PROPOSED ARTICLES OF AGREEMENT.

1. Ireland shall have the same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa, with a Parliament having powers to make laws for the peace order and good government of Ireland and an Executive responsible to that Parliament, and shall be styled and known as the Irish Free State.

The Treaty that never was

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	Mised o Coleans A Thy Froms
03	Rubbaja bajan Anta Chamberlain Endingour C. O' duran Birkenhead.
	December 6, 1921. Listens frus & Cleanshill

The Treaty that never was

Zoom talk on the centenary of the signing of the Articles of Agreement 6th December 2021 by

Jack Lane

Aubane Historical Society Aubane, Millstreet, Co. Cork ISBN 9781903497975

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Cover illustrations:

The front and back covers show two different versions of what is ostensibly the same document purporting to be an "Anglo-Irish Treaty". The front cover shows the first and signature pages of that actually signed in the early hours of 6th December 1921 and now held in the Irish Archives. **I**t is entitled "PROPOSED ARTICLES National AGREEMENT" and the word "Treaty" appears nowhere in it. The back cover shows the first and signature pages of the document in the British Archives signed later in the day on 6th December 1921 but which is purportedly the same "Anglo-Irish Treaty". This has an added title page inscribed "TREATY between GREAT BRITAIN & IRELAND signed 6th December 1921 at LONDON", though the word "Treaty" also appears nowhere else in its actual text (which uses the term "instrument" throughout). It also has additional British signatures, that of the Irish signatory Eamon Duggan is cut and pasted onto it from an autograph on a concert programme, the two columns of signatures are in reverse order to the other document, and the paragraphs of the whole are formatted differently to the document in the Irish Archives. What explains these mysterious differences?

The Treaty that never was

"Paper never refused ink."

There is an easy way to establish whether or not there was a Treaty agreed in London on 6th Dec 1921 – is there an agreement in existence headed "A Treaty between the Republic of Ireland and the United Kingdom" signed automatically and appropriately by the respective Heads of State, President Eamon de Valera and His Britannic Majesty King George V? That's a rather simple and straightforward description of such an agreement.

Are there any, much repeated, Pathé newsreels of such an auspicious event? Of course not as it never happened. Such a Treaty does not exist and could not exist.

Why? That's what I will try to explore.

Any Treaty worthy of the name must have some basic preconditions; first and foremost that it was freely entered into by mutually recognised independent states. What was signed at 2am on 6th December 1921 did not meet a single one of these preconditions and entailed much worse.

- It was signed under a threat of immediate war.
- The Irish Republic was not recognised.

- The British Government demanded and got an oath of allegiance from the Irish negotiators.
- The Irish Government was specifically prevented from seeing or agreeing to its final terms before the document was signed.
- The word 'Treaty' is not mentioned anywhere in the text instead it is referred to as an 'instrument' throughout.

It is oxymoronic to call such a thing a Treaty.

We know what treaties look like. We live under one – the Treaty of Rome. It met all the preconditions whether you agree with it or not and it was signed by the relevant Presidents and Monarchs – three of each as it happens. Another Treaty was signed a couple of weeks ago by France and Italy.

Yet we are told by some that the document signed was not only a Treaty but the founding document of the Irish State. How could that be when the existing Irish state sent delegates to negotiate the agreement?

This has been talked about for 100 years and it could be talked about 'til the cows come home. I will try to explore in a brief narrative how this debâcle came

about. To do so I will briefly look at the main events and personalities behind it – and try to see the wood for the trees.

What I am saying is not original. It was disputed in the Dáil and in the House of Lords that it was Treaty.

FIRST EVENT

The first event was on 15th July 1921 when de Valera met Lloyd George to follow up the Truce. Lloyd George offered Dominion Status. De Valera refused to consider it as he was Head of an existing Republic voted for on a number of occasions and defended in war. He did not even take the document offered. Lloyd George said this refusal meant war and that he could send a soldier for every man woman and child in Ireland. De Valera said he would have to be able to keep them there. Lloyd George backed down and his bluff was called. He blinked, 1-0 to de Valera. Then there was deadlock.

NEXT EVENT

The next development came on the 27th July with the breaking of the negotiating deadlock by de Valera with his concept of External Association. It was an ambiguous concept to reflect an ambiguous situation that allowed for development by political skill in a positive or negative direction.

It became the basis of all the future negotiations on the Irish Government's side. The idea was that Ireland would be <u>associated</u> with the Commonwealth (Empire) but not a <u>member</u> of it.

This line was quite open and clear in the correspondence with Lloyd George and in Cabinet discussions.

NEXT EVENT

The next event was on the 8th October with the appointment of delegates for a full conference. De Valera designated them as plenipotentiaries indicating they had full powers as they would not be accepted as simply delegates of the Republic. It was a concept from earlier times when states needed to give full delegates dealing powers to with faraway states when direct communications did not exist. It was now an ambiguous term to cater for an ambiguous situation and enable some progress.

But he ensured that the Cabinet also gave them the following very clear instructions:

- (1) The Plenipotentiaries have full powers as defined in their credentials.
- (2) It is understood however that before decisions are finally reached on the main questions that a dispatch notifying the intention of making these decisions will be sent to the Members of the Cabinet in Dublin and that a reply will be awaited by the

Plenipotentiaries before the final decision is made.

- (3) It is also understood that the complete text of the draft treaty about to be signed will be similarly submitted to Dublin and reply awaited.
- (4) In case of break, the text of final proposals from our side will be similarly submitted.
- (5) It is understood that the Cabinet in Dublin will be kept regularly informed of the progress of the negotiations (Cabinet mins. 7/10/1921)

These could hardly be clearer - particularly item 3- and it was to help them avoid being intimidated into an Agreement or blamed for a bad deal. It gave them the opportunity to involve the whole Cabinet in any final decision and avoid any avoidable splits. It was to be a safety net, a backstop.

De Valera insisted that Collins be included against his wishes because of the reputation he had acquired in the British mind and to show that the Cabinet was united, singing from the same hymn sheet. Something like the later McGuiness/Adams combination.

De VALERA'S STRATEGY

De Valera did not go at this stage for tactical reasons. The delegation was to test to the limit what was possible. He was conscious that any agreement reached had to be acceptable to the Cabinet and avoided the fate of President Woodrow Wilson, who had signed the Versailles Treaty only for Congress to reject it. It was said at the time that he should have a sent delegates to Versailles and judge what they had achieved before committing his country to it. De Valera no doubt noted this.

Such an outcome would be a disaster in the Irish context and to be avoided at all costs. This was de Valera's guiding principle.

John M. Regan has summarised his strategy well: "Against his maximum offer of external association de Valera had for tactical reasons to test to the point of destruction the British resolve not to go back to war. That in effect meant bringing the British to the point of fixing bayonets rather than merely rattling their sabres. To achieve the absolute extension of the British will to compromise de Valera constructed the Irish position in such a way as to enable him to conclude the talks personally at the eleventh hour. these In circumstances this was not only logical: it was good politics too." (The Irish Counter-Revolution 1921-36.)

This was to be negotiation for the keenest judgements, moral courage, and strong wills and for the highest of stakes – war or peace. It would be strictly for 'the adults in the room' and that would

in effect be Lloyd George and de Valera eyeball to eyeball! Their meeting in July would be a rehearsal for this meeting. And when it comes to moral courage de Valera had plenty – he took on the Pope during the negotiations.

COLLINS' STRATEGY

After the initial weeks of negotiations another view seems to have begun to take shape in Collins' mind that was head of the IRB. His sympathetic biographer Tim Pat Coogan explains that by mid-October "some time between 11 and 24 OctoberDominion status was as far as he was prepared to go." (p.242.).

IRB records might throw light on this development if available but being a conspiratorial body these are not available as they were destroyed by the Secretary. Unlike how de Valera and the Cabinet developed their position out in the open. Such a conspiratorial approach while totally and absolutely valid hitherto as promoting Irish separatism was treason/felony with a rope or firing squad for doing so. As the song says "There may be good men but there will never be better men." But their modus operandi was now past its sell by date in a democratic Republic.

Coogan quotes his correspondence of 4 November: "Not much achieved, principally (Lloyd because P.M.

George) recognises our over-riding difficulty – Dublin. Plays on that."

And on 15 November: "I prefer Birkenhead to anyone else. He understands and has real insight into our problems - the Dublin one as much as anyone else. Dublin is the real problem." (p.242).

So Collins had come to see the British Government as his ally against his own Government! Coogan seems very blasé about this.

And Coogan goes on to claim that: "From what had passed before I believe it is not unreasonable to speculate that the 'ultimatum' could well have suited them (Collins and Griffith – J.L.) because it gave them the opportunity of producing a fait accompli as opposed to further hair-splitting and politicking in Dublin which they feared would only result in losing Ireland a historic opportunity." (p. 264.)

sympathetic biographer Another explains at this point that Volunteers had expanded out of all recognition, from about 3,000 before the Truce to over 73,000. Michael himself viewed this expansion with some alarm, fearing this army might fall under the control of 'certain elements' who might then use it for their own ends. It takes no flight of the imagination to guess who he

had in mind. Added to this was the worry that there was growing interference from Dublin which, he felt, might jeopardise the peace negotiations in London." ("Michael Collins – a life" by Peter Mackay.)

These were legitimate opinions to have but they should have been made clear to the Government that he was a member of but they were not.

This was a bad omen.

MOMENT OF TRUTH – 3 DEC.1921 -THE DAY THAT SHOULD HAVE GONE DOWN IN HISTORY

The moment of truth for this difference of opinion should have occurred at what turned out to be the last Cabinet meeting on 3rd December which discussed Lloyd George's 'final offer' that again insisted on Dominion Status with some additional powers and an Oath of Allegiance. This meeting is not highlighted by many but it was crucial for what did not happen.

The meeting lasted for 7 hours with Griffith fully supporting acceptance. But the important view was that of Collins and he did not come clean. All commentators noted his unusual behaviour.

Coogan says: "The most eloquent statement of the day was embodied in Collins' silence. As Childers notes in his diary 'M.C. difficult to understand. Repeatedly pressed by Dev but I really don't know what his answer amounted to." And in his biography of de Valera Coogan says that "Collins had somewhat masked his hand" (p. 207).

Other views on Collins' behaviour at the meeting were: "Collins's view was more confused" and on the oath "he was ambivalent, pointing out that it wouldn't come into force for 12 months, and it might be worth taking that time." (De Valera by David McCullagh, p.237). He seems to be the only confused person at the 7 hour meeting which provided plenty time to clear up minds. Pakenham in 'Peace by Ordeal' says: "Collins's more obscure.... his attitude was volubility dried up." (p.207). Dorothy MacArdle says "Michael Collins's view was complicated." (The Irish Republic.) complicated Silence. confusion. thinking, obscurantism are not the usual attributes now associated with Collins.

Griffith agreed eventually not to accept the draft as it stood as Cabinet opinion was divided and he agreed it would split the country if put to the Dáil in such a situation. He said he would go back and get it changed and let the Government know of the final position, and that the Dáil should then have the final word. De Valera then said there was no need for him to go "at this stage of the Negotiations."

If Collins had not "masked his hand", a crisis would have arisen whereby the Cabinet would have had to make a final decision to accept or reject. Instead there was fudge essentially because of Collins' attitude. If there was not fudge there was likely to be such a crisis that de Valera would then have had go to London and play his hand.

David McCullagh of RTÉ in his recent biography of de Valera gives the real reason for Collins' behaviour:

"Unknown to de Valera, the Cabinet was not the only body considering the draft Treaty. Collins had given a copy of the British draft to Seán Ó Muirthuile, secretary of the IRB, to put before 'the lads' – the Supreme Council. According to O Muirthuile, the oath proposed by the British was unacceptable, but a new version was drafted that expressed allegiance to the 'Irish Free State', with fidelity to the British Monarch in a subsequent clause. At best this was an appalling breach of confidentiality by at worst, it suggests he Collins; regarded the views of the Supreme Council as being of greater value than those of the Cabinet; the oath contained in the final treaty was in the IRB's form rather than de Valera's." (p.239)

FINALE

McCullagh's 'worst' assumption was correct. Collins' first loyalty was to the

IRB, not to the Cabinet or to his Government, his subsequent and behaviour followed from that. He did not attend the next meeting with the British. Lloyd George saw his opportunity in this division, met Collins on his own, made all sort of promises and established a rapport with him at these meetings and got him onside.

Lloyd George issued After his ultimatum and the Irish delegates were returning in a taxi to think about the terms, Collins shocked the others by saying, out of the blue, that he would sign the agreement. He then worked to persuade the reluctant others to do so as well, ignoring his Government Dublin. This was as Lloyd George had of course insisted, which would maximise the conflict within the Cabinet.

So the scene was set for the debâcle that followed.

THE de VALERA ALTERNATIVE

What is worth considering is the possible outcome of the de Valera strategy as John Regan noted it. Was it realistic to reject the agreement and risk a resumption of war? De Valera was always ready to face that choice if there was no other alternative to maintain Independence. But even if there was a rejection could Lloyd George be forced into a delay and then who knows? It is

assumed nowadays that a threat of war by Lloyd George meant actual war but that was disproved by de Valera at the first meeting.

Would he risk it again and was it reckless to consider doing so? Let's put some flesh on John Regan's assessment of de Valera's strategy.

What was the situation in December 1921 compared to July 1921? Had it changed and in whose favour?

What cards did each now hold and how might they play them?

What was the crucial issue now – the difference between being in Commonwealth and accepting the rôle of King King the of the as Commonwealth but not as King of Ireland? It was the difference between remaining a Republic or becoming a Dominion. What India became and Barbados a few weeks ago. But the issue presented as such on the rôle of the King seemed a quibble to most of the public at home and abroad.

Would Lloyd George declare war over it?

And he would have had to declare war now for the first time, as heretofore it had formally been only a policing and law-and-order matter. Would public

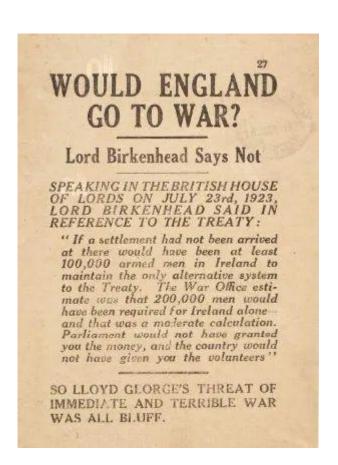
opinion wear it, especially in America which now obsessed British government policy, as there was a serious conflict where the US were determined to remove the British Navy from its position as ruler of the seas - which was the backbone of the Empire. Trotsky predicted a war over this. The US had defeated Germany for Britain paid the price of being a debtor nation to the US. Who pays the piper calls the tune. And Britain was under US cosh ever since. This was the real beginning of the end of the British Empire. This was not a time to upset American opinion over the rôle of the British Monarch in Ireland! There are not many fans of monarchy in America at the best of times and certainly not among Irish Americans who were a strong political force there!

What was the situation? The Empire was facing problems across the globe and it was stretched to the limit militarily and over stretched. More so than before, when they had had to recruit Tans and Auxiliaries for the war in Ireland. That situation had in fact further worsened for Britain.

The Irish Volunteers had increased to something like 70,000 and there was a big increase in ordnance supplies as described by Emmet O'Connor:

"More munitions were imported in the five months of the truce than in the previous eleven months ... There is no doubt that from early 1921 the IRA was developing an effective supply network, in Germany and the US at least; foreign supplies were becoming more important in the eyes of local brigades and GHQ; and there was an increasing demand for weapons. Had the heavier continued, it is probable that more attention would have been given to the importation of big shipments of the latest weaponry, and we can only speculate on the military and political consequences ... It was of course ironic that the most elaborate and successful importations occurred after the truce."

Birkenhead explained later:



The attitude of a typical citizen soldier of the IRA was that of Seán Moylan, my favourite politician, in his Dáil debate speech which concluded:

"Lloyd George if he wants war will have to declare war. If he is giving us freedom he can do so without declaring war. All we ask of Lloyd George is to allow us to carry on. There is just one point more. It is this. As I said we have been fighting for the extermination of the British interests in Ireland. We are told we have it. I don't believe we have it. If there is a war of extermination waged on us, that war will also exterminate British interests in Ireland: because if they want a war of extermination on us, I may not see it finished, but by God, no loyalist in North Cork will see its finish, and it is about time somebody told Lloyd George The Dáil adjourned after this that." speech.

Was Lloyd George bluffing again for sure? We have evidence almost from horse's mouth - his Private the Secretary, Geoffrey Shakespeare. He was to bring the infamous letter to Craig and described it as one big bluff. He found it incredible that the Irish were taken in. The idea of him needing to take a letter to Craig via a steam train from Euston to Liverpool, and then by steamer to Belfast, was pure theatrics. He celebrated afterwards with LG. With

a name like that he had to write about it - see his book "Let candles be brought in".

Only one thing is certain about de Valera - he would have maintained maximum Cabinet unity and that was the crucial thing to achieve in the circumstance.

So the essential difference was *how* an agreement was to be reached on whether or not it would '*stick*' or not with the Cabinet. The agreement did not stick because of the way it was concluded, ignoring the Cabinet and I have tried to show why and how this happened.

As the song says:

"It's not what you do,

It's the way that you do it,

That's what gets results."

And it got a disastrous result in this case.

SUBSEQUENT HISTORIES

To throw further light of what was in play it is also worth looking at what happened to Lloyd George subsequently to understand his weakness at this point. He would be thrown out of power by the Tories a few months later because he wanted to renew war with Turkey, led by Ataturk, which was refusing to accept another Treaty, that of Sêvres that sanctioned the breakup of the Ottoman Empire, but he found no support for this war at home or abroad. Lloyd George

could not always get the wars he wanted or threatened at this stage. All had had enough of war for now. The rejection of the Irish 'Treaty,' instead of the rejection of Sêvres Treaty by Ataturk, could have been the catalyst that led to his downfall. "Attaboy Ataturk!" was an Irish Republican catch cry of the time.

In the 1930s de Valera went to Downing Street and had total success again by calling the British bluff and ignoring the threats and intimidation over the economic War. 2-0 to de Valera. Collins could be said to have lost 2-0 over the successful Downing St. ultimatums to sign the Articles of Agreement in December 1921 and to launch the 'civil war' in June 1922.

If all this proved nothing else it proved that de Valera had form in handling Downing St. whoever was in situ there. He had their measure and a track record of success.

THE ROLE OF THE INDIVIDUAL IN HISTORY

What the whole episode highlights is the rôle of the individual in history, an issue that's not a fashionable consideration with historians nowadays. It is not taken as a serious factor. Abstractions, 'structures,' themes etc. are much more comfortable and fashionable to deal with - such as a non-existent Treaty.

In Collins and de Valera there were two very different personalities.

De Valera spooked the British then and at every turn throughout his life. They could never fit him into their mental framework, he was beyond them, an enigma. So he became another demon in their large repertoire of same.

One exasperated British official in the 1930s described him as having a "devious straightforwardness" – exactly the quality needed to counter British statesmen such as Lloyd George, the Welsh Wizard.

They *could* get the measure of Collins. They made him into a celebrity and a 'gunman' and these concepts they could easily cope with. He was a very recognisable "broth of a boy." By comparison de Valera was just an alien being to them. Collins was no doubt an attractive personality but politicians are judged by their own judgements – and misjudgements!

And he soon saw the results of his misjudgement over the Treaty when he tried to step on a stepping stone. They turned on him in the early months of 1922 when to his great credit he very sensibly tried to ameliorate, in fact ignore, the so-called Treaty, and made a Pact with de Valera to form a government that sought to ignore the 'Treaty' divide by replicating the Dáil

make before the split. The British then showed their true colours of utter contempt for him. He soon realised that he no freedom to achieve anything more than the Articles of Agreement and he had no stones to step on. Britain reminded he held power under a British Act of Parliament, the Government of Ireland Act 1920, and he was under the cosh. He was not in control of his own destiny.

And they showed their contempt for him in trying to do any more. Lloyd George described him now as like a "wild animal," "shallow," "all over the place," "jumping and hopping about", and many similar comments from others and even Eamon Duggan, a supporter, described him as "very highly strung and overwrought and sometimes left their own meetings in a rage with his colleagues."

There is no evidence of anything like this that could be said about de Valera.

They made Collins break the Pact before the Election it was designed for which distorted the result, interpreting it as a plebiscite on the "Treaty" which not the original plan by Collins and de Valera, and then forced him to declare war on the Republicans a few weeks later.

A tale of two 'Treaty' documents

When researching the so-called Treaty there was something that struck me as odd - the existence of two different documents purporting to be what was signed on 6th December 1921. Each appears promiscuously in many publications and articles by media commentators as the same 'Anglo Irish Treaty.' How come?

One is headed "PROPOSED ARTICLES OF AGREMENT" with the word "Proposed" crossed through and bearing the signatures of the witnesses who signed it at 2.15 am that morning in Downing St. This document is held by the Irish National Archives in Dublin. (Reference: 2002/5/1)

This is clearly a valid document from any legal point of view but in no sense a Treaty and does not claim to be one. The word "treaty" appears nowhere in the document as it had not appeared in any draft discussed hitherto between the two negotiating teams. As the many drafts were discussed line by line for weeks by the two teams and their top lawyers its omission was hardly an accident. It simply was not a Treaty but exactly what it says on the tin, "(Proposed) Articles of Agreement."

It is the original and unique document signed "on the spot" that morning by the two negotiating teams.

How come then that there is another document that purports to be

the same "Treaty" and held in the British Archives but which differs in several respects from this?

This other has a title page, not on the first one, bearing the title "TREATY GREAT **BRITAIN** between IRELAND signed 6th December 1921 at LONDON." This sheet is attached at the front of the text agreed that morning. In this version there are three extra signatures, who were not British witnesses on the original, and one Irish signatory, Eamon Duggan, is literally a cut and paste job gummed on to the document. Also the paragraphs of the original document are re-formatted and the two columns of signatories at the end are now on opposite sides of the page to the earlier document. So it is clearly a different document and with anomalies that make it not a valid legal document at all. (Reference: DO 118/51)

How did this happen?

Later in the morning/day of the 6th December, following the signing, there was a visit to the Irish delegation by the British with a request that an extra three British signatories be added – Worthington-Evans, Greenwood and Hewart.

These were not witnesses to the original agreement and it is not recorded why there was such a request or need. Also, on the Irish side, Eamon Duggan, was not now present as he had been sent post haste to Dublin with the document signed at 2.15 am. That is why the

genuine original document is in Dublin today.

Kathleen McKenna came to the rescue by cutting Duggan's signature from the programme of a concert he had attended some months previously and had it pasted on to the document.

These anomalies mean that this is not a valid legal document in any sense. It is a fake.

Requesting extra British signatures is most likely to have been a ruse to get the Irish delegates to sign a new document that would now include the word 'Treaty' in a new title page. The first time the word ever appeared in print in any document during the long negotiations.

Were the Irish made aware of this? After the gruelling hours earlier that morning they were not likely to have been in a mood for any revisiting of the discussion and debates and the request for extra signatories may have seemed innocuous. They may have overlooked the other aspect of the new title sheet if they were made aware of it at all which seems very unlikely indeed.

Arthur Griffith in a note on the earlier, final negotiations that morning described the state of mind they were in:

"things were so strenuous and exhausting that the sequence of conversation is not in many cases clear in my mind today." That may indicate the exhausted state of mind they may

also have been in later day after the negotiations.

In any case, the British got the Irish signatories to a new document that had the word 'Treaty' as the heading and that was crucial for them.

But did the Irish realise this? In the first private session of the Dáil debate Michael Collins said: "....the final document, which the Delegation of Plenipotentiaries did not sign as a treaty, but did sign on the understanding that each signatory would recommend it to the Dáil for acceptance." (Dáil Éireann, Private session, 14 December 1921.)

It appears therefore that Collins, at least, was unaware that he had actually signed a 'Treaty' at all which suggests that he was the victim of a piece of skulduggery involving the creating of a second document that could be claimed to be a Treaty.

The skulduggery had a real purpose – as always. This second document was the one widely publicised in the British press on the morning of 7th December and afterwards as a Treaty agreed by the Irish Government. If such was rejected by the Dáil it would be a propaganda coup against the Irish Government and its authority, which would be discredited in international opinion.

There was nothing to be gained by the Dáil accepting just some 'articles of agreement' or work in progress, towards a Treaty which was self-evidently not

itself a Treaty. The second document in the British national Archives has an unusual condition for viewing it: "This record can only be seen under supervision at The National Archives." This used to be the condition for viewing pornography so perhaps this "Treaty" document really qualifies as a piece of political pornography.

Jack Lane

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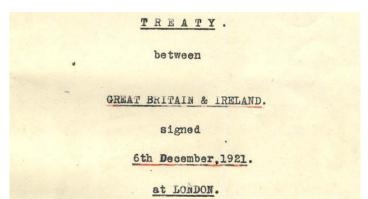
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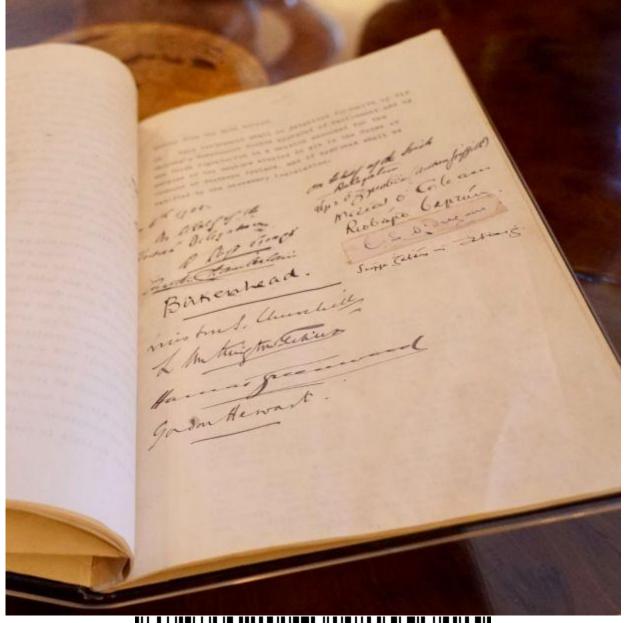
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