

E. R.

P/A

CONFIDENTIAL

ME/163/87/SH

MR BELL

Mr W. D. [unclear]
for urgent advice pl (it will affect)
cc Mr S Hewitt
our submission RMB 3/2

McGIMPSEY CASE

I attach a copy of the submission made by the McGimpsey brothers to the Irish High Court, handed to me yesterday by Mr Lillis. You may wish to look through it. I am not giving it any further circulation at this stage, and do not know even whether the FCO have a copy, but you may like to think about further distribution.

2. Mr Lillis said little by way of comment. He thought that the submission missed one or two points (but did not identify them). He was not himself pessimistic about the outcome from our point of view - the selection of judges for the Supreme Court hearing on the single European Act had had some effect in producing the unfavourable verdict, and this might not happen next time. But the High Court hearing would probably come first. We could expect to hear much more about this as the year went on; it was clear that the Irish Government were taking the whole question very seriously.

Mark Elliott

M ELLIOTT

2 July 1987

CONFIDENTIAL

BETWEEN

CHRISTOPHER MCGIMPSEY and
MICHAEL MCGIMPSEY

Plaintiffs

Campbell College

IRELAND, THE TAOISEACH, THE TANAISTE,
THE MINISTER FOR THE GAELTACHT, THE
MINISTER FOR FOREIGN AFFAIRS, THE
MINISTER FOR FINANCE, THE MINISTER FOR
JUSTICE, THE MINISTER FOR AGRICULTURE
AND FOOD, THE MINISTER FOR SOCIAL
WELFARE, THE MINISTER FOR INDUSTRY &
COMMERCE, THE MINISTER FOR TOURISM &
TRANSPORT, THE MINISTER FOR ENERGY,
COMMUNICATIONS AND FORESTRY, THE
MINISTER FOR THE MARINE, THE MINISTER
FOR THE ENVIRONMENT, THE MINISTER FOR
LABOUR, THE MINISTER FOR HEALTH, THE
MINISTER FOR DEFENCE, THE MINISTER FOR
EDUCATION AND THE ATTORNEY GENERAL

Defendants

STATEMENT OF CLAIM

1. The first named plaintiff Christopher McGimpsey was born on 3rd September 1952 at Donaghadee County Down and now lives at Northern Ireland. He was educated at Campbell College, Belfast, Syracuse University, and at the University of Edinburgh. He is an historian by training and is a company director. He is the holder of an Irish passport.

on 13th his
(interest?)

- 2 -
The second named plaintiff Michael McGimpsey was born on
1st July 1948 in Northern Ireland and resides at

/County Down/

He was educated at Regent House, Newtownards, / and at Trinity
College, Dublin. He is a company director.

3. The first named defendant is the State, the second to sixteenth
named defendants collectively constitute the Government
entrusted with the executive power of the State pursuant to
Article 28 of the Constitution, and the last named defendant is
the Law Officer of the State designated by the Constitution.
4. The first and second named plaintiffs are members of the
Official Unionist Party of Northern Ireland. In 1983 the first
named plaintiff made a written submission to the New Ireland
Forum and on the 19th day of January 1984 the first and second
named defendants made an oral presentation to the New Ireland
Forum. The New Ireland Forum was established for consultations
on the manner in which lasting peace and stability could be
achieved in a New Ireland through the democratic process and to
report on possible new structures and processes through which
this objective might be achieved. None of the political
parties representing the Unionist point of view were officially
represented at the New Ireland Forum.
5. On the 15th day of November, 1985 at Hillsborough in the County
Down the Government of Ireland and the Government of the United
Kingdom concluded an agreement entitled "Anglo-Irish
Agreement". In Article 1 of the said Agreement the two
Governments

"(a) affirm(ed) that any change in the
status of Northern Ireland would only
come about with the consent of a majority
of the people of Northern Ireland;

(b) recognise(d) that the present wish of
a majority of the people of Northern
Ireland is for no change in the status of
Northern Ireland;

named

*elaborate
of para?*

his interest

(c) declare(d) that, if in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support in the respective parliaments legislation to give effect to that wish."

In Article 2(b) of the said agreement the two Governments stated that "There is no derogation from the sovereignty of either the Irish Government or the United Kingdom Government, and each retain responsibility for the decisions and administration of government within its own jurisdiction."

*Description
is separate?
danger of
confusingly
restrictive*

In the said Article 2 the two Governments agree that an Inter-governmental Conference be established and that ".....determined efforts shall be made through the Conference to resolve any differences...." on

*But only is
for a)
discussed
within the Conf?*

- (i) political matters;
- (ii) security and related matters;
- (iii) legal matters, including the administration of justice; and
- (iv) the promotion of cross border co-operation.

In Article 3 of the said agreement the two governments agreed to establish a Secretariat to service the Intergovernmental Conference on a continuing basis.

In Article 4 (a) the two Governments agreed that the Conference within which they would work together

*shall be a
framework*

- "(i) for the accommodation of the rights and identities of the two traditions which exist in Northern Ireland; and
- (ii) for peace, stability and prosperity throughout the island of Ireland by promoting reconciliation, respect for human rights, co-operation against terrorism and the development of economic, social and cultural co-operation."

In Article 4(c) the two Governments agreed that the Conference should be "....a framework within which the Irish Government may put forward views and proposals on the modalities of bringing about devolution in Northern Ireland, insofar as they relate to the interests of the minority community."

In Article 4(b) of the said agreement the two Governments express support for the policy of devolution in Northern Ireland, and in Article 5(c) the two Governments agree that in the absence of devolution on an agreed basis the Conference would constitute a framework within which the Irish Government could put forward views on proposals for major legislation affecting the interests of the minority community.

no leading, the
reference is to
acceptance in NR

6. The said agreement is unconstitutional because it establishes a framework through which the foreign relations power of the State must be exercised in respect of the United Kingdom. In doing so the Government has purported to abdicate full freedom of action in respect of policy with that State, or to inhibit or qualify or restrict that freedom of action, by entering into a solemnly covenanted commitment to exercise the executive power of the State, within the meaning of Article 29 of the Constitution, in a particular manner; the said restriction was not submitted to the people for their approval in accordance with the requirements of Articles 6 and 47 of the Constitution.

Crotty says

7. Further, or in the alternative, the Government has purported, in Articles 1 and 2(b) of the Agreement, to acknowledge the sovereignty of the Government by the United Kingdom over a portion of the national territory. This concession of right, contained in a solemnly covenanted commitment binding on the State in international law, is contrary to the provisions of Articles 2 and 3 of the Constitution. Article 1 of the said agreement is also repugnant to Articles 2 and 3 because it purports to leave the determination of the issue of the reintegration of the sectorial territory to the majority of the people in Northern Ireland rather than to the people of the national territory as a whole.

46

Difficult to see
in light of art
2(3). That is

Art 1 Art 2
Not say where
"jurisdiction"
but if not 2
What is Art 2

Says it will be
come about..

Shameless
 in any way
 in and by the 8th
 Govt to undertake
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 process

Confusing and evasive
 direct and
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 say as the people
 of Northern Ireland
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 Govt in app. Me.
 Here
 fanciful

If it is OK to acknowledge
 then duty to make sense

Acknowledging
 the unacceptability

but they do not
 necessarily acknowledge
 the right to justice
 there

Other states act.
 but H.N.'s with
 consequential

Conceded
 into relief (ii)

8. Further, or in the alternative, pursuant to Schedule 1 of the Northern Ireland Act of 1974 the people of Northern Ireland have no say in the preparation and enactment of legislation applicable to that part of the national territory, and insofar as Article 4(b) and 5(c) of the said agreement confirm the present legislative and executive structures in Northern Ireland, the said agreement is repugnant to the provisions of Articles 3 and 5 of the Constitution which impose a duty on the organs of the State established by the Constitution to ensure, to the best of their ability, that the system of government in Northern Ireland is democratic.
9. Further, or in the alternative, Articles 4(c) and 5(c) of the Agreement, which purport to establish a framework in which the Irish Government can participate in initiatives to secure devolution in Northern Ireland and to prepare legislation on major policy issues affecting the interests of the minority community, insofar as they confirm the status quo, are contra to Articles 2 and 3 of the Constitution which aspire to a state of affairs other than the present dispensation in Northern Ireland.
10. Further, or in the alternative, the resolution of Dail Eireann of 21st November 1985 approving the terms of the said Anglo-Irish Agreement is contrary to the provisions of the Constitution in that it purports to confirm the unconstitutional actions of the Government and insofar as it forms the basis for annual appropriations from the Central Fund of the State designed or intended to finance the activities of the Conference established by Article 2 of the said agreement and the secretariat established by Article 3 of the said agreement

THE PLAINTIFFS CLAIM:

- (i) a declaration that the Anglo-Irish Agreement, concluded between the Governments of Ireland and the United Kingdom at Hillsborough in the County Down on the 15th day of November 1985, is contrary to the provisions of the constitution;
- (ii) - an injunction to prevent the State from appropriating monies from the Central Fund to the service of the Intergovernmental Conference or Secretariat established by the said agreement;
- (iii) further and other relief;
- (iv) costs.

Could lead to
a breach of
int law.

Can now form

Finbarr Murphy,
Frank Clarke - who he?
Hugh J. O'Flaherty,

Not wanting to
prevent the
state from
in a Conf-
Why?

Int defence?

Int law rel

PLENARY

BETWEEN:—

Form No. 1
Order 1. Rule 2

Impressed Stamp

Christopher McGimpsey and Michael McGimpsey

Plaintiffs

— AND — IRELAND, and

An Taoiseach, An Tánaiste, The Minister for the Gaeltacht, The Minister for Foreign Affairs, The Minister for Finance, The Minister for Justice, The Minister for Agriculture & Food, The Minister for Social Welfare, The Minister for Industry & Commerce, The Minister for Tourism & Transport, The Minister for Energy, Communications & Forestry, The Minister for the Marine, The Minister for the Environment, The Minister for Labour, The Minister for Health, The Minister for Defence, The Minister for Education and the Attorney General

To the Defendants, An Taoiseach, An Tánaiste, The Minister for the Gaeltacht, The Minister for Foreign Affairs, The Minister for Finance, The Minister for Justice, The Minister for Agriculture & Food, the Minister for Social Welfare, The Ministry for Industry and Commerce, The Minister for Tourism & Transport, The Minister for Energy, Communications & Forestry, The Minister for the Marine, the Minister for the Environment, The Minister for Labour, The Minister for Health, The Minister for Defence, The Minister for Education, and the Attorney General of Government Building, Lower Merrion Street, City of Dublin

Defendants

This Plenary Summons is to require that within eight days after the service thereof upon you (exclusive of the day of such service) you in person, or by Solicitor do enter an appearance in the Central Office, Four Courts, Dublin, in the above action; AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and Judgment may be given in your absence.

BY ORDER— The Honourable Thomas A. Finlay,

Chief Justice of Ireland the 19th day of May

One Thousand Nine Hundred and Eighty-Seven

N.B.—This Summons is to be served within TWELVE Calendar Months from the date thereof, or if renewed, within SIX Calendar Months from the date of the last renewal, including the day of such date, and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by Solicitor, at the Central Office, Four Courts, Dublin.

GENERAL INDORSEMENT OF CLAIM.

The Plaintiff's Claim is for:-

- A. A Declaration that the Agreement, concluded between the Governments of Ireland and the United Kingdom at Hillsborough County Down, on the 15th day of November 1985, is contrary to the provisions of the Constitution.
- B. Further and other relief.
- C. Costs.

Finbarr Murphy B.L.,

Hugh O'Flaherty S.C.,

Signed, *Evanian Walsh* 2. 0. 1. 5.....

Brendan Walsh & Partners.

This Summons was issued by the Plaintiff who reside

at

• State address
accurately.

and is

and whose address for service is

or

This Summons was issued by

Brendan Walsh & Partners

whose registered place of business is at

18 Herbert Street, Dublin 2

Solicitors for the Plaintiff s ~~who reside~~

Christopher McGimpsey resides at

North ~~W~~. Ireland and Michael McGimpsey resides at

~~in the County of~~

and ~~is~~ are Company Director & Businessman respectively.

This Summons was served by me at

in the County of

on the Defendant

on day, the day of 19

Indorsed the day of 19

Signed.....

Address.....

.....

THE HIGH COURT

19 87 No.

Christopher McGimpsey & Michael McGimpsey

vs.

An Taoiseach, An Tanaiste, The Minister for Foreign Affairs, The Minister for Finance, The Minister for Justice, The Minister for Agriculture & Food, The Minister for Social Welfare, The Minister for Industry & Commerce, The Minister for Tourism and Transport, The Minister for Energy, Communications & Forestry, The Minister for the Marine, The Minister for the Environment, The Minister for Labour, The Minister for Health, The Minister for Defence, The Minister for Education, And the Attorney General.

Originating Summons

PLENARY.

Order 1, Rule 2.

Brendan Walsh & Partners
Solicitors
18 Herbert Street,
Dublin 2.

Castletown Press Ltd. Low Printers, Celbridge