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TELEX NO. 90879

Our Ref.

Your Ref

Confidential

7th March, 1988.

Mr. Dermot Nally,
Secretary to the Government.

RE: McGimpsey and McGimpsey's case.

Dear Dermot,

I enclose copy of the Defence in the above case, which has been settled by the Attorney General. He took account of the points made by you and by Noel Dorr and his colleagues, and he discussed the central issue (dealt with in paragraph 12 of the Defence) with the Taoiseach.

It is proposed to file the Defence on Wednesday next, 9 March. The Attorney General has no objection to a copy being conveyed at this stage to the British.

Yours sincerely,

Matthew Russell,
Senior Legal Assistant.

c.c. Noel Dorr,
Dermot Gallagher,
D. O'Donovan.

M. Kowal
7/3

OIFIG AN ÁRD-AIGHNE
(Office of the Attorney General)
GOVERNMENT BUILDINGS
UPPER MERRION STREET
DUBLIN 2

JRM 4/3/88

McGimpsey and Another -v- Ireland and Ors.

Draft Defence

1. The plaintiffs do not have the locus standi necessary to seek the reliefs sought in the Statement of Claim on the grounds that neither of them has any interest or right which has or will suffer any injury or prejudice by reason of any of the matters alleged in the Statement of Claim or by reason of the coming into force of the said Agreement or at all, nor has either a common interest with any other persons who could claim to be, or to be likely to be, adversely affected thereby.
2. The Defendants are strangers to the matters pleaded in paragraphs 1 and 2 of the Statement of Claim and await proof thereof.
3. The Defendants do not admit to the matters pleaded in paragraph 4 of the Statement of Claim and insofar as the same are relevant to the Plaintiffs' claim, await proof thereof.
4. The Government in the exercise of the executive power of the State in or in connection with its external relations are entitled, pursuant to the provisions of the Constitution, to enter into international agreements concerning the relations of the State with other States and the Government, in entering into the Anglo-Irish Agreement, 1985, were acting within and in accordance with their constitutional functions.
5. The Defendants say that the provisions of the said Agreement are not completely or accurately quoted or pleaded in the Statement of Claim and deny that the meaning, effect

or consequences of its provisions are correctly or alternatively completely stated; and the Defendants at the hearing will refer, for greater particularity, to the full text of the said Agreement for the true and complete meaning, effects and consequences thereof.

6. The said Agreement is not unconstitutional and its provisions are not incompatible with Articles 2, 3, 5 or 6 of the Constitution as alleged or at all.
7. The Defendants deny that the said Agreement establishes a framework through which "the foreign relations power" of the State must be exercised in respect of the United Kingdom. The said Agreement establishes a conference within the framework of the Anglo-Irish Intergovernmental Council (referred to in Article 2 of the said Agreement) to perform such functions as are conferred upon it by the Agreement.
8. If, which is denied, the said Agreement establishes a framework through which "the foreign relations power" of the State must be exercised in respect of the United Kingdom the Defendants deny that the said Agreement is unconstitutional by reason thereof.
9. The Defendants deny that the Government have purported to abdicate freedom of action in respect of policy with the United Kingdom and further deny that the Government have purported to inhibit or qualify or restrict that freedom of action as alleged or at all.
10. Insofar as the manner in which the Government act in respect of policy with the United Kingdom is affected by the said Agreement, the same was entered into by or on behalf of the State in the exercise of its sovereign powers, including the exercise of the executive power of the State in or

in connection with its external relations, and the said Agreement is not inconsistent with the provisions of the Constitution, and in particular Article 29 thereof, as alleged or at all.

11. The Defendants deny that the said Agreement requires the executive power of the State to be exercised in a particular manner or alternatively in a manner inconsistent with the provisions of the Constitution. If the Agreement requires the executive power of the State to be exercised in a particular manner the Defendants deny that the Agreement is inconsistent with the provisions of the Constitution, or any of them, as alleged or at all.
12. The Government have not, in Article 1 or 2(b) of the Agreement or in any Article thereof, purported to acknowledge the de jure sovereignty of the Government of the United Kingdom over portion of the national territory, nor made any such "concession of right". The said Articles acknowledge the jurisdiction which, as a fact, the Government of the United Kingdom exercise in relation to Northern Ireland.
13. Article 1 of the said Agreement does not have the effect attributed to it by the final sentence of paragraph 7 of the Statement of Claim.
14. Article 1 of the said Agreement is not repugnant to Articles 2 or 3 of the Constitution as alleged or at all.
15. Articles 4(b) and 5(c) of the said Agreement do not have the effect alleged in paragraph 8 of the Statement of Claim. Furthermore, the said Articles are not repugnant to the provisions of Articles 3 and 5 of the Constitution on the grounds alleged in paragraph 8 or at all.

16. If and insofar as Articles 4(c) and 5(c) "confirm the status quo" they do no more than take account of its existence and are not, by reason thereof or at all, contrary to Articles 2 or 3 of the Constitution.
17. The resolution of Dail Eireann of 21st November, 1985 approving the terms of the said Agreement is not contrary to the provisions of the Constitution as alleged or at all.
18. It is denied that any actions of the Government relating to the said Agreement were unconstitutional as alleged or at all.
19. The plaintiffs are not entitled to the reliefs claimed or to any relief.