather alien to them.

This change in attitude also saw a rise in native demand to have their lands surveyed, to the extent that by 1909 the survey teams were struggling to keep up with their assignments.<sup>12</sup>

The alienation of land for rubber planting and other uses had started after the introduction of the 1903 Land Proclamation. Under this ordinance, the natives were encouraged to take out individual titles for their land. The ordinance did not cover communal and grazing land, however, a bone of contention for the Dusun of Papar in 1910. Initial Dusun resistance against the land alienation process soon evaporated when the benefit of having a land title was made clear to those who had

10 Clauses 26 and 27 of North Borneo Proclamation XXIII of 1903.

11 See North Borneo Proclamation XXIII of 1903; and Tregonning, *A History of Modern Sabah*, p. 120.

12 Tregonning, *A History of Modern Sabah*, p. 121.

obtained the titles. By the time such realisation came to the community, however, many had lost their lands to the rubber estates — the origin of the grievances that culminated in the petition. A severe staff shortage in the Chartered Company administration had also resulted in a delay in the issuing of land titles. When visiting the west coast to investigate the problem in 1907, Henry Walker, the Land Commissioner, reported:

I went to Jesselton per S.S. Marudu on the 4th January and visited Beaufort and Tenom. Inspected the books at each station. The indexes at Jesselton were not written up and with that exception, the books are in order. I consider the clerical assistance at Jesselton to be quite inadequate to cope with the class or mass of work. The Putatan Native Titles are still unissued. This remark applies also to Papar... I note I did not ask for the shop rents at Papar but I discussed the matter of issuing the native titles at Putatan and Papar with the Resident who proposes to send his Malay clerk with the Demarcator Maksud Ali to issue the native titles at those two places.<sup>13</sup>

The delay in issuing the land titles, coupled with reluctance by the Dusun to pay for the process of land alienation, resulted in plots remaining unmarked and later being sold to the rubber estates. A few weeks before the Papar Dusun submitted their petition, G.C. Woolley,<sup>14</sup> then Acting Land Commissioner, visited Papar to hear a land case. According to him: 'Land office affairs here (Papar) seem to be in rather a chaos.'<sup>15</sup> Many Dusun who lived along the railway line found themselves losing their land and precious fruit trees. They also claimed to have suffered the loss of grazing lands and burial grounds. Negative feelings were mounting to the extent that they sought remedial action from the government. At the initial stage they sought the assistance of the District Officer, Edward Owen Rutter, who was not of much help.<sup>16</sup> When they complained to the Resident, E.H. Barraut, he also seems to have refused them. In fact, the meeting led to a stand-off between the Dusun and the Resident, whom they accused of being drunk when dealing with them. Even though the Chartered Company had dispatched its land officers to take a look at the situation,

13 'Commissioner of Land's Inspection Report (West Coast) by Henry Walker', *British North Borneo Herald*, 16 Feb. 1907.

14 G.C. Woolley joined the Chartered Company as a cadet in 1901 and rose through the ranks to become the Land Commissioner in 1911. See 'Service Record of G.C. Woolley', The National Archives, London (hereafter TNA), CO 874/201. (Woolley was the elder brother of Sir Leonard Woolley, the archaeologist who discovered the City of Ur.) Upon retiring in 1932, he returned to spend the remaining years of his life in Sabah. Woolley was interned during the war; he died in 1947. A keen observer of native customs, Woolley was the author of several volumes on the peoples of Sabah, including: *Dusun adat: Some customs of the Dusuns of Tambunan and Ranau, West Coast Residency* (Sandakan: Government Printers, 1939); *Kwijau adat: Customs regulating inheritance amongst the Kwijau tribe of the interior* (Sandakan: Government Printers, 1939); *Murut adat: Customs regulating inheritance amongst the Nabai tribe of Keningau and the Timogun of Tenom* (Jesselton: Government Printers, 1939).

15 'The Diary of G.C. Woolley' is deposited at the Sabah State Museum, 19 Apr. 1910.

16 Rutter joined the Chartered Company in 1910 as a cadet, and was Assistant District Officer in Putatan during the course of the case. He resigned in 1914 to serve in the army during the First World War and rose to the rank of major. Rutter was a prolific writer; among his more important works on Sabah are: *British North Borneo: An account of its history, resources and native tribes* (London: Hutchinson & Co., 1922); and *The pagans of North Borneo* (London: Hutchinson & Co., 1929).

to the extent of preparing funds to pay compensation for fruit trees that were removed, or other losses, the Dusun were generally unhappy with such measures. Many felt the compensation was too meagre and that, in most cases, their complaints and pleas were not entertained. This caused the Dusun in Papar to unite and act initially through a petition to Sir John Anderson and, later, by engaging an English lawyer, R.B. Turner, to act on their behalf to seek redress for their plight.

### The petition

The petition, dated 20 July 1910, finally arrived at the office of Sir John Anderson, the High Commissioner for the Federated Malay States and British Borneo — and also Governor of Singapore — in October 1910.<sup>17</sup> It sought the British government's intervention to redress what was regarded by the Dusun community as unjust treatment by the North Borneo Company administration. The petition was made by Simon Sindurang Bulakang, one of the principal Dusun headmen elected as the representative of the Papar Dusun to voice their grievances against what they considered the Chartered Company's indifference towards the way the newly opened Papar Rubber Estate (owned by Sablas [North Borneo] Rubber Company) had encroached upon their communal lands.<sup>18</sup> Simon was a Dusun from Kampung Kapinpinan in Papar, and a Roman Catholic. According to him, the petition was made after persistent complaints to the Chartered Company officials, particularly the District Officer at Beaufort, had come to naught. Thus, Simon was deputised by his community to go to Labuan to present the petition via the office of the Resident of Labuan.<sup>19</sup>

The petition came in the wake of a rush by European enterprises for large tracts of land for the planting of rubber. In 1906, this development was concentrated mostly on the west coast, especially along the railway line that linked Jesselton with the interior. By 1909, 17 rubber estates were already being opened up, mainly at Menggatal, Papar, Beaufort and Tenom.<sup>20</sup> Attracted by the positive growth of the rubber industry, the government alienated large tracts of land — some of it native communal land — for sale to these European companies.

The petition contained six major points:

1. The Dusun community claimed to have settled in the area since time immemorial and that they understood their position as regards the transfer of sovereignty of the State from the Brunei Sultanate to the Chartered Company.
2. The rubber estate had acquired land in the area from the Chartered Company without the Dusun community's knowledge.
3. The rubber company had cut down fruit trees on their lands, but failed to pay compensation. In cases where compensation had been made, the amounts were not commensurate with the actual value.

17 'Sir John Anderson to the Earl of Crewe, Colonial Office', 4 Oct. 1910, TNA, CO 531/2/33213.

18 'Petition from Simon to Sir John Anderson', Labuan, 20 July 1910, TNA, CO 531/2/33213.

19 Ibid. For a study on Simon, see Danny Wong Tze Ken, 'In search of Simon [Sindurang Bulakang]: A pioneer defender of Kadazan rights in colonial North Borneo', *Borneo Research Bulletin*, 39 (2008): 53–70.

20 D.S. Ranjit Singh, *The making of Sabah* (Kuala Lumpur: University of Malaya Press, 2000), p. 240.

4. The rubber company had violated their customary rights by encroaching upon and clearing lands that were graveyards and, in the process, had damaged many burial jars (*tajau*).
5. The Chartered Company had unjustly allowed its policemen to abuse their power by deliberately encouraging native livestock to wander into the fenced areas of the rubber estates or public land, hence often resulting in the animals being impounded and heavy fines imposed upon the owners of the livestock for their release, while the policemen received a cut from the proceedings.
6. The Chartered Company, in failing to address the problems, had failed to protect the Dusun's rights.

According to the petitioners, the loss of their lands and fruit trees had resulted in the loss of their sources of income. They also suffered from the loss of their cattle, buffaloes, goats, pigs and poultry which were impounded or even killed by the estates for trespassing into areas which they had formerly habitually used without restriction. The Dusun also had to pay compensation for damage caused by their animals on estate properties which had formerly been communal grazing land. Some estate workers further contributed to the Dusun's misery by stealing poultry from the villages.

Among other requests, the Dusun sought the intervention of the High Commissioner to impress upon the Chartered Company the need to redress the problem. They also sought rightful justifiable compensation for the losses they had suffered, particularly the fruit trees and cleared orchards. Even though the rubber estates did pay compensation for some of the fruit trees and sago palms, and even for houses they had removed, the Dusun deemed this insufficient.<sup>21</sup> More importantly, the Dusun expressed their wish to have the rubber company stop work in the graveyards, for fear of disturbing the spirits that were believed to dwell in the area. It was reported that the Dusun cemetery on a hill acquired by a rubber company had been cleared and the graves desecrated. Many of the graves had been dug up and the remains of the dead scattered.

One of the major points of contention raised in the petition was that the Dusun had no desire to sell their lands to rubber or other plantation companies, and they considered the Chartered Company's actions in selling the land for conversion to rubber estates as unjust and high-handed. Finally, the petition sought Sir John's help in setting up a royal commission to investigate this and other similar grievances for the whole of Sabah, with the aim of exposing 'the injustice, high handed proceedings and other mis-administration of Government by the North Borneo Company of the officials' as well as to seek necessary remedial action.<sup>22</sup>

As a result of the petition, Sir John Anderson directed the Chartered Company to allow the Dusun to seek redress through legal means. The Dusun of Papar, Membakut and Kimanis were allowed to file a lawsuit against the Chartered Company, seeking legal redress for their grievances. They were represented by Reginald Bryett Turner, formerly the Chartered Company's Judicial Commissioner. Along with the claims

21 'Commissioner of Land's Inspection Report (West Coast) by Henry Walker', *North Borneo Herald*, 16 Feb. 1907.

22 *Ibid.*

to land rights, the Dusun also complained that the Chartered Company officers were not treating the matter seriously; instead, they claimed, the Resident for West Coast, E.H. Barraut, had been drunk when he examined the case.<sup>23</sup> As the allegation was being presented in the Court, the Governor was unable to prevent the matter being discussed or investigated.<sup>24</sup>

Turner, the lawyer engaged by the Dusun, first joined the North Borneo Company as Judicial Commissioner in 1908. A graduate of Worcester College in Oxford, Turner was called to the English Bar in 1906. In 1910, on a matter of principle over the alleged intervention of certain parties in a judicial case presided over by him, Turner resigned from the service and went into private practice — the only lawyer to do so in North Borneo at that time. In that same year he was approached by a delegation of Dusun from Papar, led by Simon Sindurang Bulakang, asking him to represent the Dusun in fighting for the return of their lands. From then, until the case was finally decided by the issuance of a Parliamentary Paper in 1920, Turner was closely associated with the Dusun of Papar, especially through their appointed leader, Simon Sindurang Bulakang.<sup>25</sup>

The Chartered Company denied having mistreated the Dusun of Papar, and blamed the entire matter on agitation by the Roman Catholic Mission, of which Simon was a member.<sup>26</sup> Interestingly, although Simon was from Kampung Kapinpinan in Papar, his address was care of the Catholic Mission in Jesselton or Labuan. In his letter to High Commissioner Sir John Anderson, Governor Gueritz was of the opinion that the matter had been dealt with strictly in accordance with the provisions of the 1903 Land Proclamation. He felt that the Dusun's claim for failing to obtain any redress or relief from any of the Company's officials was unfounded.<sup>27</sup> Gueritz also pointed out that he had directed his officials — among them the Government Land Commissioner and the Resident of West Coast — to look into the matter. He had also asked the manager of the estate not to cross the boundary line determined by the Government surveyor.

More importantly, Governor Gueritz had told Father A. Goossens,<sup>28</sup> the Catholic priest at Papar, to inform Simon and the other Dusun not to interfere with the decisions arrived at by the officers who had investigated the matter, and that the Dusun's last option was to present the matter to the Company's Judicial Commissioner, whose decision would be final.<sup>29</sup> Even though Goossens had promised

23 'Governor to President, Court of Directors', 19 Aug. 1911, TNA, CO 874/475.

24 Ibid.

25 Tregonning, *History of modern Sabah*, p. 122.

26 'Governor, North Borneo to Sir John Anderson', 13 Sept. 1910, TNA, CO 531/2/33213.

27 Ibid.

28 Father Aloysius Goossens, d. 1935, was a Dutchman who was for a time professor of science and mathematics at St Joseph's College, Mill Hill. He arrived in Sarawak in 1881, and was recalled to teach at St Joseph's in 1883. After returning to Borneo in 1888, he served primarily with the Dusun at Papar-Limbawang, and was instrumental in compiling an extensive grammar and dictionary of the Limbahau Dusun language which was published in the *Journal of the Malayan Branch of the Royal Asiatic Society*, 1924. He was also known to be constantly in disagreement with the officials of the North Borneo Company, particularly over the issue of the Company's policy in appointing Muslim headmen to administer places such as Putatan, Bundu and Papar. See John Rooney, *Khabar gembira: A history of the Catholic Church in East Malaysia and Brunei, 1880-1976* (London and Kota Kinabalu: Burns and Oates Ltd and Mill Hill Missionaries, 1981), pp. 27-8, 140, 144 and 177-8.

29 'Governor, North Borneo to Sir John Anderson', 13 Sept. 1910, TNA, CO 531/2/33213.

to inform the Dusun about the matter, including the provision for presenting the case to a Judicial Commissioner, an appeal was nevertheless forwarded to Sir John Anderson. It was obvious that the Dusun no longer had faith in the Chartered Company's method of administering justice. The fact that the Judicial Commissioner was an employee of the Chartered Company administration did not help to instil confidence in them.

During the course of the investigation, the Governor invited Simon to Jesselton for an interview with G.C. Woolley, the Acting Land Commissioner, and S. Sawrey-Cookson, the Chartered Company's Judicial Commissioner. However, Simon's interview could not come to a proper conclusion as, according to the Governor, Simon — though a minor landowner himself — could not give instances of how the problem had affected him, and could only represent the cases of his fellow Dusun claimants in vague terms. It was learned that Simon, with two others, had visited the villages along the railway line to collect evidence and subscriptions to brief Turner, who helped them to draft the petition submitted to the Judicial Commissioner. The petition had three parts, representing three localities: the complaints of the inhabitants of Papar, Kimanis and Membakut.<sup>30</sup> Turner's petition to the Judicial Commissioner, dated 8 June 1911, listed Simon and Si Banjar and others as plaintiffs, and the Collector of Land Revenue and the Chartered Company as defendants.

Accordingly, Acting Governor A.C. Pearson, who had taken over the administration after the departure of Gueritz, dispatched Woolley to visit inhabitants of the three places to determine the truth of their complaints. He was also authorised to make on-the-spot payments to settle any complaints that he deemed to be well grounded and worthy of compensation.<sup>31</sup> During his visit to Papar, Membakut and Kimanis, Woolley found that many of the complaints were genuine, and he made payments to compensate for the losses. However, he also found that some claims were misrepresentations, especially those regarding fruit trees that had been 'abandoned' or 'forgotten'.<sup>32</sup>

However, the most sensitive matter in the petition was the alleged desecration of Dusun graveyards, which was highlighted by Turner in every section of the petition. As the matter touched on the rites and customs of the people, the Company ensured that it was dealt with in a tactful manner. When Woolley had earlier been investigating some land matters, he wrote in his diary, 'walked to Papar started a land enquiry case, Dusun adat very complex, no special rules, so had to refer it to chief for report'.<sup>33</sup> However, Pearson was not that sympathetic. He suggested that the Dusun buried their dead all over the country and that their graves were not maintained. Thus, in time, the site would be lost to undergrowth. Pearson, however, was poorly informed, as the Dusun from Papar were required by custom to repair their graves, whereas the graves of some other Dusun, such as those from Tambunan,

30 'Acting Governor A.C. Pearson to Sir J. West Ridgeway, Chairman North Borneo Company', 6 Feb. 1911, TNA, CO 531/4/34569.

31 *Ibid.*

32 'Diary of G.C. Woolley', 26 May 1910.

33 'Diary of G.C. Woolley', 29 Aug. 1910. It is also from Woolley's diary that we learned about his role in drafting the 1913 Land Ordinance. Work had started even in 1910.

may not be repaired.<sup>34</sup> Earlier, the Resident for West Coast had visited some of the graveyard sites and found most of them in disrepair, thus suggesting to the Governor that they were abandoned.

In his report, Woolley found that the local custom in Membakut dictated that, unless for the purpose of a burial, no clearing or felling of any sort may take place in a graveyard; graves therefore cannot be cleared or even fenced in, though apparently a *panchang* (gravestone) may be cut to mark the site. According to his investigation, only one case of actual desecration was authentic as it was shown that the grave had been pointed out and claimed before the land was cleared, and the rubber estate was fined \$25 for the offence. The other complaints, however, were dismissed by the magistrate, as the graves had not been pointed out or marked before clearing. Woolley found that it was not the custom of the Dusun to mark their graves; therefore they could not comply with the government's requirement that only graves that were marked would be recognised. This put the Dusun's claims against the rubber estates in a greatly disadvantageous position. Woolley also acknowledged that the removal of burial *tajau* (jars) was forbidden by custom.<sup>35</sup>

According to Woolley, the local chiefs in Membakut had expressed their willingness to sell the land between Membakut Estate and the Membakut railway station, but retain the plot of land with the actual *kampung* at Limantak, including the coconut and pinang trees around it as well as the five old graveyards nearby. No compensation, however, was paid to the locals for the earlier felling of trees and clearing of graveyards as they had not been pointed out to the estate manager earlier.<sup>36</sup> In cases where a graveyard had been cleared by the estate, the Chartered Company forbade the estate from planting on it. At Kampung Kolapis, Woolley fined the estate \$25 for clearing trees and two graves that had been pointed out, despite having given instructions to the acting estate manager not to do so.<sup>37</sup>

Despite the measures taken by the Chartered Company, the case finally was sent for arbitration by the Judicial Commissioner.

#### **Allegation against the Catholic Church**

The main question that immediately came to the minds of the Chartered Company officials was: who was behind Simon Sindurang Bulakang and the Dusun? Their suspicions came from the belief that the Dusun, who had only recently come into contact with Western civilisation and laws, would not be able to appreciate the finer points of their land rights had they not been coached or instigated by others. The pointing of fingers seemed to end with the Catholic Church and the lawyer Turner. Two things prompted the Chartered Company officials to blame the Catholic Church for inciting the Dusun to act. First, Simon had given the Catholic Church at Jesselton or Labuan as his correspondence address. Second, the Company's fury was directed especially at Father Aloysius Goossens. He was also known to be in constant disagreement with North Borneo Company officials,

34 Rutter, *The pagans of North Borneo*, p. 216.

35 'Report by G.C. Woolley regarding Complaints about Mambakut, Kimanis and Papar Estates', 11 Feb. 1911, TNA, CO 531/4/34569.

36 Ibid.

37 Ibid.

particularly over the issue of the Company's policy of appointing Muslim headmen to administer places such as Putatan, Bundu and Papar.<sup>38</sup> For instance, in South Keppel, which covered the districts of Putatan and Papar, the headman was Pangeran Haji Omar, a Brunei–Malay chief from Sipitang who was appointed in 1912.<sup>39</sup>

Writing in the early 1960s, K.G. Tregonning suggested that the Catholic Church had a hand in influencing the Dusun to act against the government:

On the coast too the native land policy brought trouble. At Papar a notorious trouble maker, strongly influenced by the long established Roman Catholic mission there, found for the Christian Dusuns imaginary faults in the change from traditional tenure. Their land claims were taken to court in 1911.<sup>40</sup>

This claim was refuted in the early 1980s by John Rooney, who said he had gone through the missionary's report, which denied that the church had been implicated in inciting the Dusun to protest against the government:

The Tregonning insinuation is that Father Goossens was the grey eminence in this case. The only reference to the case in the mission archives is a letter to Bishop Dunn from Mr. G. de la Mothe, requesting mission support to protest against the Chartered Company. Bishop Dunn's handwritten note to the letters states simply that he had ordered the Fathers not to become involved. Tregonning's justification for this insinuation is an extract from a Governor's dispatch of 1921. A perusal of the British Parliamentary papers on the case shows that the Catholic Mission is not once mentioned in the proceedings. The Governor's accusation can hardly be regarded as evidence and, while some may doubt that Father Goossens would have been deterred by orders from Kuching, his involvement may be discounted. The burden of the Governor's complaint in 1921 is that wherever Catholic missions had been established the natives tended to become politically conscious of their rights and that missionary influence should be controlled so that such a result might be avoided. The dispatch illustrates the bad feeling that existed between the government and the Catholic missions of the interior.<sup>41</sup>

Rooney's misgivings about Tregonning's assertion, however, were based solely on the Mill Hill Missionary Society's reports and a parliamentary paper which seem to absolve the Catholic Church from the accusations.<sup>42</sup> An investigation into the mood of the Chartered Company officials during the period of the protest between 1910 and 1911, however, made it difficult not to allude to the Catholic Church being a party to inciting the Dusun.

38 Rooney, *Khabar gembira*, pp. 27–8, 140, 144, 177–8.

39 Ranjit Singh, *The making of Sabah*, p. 256.

40 Tregonning, *A history of modern Sabah*, p. 60.

41 Rooney, *Khabar gembira*, p. 184.

42 *British Parliamentary Papers*, 33 (1920), pp. 681–705 as cited in Rooney, *Khabar gembira*, p. 184, fn. 35. According to Rooney, 'The matter of the Putatan/Papar Land cases is dealt with in conjunction with other more serious accusations against the Chartered Company. The evidence against the Company is in three affidavits by G. de la Mothe, R.B. Turner and Dr J. Pryce Williams. Lord Milner, on behalf of the British Government, states simply that the Company has met its accusers satisfactorily, but does not specifically exonerate it. The documents do not mention or allude to the Catholic mission or its personnel.'

Owen Rutter, the former Chartered Company Assistant District Officer who had not been helpful to the Dusun when they approached him in the initial stages, had been more inclined to put the blame on Turner, the Dusun's lawyer. Rutter's only complaint with the Church was its role in bringing 'civilisation' to the Dusun at Papar and Membakut, which meant that they had lost their 'simplicity and become undesirably sophisticated; it is a fact that the Dusun who live near-by the railway line from Putatan to Membakut have changed very materially during the past fifteen years, and not for the better'.<sup>43</sup> Thus the case also saw a mild discourse by Company officials who were less than thrilled by the prospect of facing a native society who were becoming more conscious of their rights and position, a development attributed to the role played by the Church in 'civilising' them.

Turner's decision to represent the Dusun and his alleged role in inciting the Dusun to protest against the government probably stemmed from his displeasure towards the Chartered Company administration in North Borneo. Turner had been engaged by the Chartered Company in 1909 to serve as its Judicial Commissioner, but he resigned from the service in 1910 over differences with government policies and practices in allowing influential planters to dictate even judicial decisions. It is possible that his decision to represent the Dusun was out of a desire to seek revenge on the Chartered Company. Whatever his reasons, Turner played a very important role in making sure that the Dusun's grievances were heard in court. It was also Turner who was chiefly responsible for sustaining wider interest in the case, including the involvement of the Society for the Protection of Aborigines.

The Chartered Company regarded Turner as an opportunist who had stayed with the Dusun for a few weeks to get the right to represent them in the case. They also looked upon him as one of the instigators behind the whole affair.<sup>44</sup> Turner admitted that he had promised certain chiefs that he would help them obtain redress, in return for a fee collected through a general subscription by the Dusun. Turner was, of course, greatly despised by the Chartered Company officials who felt that they were unjustly challenged by him and 'others of his kind [who] are now busily employed, if not in fomenting disturbances',<sup>45</sup> and who threatened the Company with the interference of the Secretary of State, an act which would undermine the authority of the Chartered Company government in North Borneo. What the Company officials failed to appreciate was that Turner was only engaged by the Dusun after they had repeatedly sent 11 complaints to the Company (to no avail), one to the British authority at Labuan and, finally, one to Singapore. It was only after Sir John Anderson's letter advising them to take the matter before the courts that the Dusun had obtained Turner's services.

And in spite of Rooney's contention that the Catholic Church and Father Goossens were not involved, there is some truth in Tregonning's assertion. In a letter

43 Rutter, *The pagans of North Borneo*, p. 60. Rutter was probably one of the Chartered Company's foremost apologists. On his role in the case, see Judgement of Civil Suit 7/11: Simon, Si Banjar and Others versus Collector of Land Revenue and the British North Borneo Government, 8 June 1911. Rutter devoted some pages absolving the Company from all wrongdoing *vis-à-vis* the Dusun claims. Rutter, *British North Borneo*, pp. 61–2.

44 'Governor Secretary, North Borneo to Under Secretary of State, Colonial Office', 31 Oct. 1912, TNA, CO 531/4/34569.

45 *Ibid.*

from Turner to Father Goossens dated 24 June 1914, almost two years after Turner had left the country, Turner bemoaned Goossens' passivity, 'How is it that I cannot hear from you? Important matters are now in hand and I feel quite isolated, without a word from you or from our Dusun friends for when [*sic*] I have gone through so much.'<sup>46</sup> At that time Turner was hoping to hear more from Goossens on the latest developments on the ground as he himself was having meetings with the North Borneo Company board of directors and the Anti-Slavery and Aborigines Protection Society. The latter also took up the Dusun's case against the Company.

### The trial

The hearing before Judicial Commissioner S. Sawrey-Cookson<sup>47</sup> was held from 8 June to 27 July 1911, with a recess of 10 days for coronation festivities (King George V). It was one of the longest court cases in North Borneo at that time. A total of 81 witnesses were called and examined; almost all were Dusun, with the exception of several Chartered Company officers, who included Woolley, acting for the Land Office, Barraut, the Resident of West Coast — who was allegedly drunk while hearing complaints from the Dusun during the initial stage of the affair — and other officers who came as character witnesses to defend Barraut.<sup>48</sup>

In his judgement, the Judicial Commissioner felt that the Chartered Company had acted in accordance with the existing law, and that Woolley's compensation payments were sufficient. As regards the graveyards, the Judicial Commissioner also ruled in favour of the Chartered Company. In his opinion, the Company officials had given prior orders to the Dusun to fence up their graveyards, and thus mark them. But as this had not been done, he ruled that no compensation should be made for claims of unmarked graves, and no *sagit* (customary compensation or considerations) was required.<sup>49</sup>

The seriousness of the case, however, was not lost on the Judicial Commissioner, who was of the opinion that Simon and his co-plaintiffs had every right to dispute the Company's stance on the matter, especially in claiming compensation (*sagit*) for the desecrated *tajau* (burial jars) and graveyards. He duly recommended that the rights of the natives regarding graveyards be respected and protected. Therefore, wherever any graves were known or shown to exist, the utmost care had to be taken so that they were not interfered with in any way. Had this been done, he believed that there would have been no defence to claims for reasonable *sagit*. Finally, Sawrey-Cookson recommended that all possible care be taken by those acquiring land from the natives, and also the natives from whom such land was

46 'Turner to Goossens', 24 June 1914 C4.2 Box C, No. 2 (b), Parishes/Priests/Religious Orders: Correspondences of Father Aloysius Goossens, 1929–1939, Roman Catholic Church, Kota Kinabalu Diocese Archives. I am grateful to Rt Rev. Bishop John Lee (now Archbishop) and Father Cosmas Lee of St Simon's Church, Likas, for allowing me access to the archives.

47 Sawrey-Cookson joined the Chartered Company in August 1910 to replace Turner. He was made an official member of the State Legislative Council in 1912. See 'Service Record of S. Sawrey-Cookson', TNA, CO 874/201.

48 Barraut was found not guilty and was granted 14 months' leave after the case in Aug. 1911; see 'Service Record of E.H. Barraut', TNA, CO 874/200.

49 *Sagit* is a form of compensation demanded by customary laws. See 'Judgement by S. Sawrey-Cookson, Judicial Commissioner', 8 June 1911, TNA, CO 531/4/34569.

acquired should be careful to obey all reasonable orders and help in every reasonable manner to make it possible for new landowners to avoid infringing any existing native rights.<sup>50</sup>

The Judicial Commissioner's decision was a relief to the Governor. In his dispatch to the President and Court of Directors in London, Governor Ellis expressed satisfaction that the:

judgement in the Papar Land case was given on 17th instant. The full judgement will be forwarded to you in due course; at present I am able to say that the Judicial Commissioner finds that the Government has the right to resume land held by natives under customary tenure, on payment of fair compensation. That the compensation paid for fruit trees is fair and sufficient, and that owing to contributory negligence the plaintiffs are not entitled to any compensation in respect of the various burial jars which have been accidentally disturbed, nor in respect of certain cattle alleged to have been killed by falling into the Estate road ditches. Each party pays its own costs. This is from our point of view a very satisfactory decision, and gives the natives exactly what we had been ready to give of our own accord, with the small exception that we are now obliged to refer to arbitration the amount of compensation payable for any land (as opposed to fruit trees) which we resume.<sup>51</sup>

The judgement also absolved the Chartered Company officials, including Barraut, of all alleged wrongdoings. The Governor also reported:

It also gives me much pleasure to record that the judgement categorically clears a number of officers from charges of negligence in assessing claims, which charges had been brought against them by Mr. Turner's clients. Mr. Barraut is also entirely cleared from a somewhat scandalous charge of being drunk whilst enquiring into land grievances at Papar. Although I had never placed much credence in the story, the fact that the charge of drunkenness was publicly made in court, left me with no option but to inform Mr. Barraut that he must clear himself completely before going on leave. It is to be regretted that Mr. Turner has not seen fit, in spite of several opportunities, to advise his ignorant clients to withdraw their statements, which have been amply controverted by the sworn evidence of several European witnesses.<sup>52</sup>

Not satisfied with the ruling of the Judicial Commissioner, Turner helped the Dusun at Papar, Bongawan and Membakut to draft new petitions to Sir John Anderson. The petitions were dated 19 July 1911, by Batindam, Yangar and Sogara of Bongawan; 5 August by Bokupas, Gombang and Massu of Membakut and Maratam and Tagap of Papar; and finally, 8 August by Simon of Kapinpinan, Papar.<sup>53</sup> The Colonial Office was certainly not happy with the Company's stand over the issue, and strongly sympathised with the plight of the Dusun. Writing to the Chartered Company in London, Lewis Harcourt, the Under Secretary of State, remarked: 'I do

50 'Rider to Judgement by S. Sawrey-Cookson', 18 Aug. 1911, TNA, CO 531/4/34569.

51 'Governor to President, Court of Directors', 19 Aug. 1911, TNA, CO 874/475.

52 Ibid.

53 See 'Various petitions by Dusun inhabitants to the Colonial Office', 19 July 1911, TNA, CO 531/4/39938.

not like this at all. I cannot think it is consistent with public policy to dispossess natives of their fruit gardens and even of their graveyards to make room for a rubber plantation, and I should tell the C.O. [Colonial Office] so straight.<sup>54</sup> After some debate between the Chartered Company and the Colonial Office, the Colonial Office asked the Chartered Company to instruct its officers in North Borneo to take utmost care not to allow the alienation of land on which native graves were known or believed to exist.<sup>55</sup>

Though this episode ended in 1912, other similar petitions were submitted to seek the British government's intervention, including one from six locations in the west coast of Sabah in 1913. Sir Arthur Young, the Secretary of State, expressed surprise at the latest development as the petitions also involved Dusun from Putatan, Kinarut and Kimanis.<sup>56</sup> The petition from Putatan was signed by Mamidal, that from Kinarut by Masagal, Madkar and Majorit, and Kimanis by Pambahan and Bangon. Thus far, the land dispute had been confined to the Papar–Bongawan–Membakut area.

By then Turner was already back in London. Due to his involvement with the Dusun, his law licence was not renewed and he was declared *persona non grata* and refused entry to North Borneo. Turner continued the struggle from England. He also took up the case with the Anti-Slavery and Aborigines Protection Society, and the case reached the British House of Lords in October 1919. In presenting the case to the House of Lords, Turner was assisted by G. de la Mothe and Dr J. Pryce Williams; the three signed the affidavit. The House, however, upheld the Chartered Company's position in August 1920. In his judgement, Lord Milner, on behalf of the British government, stated simply that the Company had met its accusers satisfactorily, but did not specifically exonerate it.<sup>57</sup>

The expression of grievances by the Dusun was not confined to Simon and his colleagues from along the railway line. Efforts were made to get the Dusun from Tuaran to join in the protest against the government, especially when they were also facing similar encroachment from the Tuaran Rubber Estate. However, the Dusun from Tuaran decided not to join them.<sup>58</sup> Despite their efforts, Simon and his friends could not sustain their struggle for the return of their land. The absence of Turner, who was barred from entering North Borneo, and a much-subdued Father Goossens, who was instructed by his bishop not to get involved, ensured that the Dusun's cause failed. The long lull between the end of the trial and the next attempt to bring up the matter again by Turner through the Anti-Slavery and

54 'Sir John Anderson, Minutes', 9 Nov. 1912, TNA, CO 531/4/34569. See also 'Under Secretary of State, Colonial Office to Secretary, North Borneo Company', 12 Dec. 1912, TNA, CO 531/4/39938.

55 'Under Secretary of State, Colonial Office to Secretary, North Borneo Company', 12 Dec. 1912, TNA, CO 531/4/39938.

56 'Arthur Young to Lewis Harcourt, Under Secretary of State, Colonial Office', 20 Nov. 1913, TNA, CO 531/4/39938.

57 *British Parliamentary Papers*, V. 33 (1920), pp. 681–705 as cited in Rooney, *Khabar gembira*, p. 184, fn. 35. See also *North Borneo: Correspondence on the subject of allegations against the Administration of the British North Borneo Company, presented to Parliament by command of His Majesty, December 1920* (London: His Majesty's Stationery Office, 1920).

58 Rutter, *British North Borneo*, p. 60.

Aborigines Protection Society in 1919 had resulted in waning interest amongst the Dusun to take up the matter again.

### **Conclusion**

A hundred years ago, a group of Dusun from the Papar area had been willing to go out of their way to petition and launch a lawsuit against the government for allowing their lands to be infringed upon and their ancestral graveyards desecrated. The whole matter took a great deal of their time and energy, not to mention several years of waiting before it was settled. Even then, the outcome was still very much in favour of the Chartered Company and the rubber plantations.

Nevertheless, the Dusun's efforts brought about a more cautious approach in the North Borneo Chartered Company's revision of the Land Law of 1903. The new Land Ordinance formulated by Woolley was introduced in 1913. To the credit of Woolley and the North Borneo Company, the new law demonstrated a more sensitive attitude towards native customary rights because of the actions of those brave Dusun who had a strong sense of their customary rights and heritage.

Disputes over land between the indigenous people on one hand, and the state and business enterprises on the other hand, have been dominating discussions on land issues in post-colonial Sabah.<sup>59</sup> This, however, is clearly not a recent development, as demonstrated by the struggle between the Dusun of Papar against the Chartered Company and the rubber planting companies.

59 See, for instance, cases in the ground-breaking work on native land rights by Amity A. Doolittle, *Property and politics in Sabah, Malaysia: Native struggles over land rights, 1881–1996* (Seattle and London: University of Washington Press, 2005).