

THE HIGH COURT

BETWEEN/

KEVIN BOLAND,

Plaintiff

- and -

AN TAOISEACH, THE MINISTER FOR FOREIGN AFFAIRS AND THE
ATTORNEY GENERAL

And added by Order of This Honourable Court, made the 17th
day of December, 1973;

AN TANAISTE AND MINISTER FOR HEALTH AND SOCIAL WELFARE,
THE MINISTER FOR FINANCE AND MINISTER FOR THE PUBLIC
SERVICES, THE MINISTER FOR DEFENCE, THE MINISTER FOR
LABOUR, THE MINISTER FOR THE GAELTACHT, THE MINISTER FOR
LANDS, THE MINISTER FOR POSTS AND TELEGRAPHS, THE MINISTER
FOR TRANSPORT AND POWER; THE MINISTER FOR INDUSTRY AND
COMMERCE, THE MINISTER FOR EDUCATION, THE MINISTER FOR
JUSTICE, THE MINISTER FOR LOCAL GOVERNMENT AND THE MINISTER
FOR AGRICULTURE AND FISHERIES,

DefendantsD E F E N C E

delivered the 3rd day of January 1974 on
behalf of the Defendants by Liam J. Lysaght,
Chief State Solicitor, Dublin Castle, Dublin 2.

1. By reason of the matters hereinafter pleaded the Defendants say that the proceedings herein are based on a mis-construction of the Agreed Communiqué and that they are misconceived and that the action herein should be dismissed
2. (i) The document entitled "Agreed Communiqué" (and referred to in paragraph 5 of the Statement of Claim herein) is a statement issued for publication following a Conference held between the Irish and British Governments and the parties involved in the Northern Ireland Executive (Designate) (herein referred to as the "Sunningdale Conference"). The Defendants acknowledge that part of the Agreed Communiqué recites and records matters agreed upon at the Sunningdale Conference. In addition it recites

and records statements and declarations made and decisions taken at the Sunningdale Conference.

(ii) Paragraph 5 of the Agreed Communiqué (referred to in paragraph 8 of the Statement of Claim herein) does not set forth the terms of any agreement made between the British and Irish Governments. The said paragraph recites and records separate declarations made by the Irish Government and by the British Government at the Sunningdale Conference.

(iii) Neither paragraph 5 nor any other part of the Agreed Communiqué recited or recorded any agreement between the British and Irish Governments which (a) acknowledged that a portion of Ireland therein described as "Northern Ireland" is part of the United Kingdom; (b) acknowledged or stated that the portion of Ireland therein described as "Northern Ireland" cannot be reintegrated into the national territory until or unless a majority of the people of an area described as "Northern Ireland" indicate a wish to become part of a united Ireland; (c) purported to deprive the Irish people as a whole of the right to national self-determination or to determine the status and territorial sovereignty of the Irish nation; (d) purported to limit the national territory of the Irish nation to a portion of the island of Ireland; (e) prejudiced the right of the Parliament or Government established by the Constitution to exercise jurisdiction over the whole of the national territory; (f) purported to impose British nationality or citizenship on a section of the Irish people residing in an area described as "Northern Ireland" who are now and were at any material time citizens of Ireland; (g) precluded

*Not an
agreement
Joint
declarations*

exercising jurisdiction over the whole island of Ireland; as alleged in paragraph 8 of the Statement of Claim or at all.

- (iv) The Defendants acknowledge that the Agreed Communiqué records the fact that it was agreed that a formal agreement would be entered into between the British and Irish Governments. The Defendants further acknowledge that the Agreed Communiqué recorded an agreement to incorporate in the proposed formal agreement the Declarations referred to in paragraph 5 of the Agreed Communiqué. There was no agreement recorded to the effect set out in paragraph 8 of the Statement of Claim and the Agreed Communiqué does not provide that such an agreement will be incorporated in the proposed formal agreement.
3. The Defendants acknowledge that the "Agreed Communiqué" recorded a declaration by which the Irish Government fully accepted and solemnly declared that there could be no change in the status of Northern Ireland until the majority of the people of Northern Ireland desired a change in that status. By making such a declaration the Irish Government was enunciating its policy as to the manner in which a united Ireland could come about.
4. The granting of the declarations, injunctions and other relief sought by the Plaintiff in these proceedings does not form part of the administration of justice entrusted by the Constitution to the Courts and there is no jurisdiction in this Honourable Court to grant the relief sought or any part thereof. The agreement by the Irish Government to incorporate the said Declaration and the Declaration of the British Government (which is set out in paragraph 5 of the Agreed Communiqué) in a formal agreement at the formal stage of the Conference and its agreement that such formal agreement would be registered at the United Nations (which agreement is recited and recorded in paragraph 6 of the

Agreed Communiqué) is a matter for determination by the Government. The manner in which the executive power of the State in or in connection with its external relations is to be exercised from time to time is a matter for determination by the Government, subject to the provisions of the Constitution, and it was not the purport or intent of the Constitution that it should be subject to supervision, intervention or control by the judicial organ established under the Constitution.

5. (i) The formal agreement referred to in the Agreed Communiqué is to be an agreement which will inter alia make provision for the establishment of a Council of Ireland. The Agreed Communiqué contemplates that the establishment of such a Council will involve a charge on public funds. By virtue of Article 29 sub-paragraph 5(2) of the Constitution the State will not be bound by the proposed formal agreement unless the terms of the agreement shall be approved by Dáil Éireann. The appropriate organ of State to exercise supervisory control in relation to any such proposed agreement is Dáil Éireann and not the Courts established by Article 34 of the Constitution. The Defendants submit accordingly that no cause of action is disclosed.
- (ii) Further and in the alternative, the Defendants say that the terms and wording of the proposed formal agreement have not yet been agreed upon and consequently no cause of action is disclosed.
6. The declaration of the Irish Government referred to in paragraph 5 of the Agreed Communiqué did not acknowledge that a portion of Ireland therein described as "Northern Ireland" is part of the United Kingdom; did not purport to deprive the Irish people as a whole of their right to national self-determination and to determine the status and territorial sovereignty of the Irish nation; did not

purport to limit the national territory of the Irish nation to a portion of the island of Ireland; did not prejudice the right of the Parliament and Government established by the Constitution to exercise jurisdiction over the whole of the national territory; did not purport to impose British nationality and citizenship upon a section of the Irish people residing in an area described as "Northern Ireland" who are now and were at any material time citizens of Ireland; did not preclude the Courts set up under the Constitution from exercising jurisdiction over the whole island of Ireland. The said declaration is not an infringement of the territorial sovereignty of Ireland or repugnant to the provisions of the Constitution.

7. Neither the Defendants nor any of them entered into an agreement to matters, engagements or arrangements which were repugnant to the Constitution of Ireland.
8. By entering into a formal agreement as is contemplated in the "Agreed Communiqué" the Defendants deny that they would be usurping the functions of Oireachtas Éireann and/or the people of Ireland; that they would be amending the Constitution. They further deny that by registering an agreement as is contemplated in the said "Agreed Communiqué" they would be acting unconstitutionally or usurping the functions of Oireachtas Éireann or the people of Ireland or that such act would involve an amendment of the Constitution.
9. The Defendants deny that the matters referred to in paragraph 12 of the Statement of Claim are questions which should be decided only in the manner pleaded.
10. The Defendants deny that by entering into a formal agreement pursuant to the terms of the "Agreed Communiqué" or by registering the said agreement or any similar agreement that they would be prejudicing or pre-empting the rights of the Oireachtas or the Irish people as enshrined in the Constitution of Ireland.

11. The Defendants refer to paragraph 14 of the Statement of Claim herein. They repeat paragraph 1 of their Defence and say that the matters complained of by the Plaintiff did not form part of an agreement between the Irish and British Governments. They admit, however, that certain matters referred to in the "Agreed Communiqué" will be included as part of a formal agreement to be entered into between the British and Irish Governments as set out in the said "Agreed Communiqué" and that such formal agreement will be registered at the United Nations. The Defendants deny that the implementation of the matters recited in the "Agreed Communiqué" would involve doing irreparable or any damage to the rights of Oireachtas Éireann or the people of Ireland.
12. The Plaintiff is not entitled to the relief claimed or any part thereof.

JOHN BLAYNEY B.L.

RODERICK J. O'HANLON S.C.

KEVIN LISTON S.C.