

STATE (HAMAD)

THE HIGH COURT



STATE SIDE

1981 No. 226 S.S.

THE STATE AT THE PROSECUTION  
OF ASIM HAMAD

.v.

NORTH EASTERN HEALTH BOARD  
AND P.J. CLARKE

Judgment of Ellis J. delivered the 20th day of January 1982

This is an application by the Prosecutor to make absolute a Conditional Order of Certiorari made on 18th May 1981 (Doyle J.) notwithstanding cause shown.

As recited in the said Conditional Order it appeared

- (1) that by Order No. 255-1981 dated 31st March 1981 of the then Chief Executive Officer of the North-Eastern Health Board the Prosecutor was suspended from the performance of his duties as Temporary Registrar of the Surgical Hospital Cavan on the grounds of misconduct and fitness.
- (2) that by Order No. 299-1981 dated 21st April 1981 of the Chief Executive Officer of the said Board, being the second named Respondent, the Prosecutor was given notice of the second named Respondent's intention to remove him from his said position and
- (3) that by Order No. 326-1981 dated 28th April 1981 of the second-

named Respondent, the Prosecutor was given and received notice of removal from his said position.

By the said Conditional Order the Respondents were directed to send before this Court for the purpose of being quashed the said three Orders and all records and entries relating thereto on the grounds set out in paragraph 10(g) of the Prosecutor's Affidavit grounding his application.

The surgical Hospital, Cavan, is administered under the Health Acts by the first-named Respondent of which the second-named Respondent at all material times was the duly appointed Chief Executive Officer.

By Order of 23rd January 1981 the temporary appointment of the Prosecutor to the office of Surgical Registrar in the Surgical Hospital Cavan in the employment of the first-named Respondent for the period 7th January 1981 to 30th June 1981 was duly approved and made on behalf of the Board pursuant to the provisions of Section 14 of the Health Act 1970 (to which I shall refer as the Act) whereby the Prosecutor became an Officer and or servant of the Board according to the terms and conditions of his said appointment and employment.

The following are the statutory provisions and regulations relating to the procedures and requirements to be followed by the Respondents leading up to and including the removal of the Prosecutor from his

said position.

Section 22(1) of the Act relates to the suspension of the Prosecutor and provides as follows -

Section 22(1) - Whenever, in respect of an officer of a health board other than the chief executive officer, there is, in the opinion of the chief executive officer, reason to believe that the officer has misconducted himself in relation to his office or is otherwise unfit to hold office, the chief executive officer may, after consultation with the chairman or, in his absence, the vice-chairman of the board, suspend the officer from the performance of the duties of his office while the alleged misconduct or unfitness is being inquired into and any disciplinary action to be taken in regard thereto is being determined.

Section 23(1) and Section 23(5) of the Act relate to the removal of the Prosecutor from his position (being an officer of the Board other than a permanent officer) and provides as follows -

Section 23(1) - Subject to subsections (2) to (4), an officer or servant of a health board appointed under section 14 may be removed from being such officer or servant by the chief executive officer to the board.

Section 23(5) - Removals of officers and servants under this section shall be carried out in accordance with regulations made by the Minister and such regulations shall provide -

- (a) that effect shall not be given to any proposal for removal unless prescribed notice has been sent to the officer or servant of the reasons for the proposal, and
- (b) that any representations made by him or on his behalf on the proposal which are received within a prescribed period shall be considered.

The Regulations made by the Minister for Health under Section 23(5) are contained in S.I. No. 110 of 1971 entitled Health (Removal of Officers and Servants) Regulations 1971 and the Health (Removal of Officers and Servants (Amendments) Regulations 1972. The Amending Regulations of 1972 are not relevant to the issues in the case. The

relevant regulations contained in S.I. No. 110 of 1971 provide as follows:-

4. (1) Whenever it is proposed to remove an officer or servant of a health board from being such officer or servant, the officer or servant shall be given notice in writing by the chief executive officer or an officer authorised to act on his behalf -

- (a) of the intention to remove;
- (b) of the reasons for such removal;
- (c) that the chief executive officer will consider any representations made by him or on his behalf before the expiration of seven days after the giving of such notice;
- (d) of details of any proposal to appoint him to another office or employment.

(2) Effect shall not be given to any proposal for removal until notice of the intention to remove has been given in accordance with sub-article (1) of this article and until any representations made by or on behalf of the officer or servant have been considered.

The said Order No. 255/1981 dated 31st March 1981 reads as

follows:-

Order No. 255/1981

BORD SLAINTE AN OIR-THUAISCIRT

NORTH EASTERN HEALTH BOARD

Decision of the Chief Executive Officer

SUBJECT: Suspension of Dr. Asim Hamad, Temporary Registrar, Surgical Hospital, Cavan.

ORDER: There being in my opinion as Chief Executive Officer reason to believe that Dr. Asim Hamad, Temporary Registrar, Surgical Hospital, Cavan, has misconducted himself in relation to his employment or is otherwise unfit to hold employment in that -

- (a) at 2.30 p.m. on the 27th March, 1981, at the Surgical Hospital, Cavan, Dr. Hamad assaulted Mr. N. McMurray, Consultant Surgeon;
- (b) his behaviour indicates that he is no longer a suitable person to continue in employment;

I hereby suspend Dr. Hamad from the performance of his duties with effect from today's date, while the alleged misconduct or unfitness is being enquired into and any disciplinary action to be taken in regard thereto is being determined.

SIGNED: P. Murtagh  
P. MURTAGH  
CHIEF EXECUTIVE OFFICER

DATE: 31st March 1981

No issue has been raised that this order of suspension was signed by Mr. P. Murtagh who, it is accepted, although not a party, was then filling the post of Chief Executive Officer of the Board.

On receipt of this suspension order Messrs. George V. Maloney and Co., the Prosecutor's Solicitors, wrote on his behalf to the Board a letter dated 3rd April 1981 denying the allegations made against the Prosecutor and requesting a detailed statement of all the circumstances surrounding them, and requesting that the matter be referred to an independent arbitrator to hear and determine the dispute. This was followed by a letter in reply dated 8th April 1981 from the Chief Executive Officer and second named Respondent Mr. Clarke dealing with the statutory procedures required of him to be followed under the Act, and setting out in detail the information which had been furnished to him on which the statutory disciplinary procedures were being taken in respect of the Prosecutor. Under cover of a letter dated 16th April 1981 Messrs. George V. Maloney and Co. sent a detailed written statement of the Prosecutor dated 15th April 1981 to the second Respondent in which the Prosecutor denied in detail the allegations and complaints made against him.

On 21st April 1981 Mr. Clarke caused to be given to the Prosecutor the said Order No. 299/1981 dated 21st April 1981 by personal service on him at 2.50 p.m. on that date. This order constituted the intention by Mr. Clarke to remove the Prosecutor from his position and read as follows:-

Order No. 299/1981

BORD SLAINTE AN OIR-THUAI SCIRT

NORTH EASTERN HEALTH BOARD

DECISION OF CHIEF EXECUTIVE OFFICER

HEALTH ACT, 1970

HEALTH (REMOVAL OF OFFICERS AND SERVANTS) REGULATIONS, 1971

HEALTH (REMOVAL OF OFFICERS AND SERVANTS) (AMENDMENTS) REGULATIONS, 1972

TAKE NOTICE that in exercise of the powers conferred on me in that behalf by the Health Act, 1970, and in accordance with the Health (Removal of Officers and Servants) Regulations, 1971, and the Health (Removal of Officers and Servants) (Amendments) Regulations, 1972, it is my intention to remove you, Dr. Asim Hamad, from your position as a Temporary Officer of the North Eastern Health Board for the following reasons:-

1. That being a Registrar in the County Surgical Hospital, Cavan, you misconducted yourself in relation to your office in that -
  - (a) at 2.30 p.m. on the 27th March, 1981, at the County Surgical Hospital, Cavan, you assaulted Mr. N. McMurray, Consultant Surgeon;
  - (b) your behaviour indicates that you are no longer a suitable person to continue in employment.
2. By virtue of the aforesaid misconduct, you are unfit to hold the office of Registrar with the North Eastern Health Board.

3. I will consider any representations made by you or on your behalf before the expiration of seven days after the giving of this Notice to you.
4. It is not my intention to appoint you to another office with the North Eastern Health Board.

Dated this the 21st April, 1981

To/ Dr. Asim Hamad,  
Surgical Hospital,  
Cavan.

Signed: P.J. Clarke  
P.J. Clarke  
Chief Executive Officer,  
North Eastern Health Board.

On 22nd April 1981 Mr. Clarke wrote to Messrs George V. Maloney and Co. enclosing them a copy of his order No. 299/1981 and stating in the first and last paragraphs thereof that:-

"I enclose a copy of my order to Dr. Asim Hamad. As you will see this order has the effect of terminating Dr. Hamad's employment with our Board."

and

"I trust that the above correspondence and copy of my enclosed order will now finally resolve this situation."

On 28th April 1981 Mr. Clarke caused to be served personally on the Prosecutor on that date at 4.05 p.m. his said Order No. 326/1981 dated 28th April 1981, and a copy thereof on his Solicitors at 4.10 p.m. on the same date removing the Prosecutor from his position as a temporary officer of the Board.

This order reads as follows:-

ORDER NO. 326/1981

BORD SLAINTE AN OIR-THUAISCIRT

NORTH EASTERN HEALTH BOARD

DECISION OF CHIEF EXECUTIVE OFFICER

HEALTH ACT, 1970

HEALTH (REMOVAL OF OFFICERS AND SERVANTS) REGULATIONS, 1971

HEALTH (REMOVAL OF OFFICERS AND SERVANTS) (AMENDMENTS) REGULATIONS, 1972

TAKE NOTICE that in exercise of the powers conferred on me in that behalf by the Health Act, 1970, and in accordance with the Health (Removal of Officers and Servants) Regulations, 1971, and the Health (Removal of Officers and Servants) (Amendments) Regulations, 1972, I hereby remove you, Dr. Asim Hamad, from your position as a temporary officer of the North Eastern Health Board for the following reasons:-

- (1) That being a Registrar in the County Surgical Hospital, Cavan, you misconducted yourself in relation to your office in that -
  - (a) at 2.30 p.m. on the 27th March, 1981, at the County Surgical Hospital, Cavan, you assaulted Mr. N. McMurray, Consultant Surgeon;
  - (b) your behaviour indicates that you are no longer a suitable person to continue in employment;
- (2) That by virtue of the aforesaid misconduct, you are unfit to hold employment as a temporary officer with the North Eastern Health Board;
- (3) I have received no representations from you, or on your behalf, before the expiration of seven days after the giving of notice to you;
- (4) It is not my intention to appoint you to another office with the North Eastern Health Board.



Dated this 28th April 1981

SIGNED: P.J. Clarke  
P.J. CLARKE  
CHIEF EXECUTIVE OFFICER

It appears from the Affidavit of the Prosecutor and is not disputed that earlier on the day of 28th April 1981 the Prosecutor's Solicitors had prepared a written representation on his behalf in the form of a letter for personal delivery to the Chief Executive Officer of the Board, but on receipt later in the day of the order No. 326/1981 the delivery of this intended representation was delayed to incorporate in it among other matters additional material relating to a claim on behalf of the Prosecutor that the order No. 326/1981 of Mr. Clarke was premature and invalid as having been made before the expiration of the seven day period prescribed in section 4(1) (c) of S.I. No. 110 of 1971, which, it was claimed, had been received by Mr. Clarke within such prescribed period and which should have been, but was not considered by him before purporting to give effect to the proposal for removal of the Prosecutor by making his order No. 326/1981.

It was accepted on behalf of the Respondents that the letter of 28th April 1981 from the Prosecutor's Solicitors constituted "representations" on behalf of the Prosecutor for the purposes of section 23(5) of the Act and section 4(1)(c) and section 4(2) of

S.I. No. 110 of 1971. It was also accepted on behalf of the Respondents that such representations were received by Mr. Clarke on 28th April 1981 and that he had made his Order No. 326/1981 removing the Prosecutor from his position before he received the Prosecutor's representations.

In reply to the Prosecutor's Solicitors' letter of 28th April 1981, Mr. Clarke wrote on 7th May 1981 to Messrs. George V. Maloney and Co. dealing further with the matters in issue between the parties.

The grounds on which the Conditional Order was granted as set out therein and at paragraph 10(g) of the Prosecutor's Affidavit are as follows:-

10. "(g) - By reason of the matters referred to herein the procedure adopted by the Health Board and the Chief Executive Officer was in breach of the principles of basic fairness of procedures and the principle of natural and constitutional justice."

The matters "referred to herein" on which the grounds stated at paragraph 10(g) of the Prosecutor's Affidavit are based are set out at sub-paragraphs (b) to (f) of the same paragraph 10. Counsel for the Prosecutor did not seek to rely on the ground set out at sub-paragraph (a) of paragraph 10 claiming that the Order of Suspension

was made without consultation with the chairman or vice-chairman of the Board as required by Section 22(1) of the Act in view of Mr. Clarke's averment in his Affidavit that this procedure was observed.

The Prosecutor's grounds contained in sub-paragraph (b) to sub-paragraph (e) of paragraph 10 of his Affidavit are all based on the contention that the Notice or Order of Removal (Order No. 326/1981) giving effect to the proposal for removal of the Prosecutor was made by Mr. Clarke before the expiration of the prescribed period of seven days and before he had received the Prosecutor's representations on the proposal to remove him, which the Prosecutor claims Mr. Clarke had received within the prescribed period and in time, but had not considered as was required by Section 23(5)(b) of the Act and section 4(1) and 4(2) of S.I. No. 110 of 1971, and that effect had been given by Mr. Clarke to the proposal for the removal of the Prosecutor without considering his representations which he had received within the prescribed time contrary to Section 4(2) of S.I. No. 110 of 1971.

It is contended however by and on behalf of the Respondents that the Prosecutor's representations had not been made by him and had not been received by Mr. Clarke "before the expiration of seven days after the giving of the notice of intention to remove the Prosecutor" and that as averred by Mr. Clarke at paragraph 10(b) and paragraph 10(c)

of his Affidavit that:-

"He waited and allowed the Prosecutor seven days to make representations, but that he did not make any representations within the prescribed seven days and that he did not make his Order for Removal before the expiration of the period for receiving representations."

The first question in issue to be determined therefore is whether Mr. Clarke made the order for removal on 28th April 1981 after or before the expiration of the prescribed period for receiving the Prosecutor's representations, that is after or before the expiration of seven days after 2.50 p.m. on 21st April 1981 being the time and date on which Order 299/1981 (the proposal or notice of intention of removal) was served.

The fact that the Prosecutor's representations were not delivered at the Respondents' Offices until "after hours" at 9.00 p.m. on 28th April 1981 is not relied on by Mr. Blaney, and in any event is irrelevant to the issue to be decided as it is contended and submitted by Mr. Blaney that the prescribed period of seven days expired at midnight on 27th April 1981 and hence the Prosecutor's representations were made and were received by Mr. Clarke after the seven day period had expired and were late. In support of his

submission Mr. Blaney contended that the day of the 21st April 1981 being the date of service of the proposal or notice of intention of removal (Order No. 299/1981) was to be included in the computation of the seven day period.

On the other hand Mr. O'Reilly contended on behalf of the Prosecutor that the day of service on 21st April 1981 must be excluded and that the computation of the seven day period did not commence until the 22nd day of April 1981 and hence did not expire until midnight on the 28th day of April 1981. If Mr. Blaney is correct then the Prosecutor's representations were late whereas if Mr. O'Reilly is correct they were made and were received in time for Mr. Clarke necessarily to have considered them, whatever their contents, in accordance with the statutory requirements imposed on him in that regard.

It was not contended that the Saturday and Sunday which fell within the prescribed period should be omitted in the calculation of the seven days, and it was accepted that this period ran without interruption on this account.

It was also agreed by Counsel for both parties that although the notice or proposal of intention to remove (Order No. 299/1981) was not served until 2.50 p.m. on Tuesday 21st April 1981 it was to be treated

as having been given on that date as a full and not part of a day.

Counsel for both parties relied on Section 11(h) of the Interpretation Act 1937 relating to the calculation of periods of time which by Section 11 of that Act was stated to apply and have effect in relation to the construction of every Act of the Oireachtas and of every instrument made wholly or partly under any such Act. Section 11(h) provides:-

"Where a period of time is expressed to begin on or be reckoned from a particular day, that day shall unless the contrary intention appears, be deemed to be included in such period, and where a period of time is expressed to end on or be reckoned to a particular day that day shall unless the contrary intention appears be deemed to be included in such period."

Mr. O'Reilly contended that the phrase used in Section 4(1)(c) of S.I. 110 of 1971 to define the prescribed period of seven days should be construed in the context of Section 11(h) of the Interpretation Act 1937 as indicating a "contrary intention" so as to exclude the day of service in calculating the seven day period. He accepted that if the day of service was to be included therein that the Prosecutor's representations were late. He also relied on the judgment of McMahon J. given by him in the case of Mary McGuinness v. Vauxhall

Motors Limited and McCairns Motors Limited and Armstrong Patents Limited

delivered on 31st July 1980 (unreported) to which I shall refer in detail later. He submitted also that the general rule and practice at Common Law and in Chancery in this country was to exclude the day of service of a document. See Duckworth .v. McClelland (2), L.R. (Ireland) vol. 11. 1878-79, 437 and Wylie, 1905 Ed. P.862, and that Order 108 Rule 10 of the Superior Court Rules accurately reflects and recognises this position in practice. This rule provides that:-

"In any case in which any particular number of days not expressed to be clear days is prescribed by these rules the same shall be reckoned exclusively of the first day and inclusively of the last day."

On the other hand Mr. Blaney has argued that Section 4(1)(c) of S.I. 110 of 1971 could and should not be construed as indicating a contrary intention. He submitted that no distinction could be drawn between the words "after" as used in that Section and the use of the word "from" in the Interpretation Act, and that although the word 'day' does not appear in Section 4(1)(c) of S.I. 110 of 1971 that the prescribed period of seven days must begin and be reckoned from the point of time on the day when the notice of proposal of intention to remove was given on 21st April 1981 to include that day so that the

seven day period expired at midnight on 27th April 1981. He submitted further that if the legislature intended to exclude the day of service words to this effect would have been included in Section 4(1)(c) of S.I. 110 of 1971.

In the case of Mary McGuinness .v. Vauxhall Motors Limited and Others the issue to be tried by McMahon J. was whether or not the Plaintiff's action against Armstrong Patents Limited was commenced within the time limited by Section 11 (2) (b) of the Statute of Limitations 1957 which provides:-

"An action claiming damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a Statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consists of or includes damage in respect of personal injuries to any person shall not be brought after the expiration of three years from the date on which the cause of action accrued."

An accident had occurred on the 21st June, 1972 in which the Plaintiff was injured while a passenger in her husband's Vauxhall car. She sued Vaushalls Limited as the manufacturers and McCairns Limited as



the Irish assemblers of the car in negligence in the manufacture and assembling of the car. The Plenary Summons was issued on 22nd May, 1975. Pursuant to an order of the High Court made on the 20th June, 1975 the Plaintiff issued a concurrent summons against the third Defendants on 23rd June, 1975. As already mentioned the immediate issue therefore which fell to be decided was whether or not the Plaintiff's action against the third-named Defendants was commenced within the time limited by the Statute of Limitations, that is that the concurrent summons would have been issued within the time limited by that Act if the day on which the Plaintiff's cause of action accrued (21st June, 1972) was excluded in computing the period of three years. This period would have expired on 21st June, 1975 as it was impossible to issue the summons on 21st or 22nd June, 1975 being a Saturday and a Sunday when the Court Offices were closed. As McMahon J. could not distinguish the period of limitation defined in the Statute of Limitations from the period specified in the manner described in the Interpretation Act 1937, he concluded that the period of three years from the day or date on which the cause of action accrued expired on the 20th June, 1975 because the day or date on which the Plaintiff's cause of action accrued could not be excluded in computing the period of three years. In the course of his judgment

McMahon J. observed that "when a period of time prescribed by a Statute is defined as a period "from" a particular event, the well settled rule of law in England is that the day of the event is excluded in computing the period." He stated that he would gladly adopt any construction of Section 11 (h) of the Interpretation Act 1937 which would achieve uniformity in the law in England and Ireland in computing periods of time but he did not see how the provision could be construed in that way. He then distinguished the manner in which the period of time was specified in Section 11 (2) (b) of the Statute of Limitations 1957 from the manner in which the time period was described in the Interpretation Act 1937 as follows -

"The period of time specified in Section 11 (2)(b) of the Statute of Limitations 1957 is expressed to be a period "from the date on which the cause of action accrues" and not from the accrual of the cause of action. I cannot distinguish the period so defined from a period specified in the manner described in the Interpretation Act 1937, namely a period of time expressed to begin on or be reckoned from a particular day."

He also went on to state that the Legislature must be presumed to have intended that the periods of limitation in the Limitation Act 1957 should be calculated in accordance with the rules of construction contained

in the Interpretation Act 1937.

The Respondents accept that if the day on which the proposal or the notice of intention to remove him from his position was given to the Prosecutor (21st April, 1981) is not to be deemed to be included in the prescribed seven day period but is to be treated as excluded therefrom, that the prescribed seven day period would have included the whole of 28th April, 1981. This would mean that Mr. Clarke would have received the Prosecutor's representations in time, and would have to have considered them before he could properly have given effect to his intention or proposal for removal of the Prosecutor from his position, in accordance with Sec. 4(1) (c) and 4(2) of S.I. 110 of 1971.

In calculating the period of time in the manner defined and expressed in Section 4(1) (c) of S.I. No. 110 of 1971 in accordance with the rules of construction contained in the Interpretation Act 1937 the issue is whether or not having regard to the period specified in the manner described in that Regulation the Legislature must be presumed to have intended that the day (21st April 1981) on which the Respondents proposal or notice of intention to remove the Prosecutor was given or served should be included in the prescribed period of seven days, or whether or not there appeared a contrary

intention to exclude it.

As already stated the period of time as defined in Section 4(1) (c) of S.I. No. 110 of 1971 imposed on Mr. Clarke the duty to consider any representations made by or on behalf of the Prosecutor received by him before the expiration of seven days after the giving or service of the proposal or notice of intention to remove the Prosecutor before giving effect to it. In my opinion this period of time as so defined and expressed is distinguishable and different from a period specified in the manner described in the Interpretation Act 1937 where the period of time is expressed to begin or be reckoned from a particular day but is a period of time expressed to begin on or be reckoned from the happening of an event. In my view in order to be construed according to the time period in the manner defined or expressed in the Interpretation Act 1937 so as to have included the day on which the notice of proposal or intention to remove the Prosecutor was given or served, the period of time in Section 4(1) (c) of S.I. No. 110 of 1971 should have been expressed or defined as ".....before the expiration of seven days beginning on (or to be reckoned from) the day on which such notice of proposal was given or served. The substantial difference in the terminology actually used in Section 4 (1) (c) in my view indicates such a

departure from the period specified in the manner described in the Interpretation Act 1937 as to indicate an intention by the Legislature that the day on which the notice or proposal of intention to remove the Prosecutor was given or served was not to be deemed to be included in the seven day period as expressed and defined in Section 4 (1) (c) of S.I. No. 110 of 1971.

I believe this view is supported by the following passages in vol. 37 of Halsbury's Laws of England (3rd Ed. Simonds) paragraphs 161 and 166 at pages 92 and 94 respectively.

Par. 161 reads as follows.

"Where a period of time running from a given date or event to another day or event is prescribed by Law and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made.

Where there is room for doubt the enactment ought to be construed so as to effectuate and not to defeat the Intention of Parliament. Expressions such as "from such a day" or "until such a day" are equivocal since they do not make it clear whether the inclusion of the day named may be intended."

Par. 166 reads -

"When a period is fixed before the expiration of which an act may not be done (here the making of an order of removal under Sec. 4(2) of S.I. No. 110 of 1971) the person for whose benefit the delay is prescribed (here the Prosecutor) has the benefit of the future period, and accordingly in computing it, the day from which it runs as well as the day on which it expires must be excluded, and the act cannot be done before midnight on that day."

This latter passage was quoted with approval and applied by Lord Parker C.J. in the Queens Bench Division in England in the case of Thompson .v. Simpson, 1960 3 AER, P. 500 at P. 502, with whom the other members of the Court agreed.

I respectfully agree with and adopt these statements as correct and I apply them also in construing the intention of the Oireachtas, with which I do not think they conflict in the terminology used in sec. 4.(c) (1). of S.O. No. 110 of 1971 according to the provisions of sec. 11. (h) of the Interpretation Act 1937.

It follows therefore that the Prosecutor's representations were given to and received by Mr. Clarke within the prescribed seven day period and therefore that these should first have been considered by

him under his statutory obligation before giving effect to his proposal or notice of intention to remove the Prosecutor by Order No. 326 1981 dated 28th April, 1981. This Order was therefore made prematurely. I therefore acceded to the submissions of Mr. O'Reilly and hold that in so acting Mr. Clarke failed to carry out the procedures imposed on him by Section 23 (5) and Section 5 (b) of the Act and Section 4 (1) (c) and Section 4 (2) of S.I. No. 110 of 1971 for the lawful removal of the Prosecutor from his position.

The Prosecutor is therefore entitled to have a Conditional Order made absolute in respect of Order No. 326/1981 on the grounds on which the Conditional Order was granted as set out in paragraph 10 (g) of the Prosecutor's Affidavit, which I have already quoted.

I also find that no grounds have been proved or exist to justify quashing Order No. 255/1981 or Order 299/1981.

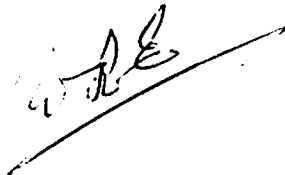
Mr. Blaney referred me to the judgment of Gannon J. in the case of The State (at the prosecution of Austin Stainbridge) .v. Seamus N. Mahon (1979) I.R. P. 214 in support of his submission that I should exercise my discretion to discharge all the orders sought to be quashed. In my view the facts in that case and the grounds on which Gannon J. allowed the cause shown were entirely different from those in the present case in which I find no reasons to do the same

in regard to Order 326/1981.

I therefore order that so much of the Conditional Order as relates to Order 326/1981 be made absolute and that so much of it as relates to Orders No. 255/1981 and No. 299/1981 be discharged.

It follows that these Orders still subsist. It would not therefore be appropriate for me to comment further on other issues which have arisen in relation to the making of Order No. 326/1981 having regard to what may happen in the future.

This includes the submission made by Mr. O'Reilly that the two paragraphs in Mr. Clarke's letter of 22nd April 1981 which I have quoted earlier constituted a predetermination or premature decision by him in relation to the removal of the Prosecutor before he (Mr. Clarke) had received or considered his representations, and therefore amounted to bias by Mr. Clarke which vitiated his Order No. 326/1981.

A handwritten signature in dark ink, appearing to be 'W. D. E.', is written over a horizontal line.