



THE ROYAL COURTS OF JUSTICE, ULSTER

BELFAST BT1 3QV

13th December, 1971.

My dear Harold

Dungiven Assembly

1. Thank you for your letter of the 9th instant about the above and enclosing reports from the 'Irish Times' and 'Irish News' (6.12.71) of the most recent meeting of the above assembly.

2. If prosecutions are ever considered they would be considered firstly under the Convention (Ireland) Act Repeal Act 1879 which states (Sect. 2):-

"..... it shall be an offence punishable with fine and imprisonment or with one only of such punishments for any person or persons either as elector, candidate, or representative, to take part in the proceedings of any assembly, other than Parliament as by law constituted, which shall propose to take or shall take upon itself, or wilfully permit to be attributed to it the functions of either House of Parliament, or any of them, or having for its object or tendency to bring Parliament into hatred or contempt."

3. This section related to the Dungiven Assembly envisages at least two situations where there may be a breach of the law -

1. A representative taking part in the proceedings of an assembly which proposes to take upon itself the functions of Stormont.



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2. A representative taking part in the proceedings of an assembly having as its object the bringing of Stormont into hatred or contempt.

4. While the newspaper reports sent suggest that a prima facie case is approaching on (1) and (2) you will also see at once some of the difficulties of proving beyond reasonable doubt either (1) or (2). For example in (1) is Dungiven really proposing to take upon itself the functions of Parliament? The functions of Parliament are its legislative authority and its financial duty of providing through taxes the monetary requirements of government. The Dungiven Parliament may have some of the external trappings and procedure of Parliament, e.g., its title, Chairman, preliminary prayers, debate in the form of motions, etc. - but these are not obviously functions. (2) is possibly stronger in proof - although they would say that the object of their Dungiven Assembly was not to bring Stormont into hatred or contempt but to provide an assembly where they can plan ways and means of helping the minority.

5. A prosecution would also be considered on the same basis as the prosecution in Reg. v. Charles Stewart Parnell (1881) 14COX508 where the charges were in substance conspiracy to prevent tenants paying their rents, to impede lawful execution on foot of Court decrees, to repossess 'evicted' farms and prevent others from entering into possession of 'evicted' holdings. This case is authority for the proposition that while an individual who refuses to pay rent or rates commits a mere civil wrong, a conspiracy between two or more persons to do this or bring it about is a criminal wrong.

6. I think that this kind of conspiracy might be easier to prove than an offence under the 1879 Act.



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7. Of course as I have said to you many times, the most formidable barrier in the way of a prosecution to my mind is - is it in the public interest to bring such a prosecution? Would a trial of this kind give much-needed publicity to an Assembly which already at only its second meeting is declining in attendance and generally in impact? Would such a trial make this Government look 'silly'? It must be remembered that a prosecution for either conspiracy or a breach of the 1879 Act would necessarily be an indictable one - one can see the drama and publicity of Fitt, Hume, Currie, Cooper - indeed all the old Stormont opposition - in the dock with no doubt separate legal representation at a trial which would last for weeks with all its attendant publicity and with no certainty of conviction at the end - what with difficulty of proofs and the vagary of a jury.

8. However, I have (very much so) an open mind on the matter and I hope the police are not unmindful of the situation and are prepared to record and obtain evidence - if you wish you could send a copy or purport of this letter to the Chief Constable or Asst. Chief Constable Meharg.

9. I am sending a copy of it to Leitch - although it is outside his work - he nevertheless has shown interest in the subject and his views are helpful as always.

Sir Harold Black,
Secretary to the Cabinet,
Stormont Castle,
BELFAST.

BT4 3ST

*Answer
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