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Corisand Investments Ltd v Druce & Co

QUEEN'S BENCH DIVISION

July 31 1978

(BEFORE MR JUSTICE GIBSON)

Estates Gazette October 28 1978; November 4 1978 and November 11 1978 (1978) 248 EG 315, 407 and 504

Judgment of considerable importance to valuers--Action for negligence in respect of valuation of hotel for mortgage purposes--Alleged overvaluation leading to complete loss of security by lenders--Second mortgage--Many matters of interest to valuers discussed--Considerations affecting valuation for mortgage--Valuation near end of property "boom"--Valuation of hotels--Judging the market--Duty of a valuer to exclude, or at least plainly to identify, the "speculative content" in a valuation for mortgage in view of risk of forced realisation of security--Duty to guard against over-confidence in market such as that in September 1973--Duty to take account of probable expenditure to satisfy Fire Precautions Act 1971--Claim against valuers succeeds

> This was an action for damages by Corisand Investments Ltd, a moneylending company, against Druce & Co, professional valuers, in respect of an alleged negligent valuation of the Raglan Hall Hotel, Muswell Hill, London N10, resulting in loss to the plaintiffs. The facts are set out in detail in the lengthy judgment of Gibson J.

G Owen QC and M Hartman (instructed by Rose & Birn) appeared on behalf of the plaintiffs; Michael Turner QC and William Crowther (instructed by Berrymans) represented the defendants.

Giving judgment, **GIBSON J** said: In this action the plaintiffs, Corisand Investments Ltd, complain that the defendants, who are professional valuers, by a negligent overvaluation of the Raglan Hall Hotel in London caused the plaintiffs to make a loan of £60,000 to borowers who later defaulted and paid back nothing of the loan. The plaintiffs have recovered nothing from the security, which has been taken by the first mortgagees, and they recovered nothing from the guarantors. This judgment will unavoidably be both long and of some complication. For reasons which I will set out in detail it is my conclusion that the plaintiffs succeed in their claim and are entitled to damages.**GIBSON J**

Corisand Investments Ltd, the plaintiff company, is a moneylending company. It is owned or controlled by John Joseph, whose main occupation is as director of an electrical importing company, the Great Eastern Trading Co. The plaintiff company was the corporate guise in which Mr Joseph, with the necessary moneylenders licence, lent money from time to time at interest. It appeared at one stage that a point might arise under the Moneylenders Act, but the defendants expressly abandoned the point.

The registered office of the plaintiff company was at the offices of Rose & Birn, solicitors, in Stoke Newington High Street in north London. Mr Birn, of that firm, in addition to the ordinary practice of a solicitor, looked after the statutory books and accounts, and attended to the renewal of necessary licences, both for the plaintiff

company and for a number of other similar small companies by which those who controlled those companies could-lend money at interest.

On October 23 1973 the plaintiffs lent £45,000 to Albine Properties Ltd. On November 20 1973 the plaintiffs lent a further £15,000 to Albine, making the total loan £60,000. By the memorandum dealing with the total loan of £60,000 the terms were that the loan would be repaid at the end of 11 months and that interest would be paid in the amount of £1,500 per month. The true rate of interest was 30 per cent. The total loan so made was secured by a second mortgage on various pieces of freehold property. They included:

(i) The Raglan Hall Hotel, Muswell Hill, otherwise known as 8, 10, 12 and 15 Queen's Avenue, N10;

(ii) 18-20 Hornsey Rise, Islington;

(iii) 32-34 Sisters Avenue, SW11;

(iv) 18-24 Aldebert Terrace, London, SW8.

The security for the first loan of £45,000 had been the same as that for the final loan of £60,000.

In deciding to make the loans of £45,000 and of the extra £15,000 the plaintiffs relied upon valuations which they obtained as to the value of the security offered, and upon information which they got as to the amount of the first mortgage debt secured upon the properties. The valuations obtained were as follows:

(i) The Raglan Hall Hotel -- £275,000;

(ii) 18-20, Hornsey Rise -- £160,000;

(iii) 32-34, Sisters Avenue -- £52,000;

(iv) 18-24, Aldebert Terrace -- £135,000.

The total of the several valuations was £622,000.

The defendants provided the valuation on the Raglan Hall Hotel on September 28 1973. The three other valuations were provided by Nigel Tizzard & Co and were dated October 16 1973 as to Hornsey Rise and October 22 1973 for the other two.

The information which the plaintiffs got as to the first mortgage was that First National Finance Corporation had lent to Albine Properties Ltd, the borrowers, some £375,000 upon the security of those properties. The plaintiffs were willing to lend up to, but no more than, a figure which, added to the amount of the first mortgage, should equal 70 per cent of the value of the properties charged, namely £435,400. The amount which the plaintiffs could lend accordingly was £60,400. In deciding to lend in total the sum of £60,000 the plaintiffs were thus acting in accordance with what they thought to be the prudent course for lenders of money on second mortgage. It was not disputed that it was reasonable for lenders to advance up to 70 per cent of a valuation expressly made for mortgage purposes.

Having made the loans on October 23 1973 as to £45,000, and on November 20 1973 as to £15,000, the plaintiffs thereafter, in common no doubt with many others who had lent money on the security of property in 1973, saw their borrowers after a short

period of time default on interest payments and then saw the properties which had been charged fail to produce enough to pay off even the lending of the first mortgagees.

The plaintiffs have had nothing back. The first mortgagees appointed a receiver. The properties were eventually sold. The property at Hornsey Rise, which had been valued at £160,000, was sold in December 1975 for £135,000. The property at Sisters Avenue, which had been valued at £52,000, was sold off in parts between February 1973 and April 1978 to realise a total of £61,425. The property at Aldebert Terrace, which had been valued at £135,000, was also sold off in parts between September 1973 and April 1978 to realise a total of £87,350. These references are, of course, to gross sale prices. For reasons which will be stated later in this judgment the usefulness of comparing the valuation figure with the eventually realised sale price, for the purpose of critical consideration of these valuation figures, is either non-existent or extremely limited--and this applies in particular to the Raglan Hall Hotel. The valuation figure for that property was, as I have said, £275,000.

The three connected properties in Queen's Avenue, which made up the main part of the hotel, namely 8, 10 and 12 Queen's Avenue, were eventually sold on June 14 1977 for £100,000. The fourth separate property, on the other side of Queen's Avenue, which had been used as staff quarters and hotel annex, namely 15 Queen's Avenue, was sold on November 1 1976 for £25,250. Again these were gross figures.

The first mortgagees have said that "After all the sales proceeds are accounted for . . . there will still be a deficit in excess of £400,000 and that therefore there will be no funds available for the second mortgagees."

These are the facts of this dispute in barest outline. The case which the plaintiffs made was that the valuation figure of £275,000 was grossly high and such that no competent valuer could have reached. In addition, the defendants negligently failed--as the plaintiffs contended--to have regard to the provisions of the Fire Precautions Act 1971--whether in making due allowance for the cost of complying with those provisions in their valuation, or in advising the plaintiffs that such allowance had not been made. The plaintiffs said that if a value had been put upon the hotel within the limits of a competent valuation, or if the defendants had done no more than warn the plaintiffs that a fire certificate would be necessary for due compliance with the Act of 1971, and that works of some size and cost would be required before a fire certificate would be granted, then the plaintiffs would have made no loan at all of any amount to the borrowers.

The plaintiffs, of course, do not seek to make the defendants responsible for the insolvency of the borrowers or the collapse of the property market which probably caused it. The plaintiffs contend that, if the defendants by a breach of duty caused the plaintiffs to place reliance upon the borrowers' apparently realisable assets to an extent which they would not have done if the defendants had not committed that breach of duty, then the plaintiffs can recover such loss as they can prove was caused by that breach of duty. The defendants, while disputing the breach of duty, have not disputed that essential proposition.

Investigation of the case in evidence proved complicated. A number of side issues arose which consumed much time. By reason of the immediately preceding history of the Raglan Hall Hotel and of the relationship of the parties to it, it is necessary to describe the property and some matters of history before the facts relevant to the main issues can be properly understood.

Raglan Hall Hotel was originally four separate red-brick Edwardian dwelling-houses in a street of residential property close to the shopping centre of Muswell Hill Broadway, N10. It was bought in 1971 by Albine, a company in which Mr Ian Spiro had a large or controlling interest. A Mr Gourgey was active in the running of the hotel; and he also had some interest in it. When the plaintiffs made their loans in October and November 1973 Mr Spiro and Mr Gourgey gave their personal guarantees of the loan. The Raglan Hall Hotel was bought by Albine for about £80,000. The plaintiffs made a bridging loan of £15,000 on April 22 1971 to Albine. That loan was repaid, in due time or earlier, with the interest reserved.

Albine were acquiring other properties, including hotels. They operated hotels under the trade name of Viking Hotels, and were engaged in complicated financial transactions in the raising of money for the carrying out of works of improvement to the buildings. One source of money for work to Raglan Hall Hotel was the firm of merchant bankers known as Cassel Arenz, whose business, by a process of which the details were irrelevant in this action, later became comprised in that of First National Finance Corporation.

Valuations of Raglan Hall Hotel were required from time to time by Cassel Arenz, and then later by First National Finance, for consideration of requests by Albine for loans of money for improvements to the hotel. The works of structural repair and of improvements and refurbishing were planned in separate phases to enable the hotel to remain in use. Phase I included the construction of a new reception area, the installation of a cocktail bar, of additional toilet facilities, the construction of a new ground-floor restaurant and the installation of central heating for the ground floor. The cost of this work was said to be in the region of £40,000. Phase II included the installation of air conditioning in the dining area, structural alteration to the dinning-room and kitchen and other work. The cost of this work was said to be in the region of £50,000. Phase III at first related only to paving work and canopy for the front of the building in the sum of about £7,000, but further work brought the total to about £21,000, as estimated in November 1972. Phase IV, as planned, referred to renovation of the first and second floors and the anticipated cost in November 1972 was £55,000. No part of this last work was ever, at any material time, carried out.

Written reports of valuation were provided to Cassel Arenz on May 20 1971 (valuation B); on January 13 1972 (valuation C); on April 25 1972 (valuation D); and then to First National Finance Corporation on December 1 1972 (valuation E); on February 12 1973 (valuation F); on June 11 1973 (valuation G). All these valuations were made by Mr Gurrin, a partner in the defendant firm.

In September 1973 Albine applied to Mr Birn for a bridging loan. Albine were required to provide a valuation of the hotel. Mr Spiro asked Mr Gurrin to provide it by Mr Spiro's letter of September 24 1973: he asked for a valuation of the hotel as it then was and for a projected valuation when Phase IV was finished. Accordingly, when Mr Gurrin prepared his report of valuation of September 28 1973, upon which the plaintiffs relied and which has been the subject of investigation in this case, he was revisiting and reinspecting and reconsidering this hotel which, over a period of two years and four months, he had visited and inspected and considered on many occasions. In addition to the letter confirming instructions dated September 24 1973, to which I have referred, Mr Gurrin received in his office a note of a telephone message from Mr Spiro which read: "Raglan Hall Hotel--£275,000--open market value--turnover £1,300 per week." That was plainly Mr Spiro's suggestion.

It will be necessary to examine Mr Gurrin's methods of valuation in greater detail at a later stage in this judgment. For the purposes of this preliminary statement of the relevant facts, which were substantially not in dispute, it is enough to say that Mr Gurrin normally first formed his opinion of the figure at which an hotel, the subject of a valuation, would be expected to sell in the market, and he then checked or tested that supposed market figure by an accounts analysis in which he calculated his estimate of the net annual return which could be achieved by a hypothetical and normally competent purchaser. That net annual income, multiplied by a number of years' purchase based on the current market conditions, produced the going concern value; and that value, when reduced by a figure for contents and for goodwill, produced the brick and mortar value.

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Mr Gurrin's methods of preparing his accounts analyses, or breakdowns as they were called in evidence, received detailed examination in evidence. It is necessary to set out the progress of these earlier valuations in order to understand some of the submissions with which this judgment must deal.

> *Valuation B:* May 20 1971: value for mortgage purposes of the Raglan Hall Hotel with one additional property at 6 Queen's Avenue; total of £122,500--of which the breakdown attributed £22,500 to No 6. The value of the Raglan Hall Hotel with complete vacant possession, therefore, £100,000.

Valuation C: January 13 1972. Value for mortgage purposes of the Raglan Hall Hotel alone with complete vacant possession and upon the assumption that the work there listed (that is to say Phase I work) was completed to a high standard--£120,000.

Valuation D: April 25 1972. Value for mortgage purposes of Raglan Hall Hotel upon the assumption that Phase I and Phase II works were carried out to a high standard of finish--£145,000.

Valuation E: December 1 1972. The value for mortgage purposes of the Raglan Hall Hotel was not amended above the figure of £145,000 at April 1962 since, as it was stated, although hotel values in general had shown an increase over the period of the past six months, the work had only been partially completed, and a considerable amount of money and time would still be required to complete it.

Valuation F: February 12 1973. The report proceeded upon the basis that the new ground floor restaurant had been completed and would be operational within two weeks; and that Phases I, II and III in the total cost of £98,000 would be completed by April 1 1973. The value for mortgage purposes with the benefit of the modernisation work so far completed was £220,000.

Valuation G: June 11 1973. The report certified that Phases I, II and III of the work and modernisation had been completed and increased the valuation by £10,000 in respect of work which in February 1973 had not been completed but by this date had been done; and increased the valuation by a further £10,000 in respect of an increase of revenue from rooms let to residential tenants. The valuation for mortgage purposes was then £240,000.

The breakdown of Valuation G showed that in calculating the net annual income at £33,385, which was multiplied by 8 years' purchase, nothing was allowed for any expected income from the new restaurant or bar which in February 1973 had been reported as due to open in two weeks' time.

It is clear from the breakdown prepared by Mr Gurrin in respect of these valuations that:

(i) The tariff per bed per night remained throughout at £2.50, apart from certain projected valuations where an increased figure for improved bedrooms with showers was taken at £5 per bed per night. That work of improvement was never done.

(ii) Rooms let to permanent residents numbered in May 1971 32 in all at £11 per week, and by June 1973 were down to 19, of which 17 were let at £14 per week and the other two at £21 and £14.70 per week.

(iii) The estimated occupancy rate, which determined the estimated gross receipts from the hotel rooms, started in May 1971 at 75 per cent, dropped in January 1972 to 65 per cent; rose to 70 per cent in February 1973; and remained at 70 per cent in June 1973.

(iv) The estimated percentage of gross receipts from hotel rooms which would be spent on expenses, and which thus revealed the net income, started in May 1971 at 40 per cent not inclusive of rates, remained at 40 per cent in February 1973 inclusive of rates; and remained at that proportion until June 1973, while the bed tariff remained constant.

(v) The multiplier of years' purchase applied to the estimated net annual income started at five years' purchase in May 1971; remained at five years' purchase in January 1972 and April 1972; rose to eight years' purchase in February 1973, and remained at that figure in June 1973.

(vi) Deductions were made in each of these breakdowns in respect of goodwill: in May 1971 at 1 1/2 years' purchase of the estimated net annual income; in January 1972 and April 1972 at the same figure of 1 1/2 years' purchase; in February 1973 (the date at which the going concern years' purchase multiplier rose to 8) the deduction for goodwill dropped to one half year's purchase and it remained at that figure in June 1973.

(vii) Deductions for the estimated value of contents began in May 1971 at £9,000; rose to £9,750 on the basis of 65 rooms in January 1972--a rate of £150 per room; remained at that figure in April 1972; dropped to £7,750 at a rate of £125 per room in February 1973, and remained at that figure in June 1973.

These breakdown calculations were not intended for the clients to whom the valuations were supplied, and the breakdowns were never seen by the clients, either in the case of the earlier valuations to which I have referred or in the case of the breakdown calculation which Mr Gurrin prepared with reference to the valuation which was supplied to these plaintiffs. These calculations were, as I have said, according to Mr Gurrin, in the nature of test or trial calculations designed to afford a method of testing his own estimate of the true market value of the hotel. It would not matter if there were errors or inconsistencies in these valuations, so long as the valuations, which they were designed to check, were within the limits of competence for the purpose of which they were supplied.

The Valuation of September 1973

With the experience of this hotel briefly stated above Mr Gurrin prepared his new valuation of September 28 1973--in the papers in this case it was marked Valuation H. It is alleged in paragraph 3 of the amended statement of claim that the defendants accepted instructions to value the hotel for mortgage purposes, that is to say on a forced sale basis. The defendants did not admit that allegation in the defence.

Valuation H was addressed to "The Lending Principals" care of Rose & Birn. It has not been in dispute in the action that the defendants knew that their valuation would be relied upon by the intending lenders of money to Albine upon the security of the hotel, and that these plaintiffs were those intending lenders and could properly claim to rely upon the defendants' valuation to such extent as the plaintiffs proved that in fact they so relied.

Mr Gurrin agreed that he knew that the valuation was for mortgage purposes, and for a second charge. Valuation H says in terms: "The value of the above described hotel for mortgage purposes with the benefit of complete vacant possession as at today's date is £275,000." That was, of course, an increase in value of £35,000 over the valuation figure of June 11, some 3 1/2 months before, and represented an increase in borrowing capacity to Mr Spiro, at the accepted percentage of 70 per cent, of some £24,500. It was a valuation figure which coincided exactly with the figure which, as Mr Gurrin agreed, was the figure which Mr Spiro was putting on the hotel. It was not suggested to Mr Gurrin that he consciously set out to work his figures to produce Mr Spiro's desired result. The plaintiffs suggested merely that this figure of Mr Spiro had influenced Mr Gurrin. Mr Gurrin accepted that Mr Spiro could have been trying to influence him, but said that it had no effect upon him at all.

The further terms of the report of Valuation H which must be mentioned, are these:

(i) The property is described--and then this was said: "The property has recently been the subject of a considerable amount of modernisation work which has incorporated the complete refurbishing of the ground floor, the installation of a new gas-fired central-heating system to the ground floor and the construction of a large new public restaurant and cocktail bar which is now used for functions."

(ii) The allocation of rooms was described thus: "In addition to the accommodation of the hotel at present let on a nightly basis there are also an additional 18 rooms which are at present let on a residential hotel basis and which produce a gross income of £252 per week."

(iii) The number of letting rooms was put at 53. The number of rooms in use for letting rooms was in fact 51, as a close examination of the text of Valuation H would reveal. Mr Gurrin reached the number of 53 letting rooms (which of course affected the calculation of the gross yield from letting) by reallocating two rooms in fact used by Mr Spiro for office purposes (room 7) and for accounts office (room 30) as available for letting purposes on sale with vacant possession. There was no specific reference to that reallocation in the report.

(iv) The tariff, and possible occupancy of the two largest rooms were put in Valuation H at £7.50 per night where they were described as triple rooms.

(v) There were disclaimers to the effect that the defendants had carried out no structural survey, and made no check on planning approvals or building regulation consents. There was no reference whatever to the Fire Precautions Act or to any possible need to expend money in order to comply with the provisions of that Act.

(vi) It was stated that "The modernisation recently carried out has brought the hotel above the standard of similar hotels in the area and it is the type of hotel for which there is a reasonably good demand in the open market at the present time." The phrase "reasonably good demand" is to be noted. It may be contrasted with the state of the market for this hotel as described by witnesses for the defendants in evidence.

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The valuation was sent to Mr Birn. The account for the defendants' valuation in the sum of £470.94, including VAT, was sent direct to Mr Spiro at the hotel. Mr Birn asked the defendants by letter of October 2 1973 for the view of the defendants as to "the maximum figure they felt should be lent on second charge." The figures set out in Mr Birn's letter were not right, but that matters not for the purpose for which I refer to it. The defendants replied by letter of October 2 1973 and said that "70 per cent of our valuation is in order and in no way excessive" in referring to their projected valuation, also contained in Valuation H, of £325,000. By letter of October 11 1973 the defendants expressly agreed that Corisand Investments Ltd, the plaintiffs, as lenders, might rely upon Valuation H in all respects.

It has, accordingly, not been disputed on behalf of the defendants that in undertaking for reward to value this hotel for mortgage purposes, and in inviting the plaintiffs to rely upon their valuation, the defendants assumed to the plaintiffs a duty of care. It is common ground that the duty of care so owed was to use the ordinary skills of an ordinarily competent man exercising the particular art, and professing to have the particular skill, of a valuer of property. Reference was made to the direction given to the jury by McNair J in the case of *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 at p 586. In applying that statement of the duty so formulated the court was invited by the defendants to consider the defendants' valuation H, and the plaintiffs' submissions directed against it, in the light of three guiding questions:

(a) Are the defendants shown to have produced a valuation in a figure which no competent valuer could have reached?

(b) Did the defendants, in putting forward the valuation H of September 28 1973, rely upon any matters upon which no competent valuer could properly rely, or fail to take into account any matters to which no competent valuer could in the circumstances fail to have regard?

(c) In particular, in the circumstances of September 1973, could any competent valuer advising on valuation for mortgage purposes fail to advert to the Fire Precautions Act 1971 and to the certain, or at least probable, need for money to be spent on works to put the hotel in compliance with that Act?

I have no difficulty in accepting the relevance of these guiding questions. Before they can be applied, it is necessary to determine to what matters of principle and of fact an ordinarily competent valuer must have regard in putting an estimated value upon property such as an hotel, and in particular where the valuation is for mortgage purposes.

Expert witnesses called by the parties gave their own views and described their own methods: reference was made to a recognised textbook *Modern Methods of Valuation* by Lawrance, Rees & Britton, 5th Ed, 1971. It was not suggested that this book was not regarded in the profession as a work of authority to which professional valuers could properly look for guidance.

I will at this point identify the expert witnesses who gave evidence. Mr K Cawte [FSVA], who has long experience of valuation work in and out of London, was until January 1977 a partner in Hammersley, Kennedy &

Co, which firm has now merged with Sidney Phillips & Son. Mr H Berney [FRICS FSVA] also has long experience of valuation work in London and is a partner in Henry Berney Rowland & Partners. These two experts were called for the plaintiffs and details of their qualifications and experience appear from their proofs. For the defendants Mr A C Gurrin [FSVA] gave evidence--he has been a partner in the defendant firm for 12 years and for that time has specialised in valuation work, and, within that work, upon valuation of hotels which accounts for about half the work he does. The defendants' firm is a large organisation with a separate sales department. The defendants also called Mr A Brett who, qualified now by some 16 years' experience, has specialised in the valuation of hotels in London. After spending eight years with Christie & Co, a firm which does much work in the valuation of hotels, Mr Brett started his own firm in about 1972. Mr Brett, when working at Christie & Co, was next door to Mr Gurrin's office and they knew each other professionally. I should say at once that in my judgment all these four men were plainly well qualified to offer expert evidence upon the work of a valuer and to state an expert opinion upon the value of the Raglan Hall Hotel in September 1973.

I have no doubt after considering the evidence of these four expert witnesses that in order to discharge the duty of care of an ordinarily competent valuer in valuing property such as this hotel the valuer must have regard to the following matters of principle and of fact:

(i) He must by inspection of the property, and by inquiry, learn enough of the property to be able to start upon the basic method of valuation which he will apply, and thereafter to apply that method effectively by obtaining any further information he needs.

(ii) The purpose of the valuer's work is to determine the price which the property would fetch if offered for sale at the relevant time and in the relevant circumstances: the concept of relevant time and relevant circumstances will require further definition.

(iii) When he has sufficiently informed himself as to the size, nature and condition of the property he can select the various methods of valuation by which he will guide and check his opinion. For example, he may be able to value by the comparison method--with or without any other method--if he has sufficient knowledge of the recent sale prices of other sufficiently comparable properties. It was agreed that the direct comparison method was rarely applicable to hotels, except in some special cases, for example in parts of London where there are a number of hotels which are sufficiently similar for a comparison method to be applied by determining a room price from other sales.

(iv) Hotels are bought and owned to make money by operating them. Accordingly, in estimating what purchasers in the market would pay for a particular hotel, the principal, or at least a well-known and respected, method is to value the hotel as it is as a going concern, including goodwill and contents. The purchaser would calculate what he could expect to earn in the hotel as it stands, or as he could make it operate, and what price it is sensible to pay for the right and opportunity to earn that income. The valuer tries to make the same calculation.

(v) In a valuation for mortgage purposes it is again common ground that the valuer cannot take the open market going concern valuation. The valuer cannot, in short, include in his valuation for this purpose any valuable part of the going concern valuation which would not or might well not be there when the mortgagee attempts to realise his security. It was not in dispute that from the going concern valuation the valuer must at least exclude any sum, where appropriate, for "goodwill" and for the movable contents. The going concern valuation, less goodwill and contents, was referred to as a "brick and mortar" valuation.

(vi) In addition to making appropriate allowances for the going concern valuation in respect of such matters as goodwill and contents, upon the theory that such assets would not be or might well not be there to be sold by the mortgagee, the valuer must--and this was common ground--make allowance for any significant defect or problem in respect of which the purchasers in the market would calculate that they would have to spend money before being able to

operate the hotel to make the estimated net income. This is, of course, no more than a particular elaboration of the two general principles that the concern of a valuer is to inform himself sufficiently about the property, and then to estimate what a sensible and informed buyer in the market would pay for the property. Although there was

no dispute about this principle as formulated there was much dispute as to the application of it to the facts of this case with particular reference to the Fire Precautions Act 1971.

(vii) An experienced valuer, after inspecting a property, will very frequently if not always readily form an approximate estimate of the probable market price of an hotel. He may test that approximate estimate against the views of people who have immediate knowledge of sale prices in the market. His opportunity to do that will be improved if his own firm has a substantial sale business of hotels. Mr Cawte was asked to accept that process as "having an instinctive figure in mind," and he accepted it thus. Mr Gurrin called this process "knowing the value from his expertise." It was never in issue that valuers do in fact go through that process of forming and testing what was so called their "instinctive" or "expertise" estimate, or that they were acting sensibly and properly in so doing.

There was a dispute, or perhaps a difference in emphasis, between the parties as to the relative weight to be given by the valuer or by the court to the values revealed by the accounts analysis method of calculating the going concern, or "brick and mortar" valuation, on the one hand, and to the value produced by the so-called "instinctive" or "expertise" process of the experienced valuer, whether in a large firm or not, on the other hand. I shall return to this point to state my conclusions upon it shortly.

(viii) Lastly, the valuer must, as I have said, in determining and advising upon the price which the property would fetch, have regard to the relevant time and to the relevant circumstances of the contemplated sale: upon this matter also there was dispute in the course of the trial. To what time, or times, must the valuer have regard, and to what circumstances?

This point was of acute importance in this case, because the valuation in question was delivered on September 28 1973 and agreed by the defendants to be available to the plaintiffs for them to rely upon on October 11 1973. It is well known that by December 1973 at the latest the property market had changed dramatically--Mr Gurrin's phrase was that in December 1973 the market suddenly crashed on virtually all types of property. Further, the market in September 1973 was in a state which has been described as "high," or "booming," and the problems of valuing in such a market must be considered.

As to the question, in paragraph (vii) above, of the weight to be given by the valuer, or by the court, to the value revealed by the accounts analysis method, and the "instinctive" or "expertise" method, this issue is, I think, of more apparent than real importance. It seems to me that all methods of valuation considered in this case are in truth variations of the comparison method, and all, to a greater or lesser extent, proceed by what has been called, but inaccurately called, the "instinctive" method. The forming of an "instinctive" estimate of the value of an hotel must depend upon a valuer deciding that purchasers are likely to pay for this particular hotel so much more or less than other purchasers paid or offered to pay for other hotels, according to what appears to be the relevant differences in size, location and quality, etc. That is not an instinctive process--it is the making of an estimate of sale value from experience based upon an indirect and general comparison method. It differs from the direct comparison method in one very important particular--the valuer, if challenged, either does not or cannot produce for scrutiny the comparables upon which he was proceeding in making his estimate. That is no criticism of him--a valuer acting in his profession will at any date have in mind, no doubt, a large amount of information about the market, much of which he could not recall a year later, and much of which could not be produced for scrutiny.

The accounts analysis method, as it was used by all valuers who gave evidence in this case, was also and equally a variation of the comparison method without production of comparables for scrutiny. No actual accounts or records of this hotel were ever produced or used by the defendants at any time, or by anybody else. That again is not stated as a criticism but as a fact. Upon the points in the various accounts analyses upon which there was dispute and discussion, the valuers were estimating, for example, what the occupancy or the running expenses of the Raglan Hall Hotel would have been by reference to what they believed the occupancy rates and running expenses of other hotels were or were thought to be after making any necessary allowances for relevant differences. Further, when the valuer settles upon a years' purchase multiplier in his analysis he is deciding what he thinks a purchaser would have paid for the right and opportunity to earn the estimated net annual profit in that hotel by what he knows or believes other purchasers were paying or offering to pay for the right or opportunity to earn similar or different actual or estimated net annual profits in other hotels.

To the extent that the one method has confronted the other in this case, each has depended upon the general skill and experience of the particular valuer. He has said, "That is my opinion based upon my experience." The court will not readily conclude, when that is said by a valuer of acknowledged skill and integrity, that he is propounding an opinion which no competent valuer could hold unless there is clear evidence that he has ignored or misunderstood the facts, or that he has failed to apply some principle which a competent valuer ought to apply.

The assertion by a valuer of acknowledged skill and experience that in his judgment a property was worth a particular sum on a particular date will again not readily be shown to have been such an opinion as no competent valuer could hold by simple reliance upon the assertion of another valuer, also of acknowledged skill and experience, that in his judgment the proper valuation was a figure so much lower than the first that the first must be regarded as a valuation which no competent valuer could put forward.

Where there is evidence of what a property in fact fetched in the market after fair marketing in fairly comparable circumstances, there is a fact against which the opinions and estimates can be tested. Similarly, where there is evidence of what rates of occupancy an hotel achieved, or what level of expenses it incurred, in fairly comparable circumstances, there is a fact against which opinions and estimates on those matters can be tested. Where there is no such evidence the bare conflict of opinion will not easily be resolved in favour of that party upon whom the onus of proof lies.

Next, I return to the question in paragraph (viii) above: in determining and advising upon the price which the property would fetch, as the basis of a valuation figure, to what time or times and to what actual or supposed circumstances must the valuer have regard?

On these questions the plaintiffs have firstly contended that by September 28 1973 there had been reported in journals, to which any competent valuer should have been paying attention, events and statements which should have informed such valuer that the boom in the property market, and in particular in hotel property, was then coming to an end, and that a valuer in fixing a valuation at that date was not entitled to be "optimistic" when valuing for mortgage purposes.

Secondly, the plaintiffs contended that, irrespective of what portents and signs there were of a present or prospective change in the property market as at September 28 1973, yet a valuation for mortgage purposes, properly done, must have regard to the fact that the mortgagee, if he is driven to try to realise his security, will be, or may well be, trying to realise the asset by means of what was called "a forced sale" in unadvantageous circumstances, and that the valuation must appropriately make allowance for that consideration.

The first of these contentions is an issue of fact to which I shall return shortly. The second contention is a matter of principle which I shall resolve as best I can at once.

The "appropriate" allowance for the concept of forced sale in unadvantageous circumstances was said by Mr Berney to be a

flat reduction from the estimated open market price of the property: he contended for 20 per cent. Mr Cawte said that the principal difference between a mortgage valuation and an open market valuation is that the mortgage valuation is for a forced sale and would always be less than the open market valuation as between willing seller and willing buyer. When the market is depressed the disparity will be small. When the market is high the difference can be as much as 20 per cent. Mr Cawte's accounts analysis did not include a specific deduction to reduce from open market value to valuation for mortgage purposes, as did Mr Berney's: Mr Cawte's view on this was reflected in his figures upon which his analysis proceeded. A mortgage valuation, said Mr Cawte, must look a certain period into the future.

Support for this contention was said to be provided by the textbook to which I have referred, *Modern Methods of Valuation,* and in particular reference was made to the passage which starts at p 233. I will set that passage out.

> *The Valuation.* In making a valuation for mortgage purposes the ordinary principles of valuation apply, but the valuer must have regard to the mortgagee's position in relation to the property and to the remedies available to him in the event of default by the mortgagor. He will bear in mind that it may be necessary to realise the security in the future and that unless the sale price then is sufficient to cover the mortgage debt, arrears of interest and costs, the mortgagee will suffer loss. While market value will be the basis of the valuation, the valuer must consider not only the present market value but particularly whether that value is likely to be maintained in the future and would be readily realisable on the forced sale of the property. He will consider very carefully any factors such as probable action by the local authority under the Housing Acts and other statutes which may unfavourably affect the value of the property in the future. He should fully consider any possible effects of the development plan for the area. Valuations should be on the basis of existing use value unless planning permission has been granted for development. He may also have to ask himself whether the existing market is unduly influenced by national or local conditions of a temporary nature which may have caused something like an artificial "boom" in prices. Any likely capital expenditure on the property, such as accrued dilapidations or the estimated cost of future development or reconstruction, must be allowed for as a deduction.

On behalf of the defendants Mr Gurrin emphasised that in his view the vital, and indeed the only, question was what he judged the market to be at the precise moment at which he was forming his opinion. If his estimate, based on experience and expertise, checked against the views of those who were buying and selling hotels in the market, differed from any theoretical going concern value produced by accounts analysis, then he had to go by his judgment of the market conditions which prevailed at that time. It was essential, he said, to value in accordance with market conditions at the precise moment of the date of valuation. Before his calculations would cause him to doubt his judgment based on expertise the difference between the figures would have to be very great. He agreed that the purpose for which a valuation was required could, and often would, affect the tone of the report, and the matters therein mentioned, and the figure of the valuation. Thus, if advising a seller, his report or advice could put a high figure forward to test the market; and, if advising a purchaser, he would emphasise defects and problems in order to assist in bargaining. He saw, as I understood him, no reason to depart from or to adjust his view of the open market price at the moment of valuation in advising an intending mortgagee. His opinion on this is of particular importance because, as I understood the totality of his evidence, the valuation of £275,000 at September 28 1973 was based upon his opinion that the market was still in boom condition, with purchasers eager to pay more for such an hotel as the Raglan Hall Hotel than any ordinary calculation of investment return could justify, and his valuation reflected what he judged could at that time be immediately realised at auction on that hotel with full vacant possession. The state of the market as Mr Gurrin contended it was, in support of his valuation, was summarised in suggestions put to Mr Cawte in cross-examination with reference to the Fire Precautions Act point; namely that prices, being paid did not reflect the true investment potential and falsified the figures basis of valuation. There was no reduction in that estimated market figure whatever in recognition of the fact that he was putting forward a valuation for mortgage purposes.

Mr Brett supported Mr Gurrin on all aspects of this part of the case. At September 28 1973 the market was, according to him, such that it was impossible to satisfy the buyers of whom many were speculators--he most certainly would have regard to such a market in making a valuation, because the final factor, or criterion, as I understood him, was the market as at the valuation date. The state of the market most certainly justified optimism. The method of his valuation, which produced a figure of £265,000, made no deduction from what he estimated the market value to be, in such a market, in recognition of the fact that the valuation was for mortgage purposes.

I come then to my conclusion on this matter of principle as to the duty of a valuer in making a valuation for mortgage purposes. There can, in my judgment, be no answer of general principle upon this point as to the need or obligation of a valuer to make any specific deduction from his open market valuation, in any particular amount or proportion, in order properly to determine a valuation for mortgage purposes. The answer must depend upon what circumstances, on the facts of any particular case, are shown to be relevant.

The contentions of the plaintiffs, however, based upon their expert evidence, more closely follow what I judge the duty and practice of a competent valuer to be than did the contentions of Mr Gurrin and Mr Brett. That conclusion follows from the proper meaning and application, as I understand them, of those principles which I have recited above and which were never in issue. The valuer must, in valuing for mortgage purposes, exclude from his valuation any apparent asset or valuable content of the hotel as a saleable property, which will not be, or may well not be, available for sale by the mortgagee when he attempts to realise the security. That sale price which the valuer must try to estimate for the guidance of the intending lender is that sale price which the property is likely to fetch--as the valuer can judge it--at the time relevant to the possible realisation of the security and in the circumstances then relevant.

It follows that, if the current open market price which the valuer judges would be realised at auction at the time of valuation is based upon a market which the valuer knows to be "high," and supported by speculative buyers apparently willing to pay prices not justified by ordinary principles of investment return, then such content of the market price so estimated as depends upon the market being in that state (which I shall call the "speculative content") should either not be included in a valuation for mortgage purposes, or should be identified as such, and as so included, for the guidance of the lender, if at the time of valuation there is substantial ground for the valuer to know that the speculative content of his estimated market price will not or may well not be maintained in future, or may well not be readily realisable on the forced sale of the property.

I accept the view of Mr Cawte that a mortgage valuation must look for a certain period into the future. The valuer cannot be expected to peer very far ahead, or to anticipate trends or future changes of which no indication has been or could then be given to an ordinarily competent valuer. The valuer, however, can reasonably be required to be aware of the fact that the market is "high," or unusually buoyant, when such are the circumstances, and to guard against over-confidence in such market conditions. He can reasonably be required to consider what the position of the property may well be in circumstances of forced sale within six to 12 months of his valuation. I was referred to the judgment of Watkins J in the case of *Singer & Friedlander Ltd v John D Wood & Company,* June 3 1977 [reported at (1977) 243 EG 212, [1977] 2 EGLR 84, 295] and, respectfully, have found support for the conclusion which I have reached on this point in what the learned judge there said at pages 5H to 6G [243 EG at 213].

In so concluding I do not, of course, as I have said, thereby decide that in valuing for mortgage purposes any particular percentage of what is thought to be the current market price in a

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high or speculative market must be deducted from that market price. The nature of the process of valuation is such that in every case the valuer must be free to apply the clear principles of his discipline, according to the best of his honest judgment, on the facts as he judges them to be. If a valuer has applied those principles, and judged the facts in a manner in which a sensible and competent valuer could judge them, it mat-

ters not that other sensible and competent valuers could and do take different views of the facts. In considering, however, whether a valuation is shown to have been one which no ordinarily competent valuer could on the facts have put forward or accepted, much weight must be attached to the fact that the valuer has failed properly to apply any of those clear principles of his discipline, if that fact be demonstrated.

Before turning to consideration of the detailed evidence of the various witnesses it is useful to consider first, upon the totality of the evidence, the two issues of fact which are relevant to the application of the principles discussed above at the time in September 1973 when the defendants prepared their Valuation H.

Have the plaintiffs proved that by September 28 1973 there had been reported in journals, to which any competent valuer should have been paying attention, events and statements which should have informed such valuer that the boom in the property market, and in particular in hotel property, was coming to an end; and/or that a valuer in fixing a valuation figure at that date was not entitled to be "optimistic" when valuing for mortgage purposes?

Further, or alternatively, have the plaintiffs proved that, at the time of the making of Valuation H in September 1973, an ordinarily competent valuer had substantial ground for knowing that any speculative content of his estimated open market price would not or might well not be maintained in future or be readily realisable on the forced sale of the property?

The primary facts by which the plaintiffs set out to prove these propositions were not, as to most of them, in issue and can be briefly listed.

(i) The subsidies provided under the Development of Tourism Act 1969 had greatly increased the number of available hotel beds in Greater London and had caused there to be more beds than there were guests to fill them. The result was competition in prices which kept tariffs down at a time when costs had been increasing sharply for some two years. Mr Cawte said that such were the facts to his knowledge in September 1973.

(ii) Comment upon the effects of the Development of Tourism Act was published in the journal called *Caterer and Hotel Keeper.* Mr Gurrin and Mr Brett both agreed that valuers read that journal. Extracts from the journal were before the court in an agreed bundle. The plaintiffs relied upon comments in the issues of February 11 and July 5 1973. Mr Gurrin accepted that there was a glut of hotel rooms, but only in the upper grade, and contended that it did not apply to hotels in the third and fourth category in which he placed the Raglan Hall Hotel. Mr Gurrin agreed that there was pessimism in the market at the relevant time, but again only in the upper grade. Mr Brett also agreed that there was an abundance of hotel rooms in central London produced by the incentive scheme, but in his view that did not affect the Raglan Hall Hotel -- there was still good demand in lower tariff hotels.

(iii) There was an increase of interest rates, as signalled by Bank Rate, in the summer of 1973. Bank Rate was at 7 3/4 per cent on May 18 1973; 7 1/2 per cent on June 22; 9 per cent on July 20, and 11 1/2 per cent on July 27 of that year.

(iv) On September 17 1973 the Governor of the Bank of England sent a letter to the banks. The burden of the\letter was that for the good of the economy there must be significant restraint on the provision of credit for persons (other than for house purchasers) and further restraint on lending for property development and financial transactions. Mr Cawte said that the letter had a profound effect upon the market. Mr Berney said that the increase in Bank Rate and the Governor's letter were widely reported in the press and had a profound effect on the availability of money to finance purchasers. Mr Gurrin did not agree. The Governor's letter had no effect upon the market and he did not expect any effect from it for the foreseeable future; and the four-point advance in Bank Rate had no effect upon demand in market or the prices being paid. Mr Brett

supported Mr Gurrin: his recollection was that the Governor's letter had no effect, not even upon him as a valuer or as an hotel agent selling hotels. According to Mr Brett there was a substantial demand for hotels; it was impossible to satisfy the buyers of whom many were speculators. A valuer was still justified in being optimistic -- an auction on October 23 1973 of an hotel produced many bidders, and the hotel sold at a price of £25,000 more than Mr Brett had anticipated.

(v) Mr Cawte, in his proof said this: "At September 1973 an optimistic open market valuation would not be unreasonable in view of the fact that market conditions were still booming." Mr Cawte went on to explain why, as discussed above, due allowance from an optimistic open market valuation in boom conditions must be made for a valuation for mortgage purposes, but his evidence does support the contention that the market had not ceased to be in a state of "boom" by September 28 1973.

(vi) Mr Berney, in dealing with the separate question whether in September 1973 a valuer would or should have referred to the Fire Precautions Act 1971 referred to the fact that in October 1973 he had so advised a bank with reference to property at Tenby. His valuation was produced. When he was cross-examined he did not have a copy of it in front of him. He agreed that if, in October 1973, he had known or had reason to suspect that the property market had changed from its boom condition, or was about to change, he would so have advised the client. On examination of that valuation it is plain that he did not so advise the bank.

I have, of course, been considering these issues of fact with regard to all the evidence, as well as those matters to which I have expressly referred. The plaintiffs, in my judgment, have not proved that by September 28 1973 a competent valuer knew or should have known that the boom in the property market was then coming to an end, in the sense that he should have known that a drop in prices was about to happen. I think that a shrewd and careful valuer might well have had misgivings by that date, and anyone advised by such a valuer would indeed have been fortunate. But I am quite sure that a valuer was not negligent because he did not then anticipate or suspect the impending collapse of the property market.

The plaintiffs, however, have wholly satisfied me that in September 1973 an ordinarily competent valuer had substantial ground for knowing that any speculative content in his estimated open market price, estimated in that boom market, might well not be maintained in future or be readily realisable on the forced sale of the property. A valuer in fixing in September 1973 a valuation figure for mortgage purposes was not entitled to be optimistic in the sense that he could not treat as a proper basis for a mortgage valuation an open market price containing a substantial speculative content

A valuer in September 1973 knew that any speculative content in the open market price, attributed by him to a property, might well disappear within a short period of time. There was no rational basis for supposing that such speculation in hotels as had been seen to occur must continue for any particular length of time--it could cease as it had begun. The concept of a speculators price, as I understand it, is to pay more for a property than other buyers are then willing to pay on ordinary principles of investment return in the belief that the market will rise to and overtake the price so paid. The capacity of speculators in the market to bid for hotels must have been affected by the cost of borrowing money; and the increase in Bank Rate in the summer of

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1973, and the letter of the Governor of the Bank of England to which reference has been made, were entirely sufficient to remind any valuer that a boom market may not continue and may not be there when a mortgagee comes to sell his security.

It is now necessary to consider the expert and the other evidence put forward on behalf of the plaintiffs upon which rest the submissions that the defendants' valuation H in the sum of £275,000 was a valuation which no ordinarily competent valuer could on the facts have reached, and that, secondly, even if that valuation of

£275,000 was within the limits of ordinary competence, nevertheless the failure to advise the plaintiffs with reference to the Fire Precautions Act 1971 caused the plaintiffs to enter into these loan transactions which, if properly advised about that Act, they would not have accepted at all. I shall deal with the amount of the valuation first.

Mr Cawte had provided a report of valuation dated January 8 1975. He had been supplied with a copy of the defendants' Valuation H. He was trying to value in 1975 an hotel property as he would have valued it in September 1973. The difficulties are obvious. I have no doubt that Mr Cawte did his best to overcome them, and I am satisfied that the valuation which he put forward in this case, based on an accounts analysis method, is not far from what he would have produced if he had been asked to value in September 1973 for mortgage purposes, having regard to the view he took of this hotel. Mr Cawte's method and reasoning are apparent from his valuation, his proof and his letter, also dated January 8 1975. His conclusion was that the open market value of the Raglan Hall Hotel at September 1973 for mortgage purposes was £160,000. From that sum he deducted what he then thought, on the information he had, would have been the cost of work necessary to obtain a fire certificate--namely £20,000. The structure of his valuation rested upon the tariff of £2.50 per night per head; 33 rooms for hotel catering; 18 rooms used for permanent residential letting producing £13,000 per annum; an occupancy rate of 60 per cent for the hotel bedrooms; an estimated gross income from the bar and restaurant of £25,000 per annum; and estimated expenses of 60 per cent of the gross takings overall. The estimated net trading profit was therefore £26,517. He applied a multiplier of 7.14 years' purchase allowing for a return of 14 per cent. He made deductions for replacement of contents, and for goodwill at one-half year's purchase.

Mr Berney had provided a report dated April 1 1976. His report, and his account of the inquiries which he carried out to qualify himself to provide the valuation, showed impressively the great care which he took in gathering information, and I have no doubt that his course of inquiry was typical of the way in which he normally works. The methods and reasoning of Mr Berney are apparent from his report and from his proof. His conclusion was that the value of the freehold interest in the Raglan Hall Hotel as a going concern as at September 1973 was £175,000; and as security for advance by way of legal mortgage the value was £140,000. That shows his deduction of 20 per cent. The structure of his valuation again rested upon the basic information which Mr Gurrin had originally obtained, that is to say the tariff of £2.50 per head per night. As appears from the schedule to his proof he had miscalculated the number of rooms available, taking 63 rooms in addition to the permanent lettings. He took an occupancy rate of 50 per cent as against Mr Cawte's 60 per cent. The assumed income from the bar and restaurant was put by him at £15,000 gross per annum. He took expenses at 70 per cent of the gross receipts--as against Mr Cawte's 60 per cent. The valuation then proceeded by a method different from that of Mr Cawte and Mr Gurrin and Mr Brett. Mr Berney applied a multiplier of two years' purchase to his net estimated income and then added what he estimated the value of the several freehold properties to be. The resulting figure of £188,500 was then reduced by £20,000 for the supposed cost of work required for the fire certificate. Accordingly his figure of valuation for mortgage purposes was £160,000 if his figure for fire certificate works is added back.

Both these witnesses were cross-examined by Mr Turner for the defendants with the greatest possible skill, courtesy and economy of time. I shall summarise the effect of that cross-examination by stating the substance of their evidence, as I regard it, in the light of their answers. I shall then be able to state my conclusions upon this part of the case after considering the evidence of Mr Cawte and Mr Berney against the evidence of Mr Gurrin and Mr Brett.

It is first necessary to refer to Mr Gurrin's breakdown calculation which he prepared for the purposes of his valuation in H the sum of £275,000. I have previously referred to the breakdown calculations which Mr Gurrin prepared for his earlier valuations. This breakdown proceeded, in some particulars, on different assumptions to those apparent from earlier calculations.

(i) Mr Gurrin treated 53 rooms as available for letting for hotel purposes as stated in the valuation itself. That reallocation of two rooms on the basis of the tariff at £2.50 per head per night produced the weekly turnover figure of £185

per night, or £1,295 per week, which may be compared with the turnover figure of £1,300 per week as supplied by Mr Spiro in his phone message.

(ii) The tariff and possible occupancy of the two largest rooms was put in his valuation H at £7.50 per night where they were described as triple rooms. Those two rooms in the breakdown were treated as so many rooms at £10 per night. Five pounds per night adds £1,825 per annum to the gross receipts on a 100 per cent occupancy basis.

(iii) Whereas in his valuation H there was reference to the 18 residential rooms producing £252 per week, or £14 per room per week, on information provided by the hotel to Mr Gurrin, in his breakdown he attributed all the residential rooms as available for hotel letting purposes and increased the estimated net income by £3,203 per annum on the basis that half the rooms let residentially could be turned into double rooms for hotel purposes.

(iv) Mr Gurrin took an occupancy rate of 65 per cent--against Mr Cawte's 60 per cent and Mr Berney's 50 per cent. The English Tourist Board figure of average occupancy of an hotel of this class was 56 per cent.

(v) Mr Gurrin again took for the hotel rooms running costs at 40 per cent as he had done since May 1971 upon an unaltered tariff.

(vi) The estimated income from bar/restaurant was put at £25,000 gross per annum as an addition to receipts from rooms in the total gross sum of £43,893, plus £5,339 gross for extra beds in the reallocated residential rooms. This total of £49,232 from letting rooms may be compared with the total estimated gross receipts for valuation G on June 12 1973 of £55,637.40 from letting rooms. The estimated gross income (before expenses) upon which Mr Gurrin was valuing or testing his valuation of this hotel had accordingly risen in 3 1/2 months from £55,637 to £74,232 in September 1973, without any relevant physical alteration in the hotel, or knowledge of actual trading results achieved. The increased figure compares with Mr Cawte's estimated total turnover of £65,923.

(vii) The expenses of the bar/restaurant were put by Mr Gurrin at 60 per cent of £25,000. Mr Cawte, when treating the bar/restaurant expenses separately, said that the expenses would be 80 per cent.

(viii) Mr Gurrin then in his breakdown applied a multiplier of 7 1/2 years' purchase, or 13 per cent return, to his estimated net annual income of £39,540. He deducted £21,200 for contents at £400 per room. He deducted nothing for goodwill. If he had deducted on the same basis as in June he would have deducted £19,770, being one-half year's purchase of £39,540.

I come now to the answers of Mr Cawte in cross-examination in the light of which his evidence must be considered. Mr Cawte, who answered most of Mr Turner's questions with an equal economy of words, agreed that a number of differences between his assumptions and calculations and those of Mr Gurrin were, taken separately, no more than differences of opinion between experts, and he did not wish to say with reference to them that Mr Gurrin's approach was such that no competent valuer could have adopted. These differences were:

(a) Mr Gurrin's figure for occupancy of 65 per cent, against his own of 60 per cent;

(b) Mr Gurrin's figure of £43,893 for gross receipts for letting rooms as compared with his own figure of £27,923 plus £13,000, or a total of £40,923;

(c) Mr Gurrin's reallocation of two rooms currently used for offices to use as hotel bedrooms upon his vacant possession basis;

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(d) Mr Gurrin's attribution of £3,203 per annum additional net income upon the basis of nine extra beds in the reallocated residential rooms;

(e) Mr Gurrin's figure of 7 1/2 years' purchase against Mr Cawte's figure of 7.14 years' purchase.

Mr Cawte, however, would not accept as a figure which any competent valuer could take in September 1973 Mr Gurrin's estimate of costs at 40 per cent on room rents and 60 per cent on bar/restaurant takings. He agreed that this was the basic difference between them. Mr Cawte was deducting £39,406 from an estimated total turnover of £65,923. He was in effect asked to accept that a competent valuer could reasonably deduct only £34,692 from an estimated total turnover of £74,232. (These figures are taken from Mr Gurrin's breakdown and adjusted to include the gross rental receipts and deducted expenses in the calculation of nine rooms from single to double.) Mr Cawte would not accept that a reasonable valuer would under any circumstances adopt 40 per cent as an adequate deduction for expenses on letting rooms. He did not contend for his own figure as a hard or fast rule, but Mr Gurrin, according to him, had not allowed enough.

If Mr Cawte's deduction for an estimated total turnover at a rate of 60 per cent for rooms and bar/restaurant were applied to Mr Gurrin's figure for estimated total turnover of £74,232, the deduction would be £44,539 as against Mr Gurrin's deduction of £34,692. That difference of about £10,000 in the estimated net annual income would work, of course, a difference of some £75,000 on the final valuation figure in Mr Gurrin's breakdown if the multiplier of 7 1/2 was maintained. Alternatively the multiplier would have to be sharply increased if the price of £275,000 was to be maintained.

Mr Cawte gave reasons for rejecting Mr Gurrin's estimate of expenses. In particular he asserted in effect (as was not capable of being disputed) that from May 1971, when Mr Gurrin started his valuations and financial analyses, until September 1973, when valuation H was produced, all the costs of running an hotel like the Raglan Hall Hotel, such as rates, utilities, wages, repairs, food, replacements and insurance, had all increased very substantially. If Mr Gurrin took 40 per cent in May 1971 how could he justifiably still take 40 per cent in September 1973 upon the basis of an unaltered tariff?

Next, Mr Cawte would not accept the propriety of Mr Gurrin's failure to deduct any sum for goodwill. Mr Cawte deducted a half-year's purchase in the sum of £13,258. On Mr Gurrin's figure a like deduction would be £19,770.

I have found this last point of particular theoretical difficulty in understanding the experts' evidence. When an hotel is valued upon known figures (as this hotel never was) as a going concern I entirely understand the exclusion from a brick-and-mortar valuation of that sum which, on the going concern valuation, is put down as goodwill. It is less clear to me why, by any necessary principle, a valuer who is calculating what a purchaser would pay for an hotel, without reference to any actual accounts, and who wishes to reach a figure which does not include goodwill, should be required to calculate on a basis which includes goodwill and then deduct it. In criticising the calculation of a valuer who has produced a brick-and-mortar valuation without any visible step of deducting goodwill, it seems to me that for the criticism to be demonstrated as valid, it must be shown that the assumptions upon which the estimated net trading return proceed are only justifiable upon the basis of a business conducted with the assistance of existing goodwill. Or it must be shown that the multiplier being applied is only justified upon the basis of a notional buyer who would for that price expect to be acquiring goodwill. If either is shown then the failure to deduct goodwill is shown to be contrary to principle, because the intention is to produce a valuation which does not include goodwill. If that is not shown, then the mere absence of that step in the calculation which is called "deduction of goodwill" does not demonstrate an error in principle--the valuer under attack can justify his calculation by the simple retort (if it be the case) that the estimated income for the purpose of the valuation does not require the deduction of any sum for goodwill.

The answer to this dispute, accordingly, between Mr Cawte and Mr Gurrin on this matter of goodwill turns, in my judgment, upon the answer to the ultimate question: is the valuation figure of £275,000 produced by Mr Gurrin shown to be excessive when tested against any credible figures for estimated trading profit? If it is, then one of the possible points of error was his selection of estimated trading profit figures which required a deduction for goodwill which was not made.

Lastly, it is to be noted that Mr Cawte, after making the answers he did on the various separate matters of difference between himself and Mr Gurrin, as I have listed them, maintained his assertion that a reasonably competent valuer could not, if he informed and directed himself properly, have valued this property in September 1973 in the sum of £275,000. He did not think that a figure higher than £175,000 could reasonably have been reached. He appeared to hold the view that as between different valuers, the sort of margin of difference which might reasonably be expected was plus or minus 15 per cent from the supposedly right valuation.

I can deal more shortly with the evidence of Mr Berney. He had a poor opinion of this hotel--he knew, I think, more about its subsequent history than anyone else--in particular that it had been much used by Haringey Council for housing homeless people. I think his careful investigation made it more difficult for him to see this hotel as it presented in September 1973 with its recently completed works of renovation. He was, I am sure, a careful and fair man, and a most careful valuer. He was more severe on both occupancy (50 per cent) and costs (70 per cent) than was Mr Cawte. His method of valuation was different from that of Mr Cawte and Mr Gurrin. I see no reason to doubt its normal effectiveness or accuracy in his hands. I think Mr Berney represented the cast of mind of a valuer more accustomed to dealing with banks and finance houses than with that combination of valuation and buying and selling which Mr Gurrin and Mr Brett practised. I regard Mr Berney as supporting Mr Cawte. He was less articulate than Mr Cawte and his grasp of his own calculations and methods less complete. He asserted that in his opinion no reasonable valuer could in 1973 have reached a valuation of £275,000. The outside maximum figure for a going concern valuation was for him £192,000, which he, of course, would reduce to produce a brick-and-mortar valuation or a valuation for mortgage purposes. Mr Berney's evidence threw no doubt at any material point upon the evidence of Mr Cawte. For the plaintiffs Mr Owen did not suggest that he could put his case higher than was justified by the evidence of Mr Cawte.

It is now necessary to deal with one topic which was raised in the evidence of both Mr Cawte and Mr Berney, and with the cross-examination directed to it. That is the topic of the true sale value and the rise of prices in the market preceding September 1973. The suggestion made to Mr Cawte and Mr Berney was that, whatever the accounts analysis method might indicate to be the proper valuation, if the market value was known to be higher, then the valuer must proceed by reference to that known market value. With greater or lesser speed and willingness, each in substance agreed that that was so.

Next, each was taxed with his view on the way in which the property market had moved between 1971 and 1973. It will be remembered that in April 1972 Mr Gurrin had valued the Raglan Hall Hotel in the sum of £145,000 (valuation D) upon the assumption that the works there stated were completed; that is to say Phase I and Phase II. It is not entirely clear, but the wording of valuation E of December 1 1972 and of valuation F of February 12 1973 indicates that the work assumed to be completed for valuation D at April 1972 included all or most of the work which was said to have cost £98,000. Mr Cawte of that valuation D said that he did not really quarrel with it--he thought it perhaps £5,000 too high.

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Mr Cawte accepted that from about January 1972 to September 1973 there had been a general increase in property prices of about 70-80 per cent which had affected all sections of the property market and had been created by speculative interest in the market. He accepted that such an increase had therefore possibly affected the Raglan Hall Hotel as well. He thought the greater part of the increase in value had occurred early in 1972. He was then asked how it was that a valuation in April 1972 which he did not query was the same as his hindsight valuation for September 1973. The assumption of the question was not entirely right, because the Fire Precautions Act costs were not treated as relevant for valuation D, and Mr Cawte had deducted £20,000 for his valuation at September 1973, which was, for strict comparison, to be treated as £160,000. Mr Cawte's answer was that in September 1973 he was valuing on assumed profitability, and that while he had taken into account the fact that the market had increased he also thought that in September 1973 there were definite indications that the market for hotels would drop. In the light of what he had written in his proof, however, he acknowledged in substance that he could not have been proceeding on the basis

that the market was about to drop. In short, Mr Cawte was forced to accept that his valuation of £160,000 at September 1973, before reduction by £20,000 for fire certificate costs, was difficult to reconcile with his acceptance of a valuation at £145,000 in April 1972, having regard to what he conceded had been a general increase in property prices in the order of 70-80 per cent. A figure of £140,000 becomes £238,000 when increased by 70 per cent.

Mr Cawte was further pressed then with the suggestion that the discussion had ignored the fact that "the best part of £100,000 was spent on the hotel in the meantime." That suggestion was made in error. The valuation D of April 1972 proceeded upon the assumption that the work there listed, namely Phase I and Phase II, was completed, and that work accounted for a large part of the £100,000 referred to. This error in no way affected the force of the first point made.

In re-examination Mr Cawte said that the increase in property values in hotels between January 1972 and September 1973 had largely been created by speculators, and asserted that in valuing for mortgage purposes a competent valuer would not take that into account.

Mr Berney agreed that there had been an increase of 70-80 per cent in the price of property over the period to September 1973, but that increase did not in his view apply to every property. Mr Berney's figure for the Raglan Hall Hotel in April 1972 was £88,500--which is, of course, markedly lower than Mr Cawte's as at the same date.

I think that Mr Cawte's difficulty in dealing in retrospect with open market values in 1973 and in 1972 arose from the nature of the task. The market was distorted by the boom, or rise in prices, which had occurred. It is plainly very difficult to work out in 1975, as Mr Cawte tried to do, what the appearance of that distorted market must have been with reference to one particular hotel in 1972 and 1973.

I now turn to the defendants' evidence. The structure of Mr Gurrin's breakdown has already been stated. It is important to explain the role which Mr Gurrin assigned to his breakdown calculation. His process of valuation, as I have already outlined, was to inspect the property and, provided it was in an area with which he was familiar, he would return to his office with an approximate figure in mind. He would then consult with the hotel sales department of his firm. He would thus have what he regarded as the open market value. He would then try to substantiate that figure mathematically--and in so doing he produced his breakdown. Having established the total estimated net income by reference to tariff, an occupancy figure and a percentage of costs, he then multiplied by the chosen number of years' purchase. That was established, he said, by what the market would pay at that precise time. In the event of conflict his view of the market conditions would prevail over the accounts method.

He justified his failure to deduct anything for goodwill in his breakdown calculation, not by saying that his figures were calculated on a basis that no goodwill was necessary to justify them, but by the assertion that the market had changed and buyers did not want to buy hotels with an existing connection, which was the equivalent of goodwill, but preferred to buy empty hotels. The effect is, I think, the same. It means that an intending buyer would in his opinion buy upon the basis of his estimated income and pay his years' purchase multiplier without expecting there to be any goodwill, and therefore no attributed goodwill is necessary to justify the estimated income or the price. Mr Gurrin also justified his omission of any deduction of goodwill by asserting that at the time the hotel had not in fact any goodwill attached to it. The relevance of that observation I was for my part unable to understand.

The figures in the breakdown were made to fit the price he had in mind. Thus, when he made the years' purchase multiplier 7 1/2 in September 1973 instead of 8 years' purchase as it had been in June 1973, the change did not reflect any falling off in the market--it was just that he was sure that £275,000 was right, and if he had applied 8 years' purchase to the net estimated annual revenue which he had taken he would have

come out with too high a figure. He said indeed that the breakdown really had no consequence at all--the real figure in his valuation is that put on the hotel as the open market price as a matter of his expertise.

The evidence of Mr Gurrin on the matter of deducted costs must be considered in detail. As stated above this was the essential point of difference between Mr Gurrin and Mr Cawte on a particular matter of principle on the accounts analysis examination. Mr Gurrin said that in assessing costs to be deducted he sometimes had audited accounts--but in this case he proceeded at all times on his own assessment. As he was taken through his breakdown calculations from May 1971 to September 1973, wherein, as noted, against a generally constant tariff he maintained the same percentage deduction for expenses, he contended in substance firstly that he had been deducting too high a percentage in 1971, when he was deducting both 40 per cent and rates in addition, and by retaining the deduction of 40 per cent until 1973 he was in effect merely catching up on himself. Secondly he contended that although prices of all things that an hotel needed had been increasing, the costs as a proportion of gross receipts were not rising because such hotels as this kept down costs by dropping staff, and by reducing services such as the great British breakfast. This hotel was, he said, a family hotel, and costs in such an hotel were not rising as much as in upper-grade hotels.

Mr Brett supported Mr Gurrin as much as Mr Berney had supported Mr Cawte, although I consider that perhaps Mr Berney had made a separate and independent approach to the problem of this valuation to a greater extent than had Mr Brett. Mr Brett's valuation was dated April 28 1975 and marked "NO." He recited therein the information on which he proceeded. It included the statement that the hotel had an occupancy rate of virtually 100 per cent. It appears from Mr Gurrin that Mr Spiro had told Mr Gurrin that the occupancy was 100 per cent, but Mr Gurrin said in evidence that he had not believed Mr Spiro on that. Mr Brett's valuation "with full vacant possession as at September 28 1973 was £265,000."

Mr Brett's proof contains the assertion that Mr Brett, when he agreed to do the valuation for the defendants, told Mr Gurrin that he did not want to know what Mr Gurrin's figure was before he reached his own valuation. He received, he said, the information set out on appendix A to his proof. It is to be observed therefrom that:

(a) the valuation is said to be required for mortgage purposes as at September 28 1973--nothing is said of its being on a full vacant possession basis;

(b) the total number of rooms is there said to be 44 hotel rooms and 18 rooms let on weekly residencies producing an income of £150 per week. That is an incorrect total of rooms of 62;

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(c) Mr Gurrin states in the appendix that the defendants had been advised that the hotel was doing almost a 100 per cent occupancy and that the gross income was in the sum of £1,900 per week. No one could explain where that figure came from;

(d) the gross figure made expressly no allowance for any additional income to be derived from the restaurant and bar.

Mr Brett's valuation was prepared upon appendix A and his visits to the hotel. Since there were no available comparables his valuation is arrived at on an accounting basis. His calculations were set out in appendix B. Appendix A, however, shows a marked degree of similarity to Mr Gurrin's breakdown calculation--thus the maximum occupancy figure of £67,525, which rested on a total of 53 letting rooms, was taken as in that calculation, although appendix A had referred to 62 rooms. Mr Brett took an occupancy rate of 70 per cent where Mr Gurrin had taken 65 per cent. Mr Brett took exactly the same proportions for expenses, namely 40 per cent and 60 per cent, as had Mr Gurrin. Further, and more notably, Mr Brett had inserted a figure of £3,440 for what he called "additional income in respect of allowance of residential occupations," which very plainly referred to the same concept as that which appeared in Mr Gurrin's breakdown in the amount of £3,203. Mr Brett took a multiplier of seven years' purchase and deducted nothing for goodwill.

In his evidence Mr Brett accepted that he had obtained other figures in appendix A from Mr Gurrin--the £25,000 for bar/restaurant receipts, a 100 per cent occupancy figure, and the sum of £3,440 for additional income. He asserted that he had not discussed the matter with Mr Gurrin. There was a passage in the proof in which Mr Brett said that it was his instructions, as he believed it was Messrs Druce's, to value the hotel on a vacant possession basis. If he had valued on the basis of one-third let on weekly terms with security of tenure his valuation figure would have been substantially lower. It seems to me that there must have been more discussion between Mr Brett and Mr Gurrin than the proof suggested. I do not think that this is, however, of particular significance. Mr Brett may have known in general terms the structure of the valuation which he was supporting. On the other hand Mr Cawte and Mr Berney knew precisely the terms of the valuation which the plaintiffs were attacking.

Just as Mr Gurrin asserted that the true effective judgment of the valuer in such a task as this lay on fixing the open market value by "expertise," and that the accounts analysis really had no value at all, so Mr Brett agreed with him. When asked to state by what method he determined the appropriate multiplier of years' purchase to be applied to the estimated net annual profit, he replied that he divided the net annual profit into the market price to get the years' purchase. He was using a multiplier of seven years' purchase on his appendix B. In 1973 most hotels in central London were calculated by him at eight years' purchase. After the collapse of the property market he was valuing hotels generally at five years' purchase. He was asked how he got to his open market valuation. He replied that the Raglan Hall Hotel, because of market conditions, would have attracted very many buyers--the overflow of purchasers from central London. He said that there were many non-hoteliers in the market in 1973. It was unrealistic but there were many buyers. He believed that in September 1973 the Raglan Hall Hotel had a value in the market above his valuation. It was impossible to satisfy the buyers looking for hotels. Many were speculators. On the issue of deduction of costs he defended the deductions he had allowed. He said that he had inspected many hotels in 1973 and had seen what operational costs were being incurred.

The position therefore on the evidence was that the beliefs, opinions and convictions of two valuers are ranged against the beliefs, opinions and convictions of two other valuers. Mr Cawte would not accept that a valuation figure of more than £175,000 in September 1973 could properly have been reached. For Mr Berney the outside maximum figure was £192,000 before reduction to a figure appropriate to a valuation for mortgage purposes. Mr Gurrin and Mr Brett adhered to £275,000 and £265,000 respectively. The size of the spread is very large. The size of the difference is explained by the fact that the defendants assert, as I have pointed out, that in their view at the relevant time purchasers were paying prices for such an hotel as this which falsified the figures basis of valuation.

There is no factual evidence of what the occupancy figures or running costs of this hotel were at any stage. Mr Gurrin had never asked to see any records because he did not think hotel accounts or records were trustworthy. During the carrying out of works there must have been some disturbance to the hotel, but it is surprising to me that a valuer prefers to know nothing of the hotel records or accounts. There is no factual evidence of what the running costs of any allegedly similar hotel were at any time.

In some cases concerning valuations the court has at least been able to compare an estimated value with what the property was subsequently sold for: for example *Baxter v F W Gapp & Co* [1939] 2 KB 271. In the present case attempts were made to sell the property. In October 1974 the defendants wrote to First National Finance Corporation advising them to accept the offer of £130,000 if an immediate sale was required. They had been energetically pursuing the sale of the hotel, but the property market was exceedingly depressed. As already stated the main hotel at 8, 10, 12 Queen's Avenue was sold on June 14 1977 for £100,000, and 15 Queen's Avenue was sold on November 1 1976 for £25,250. No expert witness, however, has said, or been asked by counsel to accept, that any useful comparison can be made between the valuation of any expert as at September 1973 and the ultimate sale prices realised. I find this surprising. I would have supposed that estimates could have been made of the approximate extent of recovery of prices from 1973 to 1977 as readily as estimates of increases in prices from 1971 to 1973--but my supposition must have been wrong.

Mr Brett said that whereas before the collapse of the property market he was calculating valuations of hotels at eight years' purchase in central London and at seven years' purchase for hotels outside the centre, he was, after the collapse, valuing hotels at five years' purchase. He later said that it would not be safe to multiply a sale price after the crash by 8/5ths in order to discover what its value was before. He also contended that the value of the Raglan Hall Hotel would have been dramatically affected by having it run by a receiver; by the subsequent need for a fire certificate; and by the change in law affecting security of tenure for residential tenants. If Mr Brett's calculation of five years' purchase after the property crash were right this hotel should have retained a value of about £180,000. Having regard to the fact that the plaintiffs' experts apparently did not think it useful to support their criticisms of the defendants' valuation by reference to the ultimate sale prices of the parts of the Raglan Hall Hotel I do not think that I can place any reliance upon those prices or any purported inference from them.

My conclusions upon the evidence upon this part of the case are accordingly as follows:

(i) That the open market value price which Mr Gurrin thought appropriate to this hotel in September 1973 upon his judgment of the market was a very "high" price for the Raglan Hall Hotel; that is to say it was a price which could only be expected to be realised for that hotel in a market in which a large number of eager buyers, including speculators, were competing to purchase such hotels. There was accordingly a speculative content in that open market price, and in my judgment it was a large one.

(ii) I regard it as quite uncertain on the evidence of Mr Cawte and Mr Berney whether the Raglan Hall Hotel was in fact such an hotel as would have attracted the eager attention of such purchasers or speculators, but on all the evidence I cannot conclude that no competent valuer could have so regarded this hotel in its then condition, and in September 1973. Mr Gurrin plainly thought that the Raglan Hall Hotel would command such competitive interest from speculators, and so did Mr Brett.

(iii) When Mr Gurrin's breakdown analysis is considered and tested against the views of Mr Cawte and Mr Berney it is clear

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that at almost every point at which an estimate was to be made Mr Gurrin's estimate was as high as a reasonably competent valuer could go. The fact that the breakdown was at every point of dispute at the top end of what could be accepted supports the conclusion that the open market value which the calculation was designed to check or test was a "high" valuation as I have defined it and that the defendants must have known that the speculative content was large.

(iv) Upon one aspect of his analysis Mr Gurrin's figures have been shown in my judgment to be such that no competent valuer should have accepted. I refer to his estimate of expenses. Upon this matter I accept the evidence of Mr Cawte and I do not find convincing Mr Gurrin's explanations as to why he could retain as adequate allowance for probable expenses the proportion of 40 per cent from 1971 to September 1973 upon an unaltered tariff for letting rooms. Mr Gurrin, however, was not advising his clients about the probable expenses of the Raglan Hall Hotel. The plaintiffs never saw Mr Gurrin's breakdown calculation and never relied upon it. It would not matter if the reasoning in that calculation was wrong if the valuation was right. The force of this point, however, is the same as that just made generally about the level of estimates in the breakdown analysis. When Mr Gurrin prepared his analysis to test his open market sale price figure, he used and left unaltered an allowance for expenses which should have appeared plainly too low and which therefore produced an estimated net profit which should have appeared surprisingly high. This further and very strongly supports the conclusion that the open market price figure of £275,000 was a very "high" valuation as I have defined it, and that Mr Gurrin knew or should have known that the speculative content of his open market price was large.

(v) I regard it as likely that very many experienced valuers would have reached in September 1973 a value for this hotel much closer to those of Mr Cawte and Mr Berney than to the valuation figure of the defendants. I am not, however, persuaded upon all the evidence that the figure of £275,000 was a figure which no competent valuer could reach as being the figure which Mr Gurrin said he thought it was, namely, that sum which at the moment at which he was valuing he thought could be got at auction in the then booming market as he described it, with competing speculators, and taking the view of the attractions of this hotel which he said he held.

I have reached that conclusion after much hesitation, because in general I prefer the evidence of Mr Cawte to that of Mr Gurrin. After giving the matter the best consideration I can I have concluded that I would not be justified in deciding on that basis, namely preferring the evidence of Mr Cawte to that of Mr Gurrin, that Mr Gurrin's open market figure was one which no competent valuer could regard as the price which would be paid in the market in the state in which it was in 1973 as he saw it. It was a difficult time for valuers--although it is not clear at all that Mr Gurrin saw it as such. If valuers were to have regard to what competing speculators would pay they had to estimate how much more than the sum indicated by investment return the speculators would pay and whether the particular hotel would in fact interest speculators at all. Such a state of the market seems to me to admit of the possibility of differences between honest and competent valuers of a much larger order of magnitude than would, we may hope, normally be possible, not least when one of the witnesses, Mr Cawte, whose evidence in general I found very convincing, was working by hindsight. The difficulties of working by hind-sight upon such a period of the property market were made plain in Mr Cawte's candid answers to Mr Turner's questions about the general rise in prices.

As I have pointed out there has been no factual evidence, upon which I can rely, of a relevant or comparable sale of this or any similar property, either before or after the collapse of the market, against which to test Mr Gurrin's opinion of what this hotel would have fetched immediately before the market collapsed, or by which to show how much more than a price based upon investment return any buyer would then have paid. Mr Brett supported Mr Gurrin's opinion as being a tenable one for a competent valuer in September 1973--but he did so in terms which, of course, wholly support the conclusion that Mr Gurrin's valuation reflected a price which could only be expected to be paid for that hotel in a market in which a large number of eager buyers, including speculators, were willing to pay a price containing a substantial speculative content.

(vi) It was the duty of the defendants as valuers in September 1973, in preparing a valuation for mortgage purposes, to exclude from their valuation any apparent content which might well not be available for sale by the mortgagee when he attempted to realise his security. The open market price which Mr Gurrin estimated for the Raglan Hall Hotel contained, as I have said, a large speculative content. It was accordingly the duty of the defendants, for reasons which I have previously set out, in preparing their valuation for mortgage purposes either not to include that speculative content, or adequately to identify it as such for the guidance of the lenders, and it was their duty to act thus because, as I have also already explained, the defendants had substantial ground for knowing that the "speculative content" in their estimated open market price might well not be readily realisable on the forced sale of this hotel over the immediately ensuing period of time such as six to 12 months from the date of valuation. The defendants did not discharge that duty in either way.

(vii) What is shown to have been the amount of the "speculative content"? Or in what terms should the defendants have advised about it? I have already stated that in my judgment the valuation of £275,000, when tested by reference to Mr Gurrin's breakdown calculation, is shown to be "high" on a number of points, and in particular with reference to running costs. Mr Cawte's deduction of 60 per cent for expenses overall would have reduced the valuation by approximately £75,000, but, as Mr Cawte acknowledged, there was no hard and fast rule about his proportion. Mr Berney considered that his open market valuation figure should be reduced by 20 per cent for a valuation for mortgage purposes. Mr Cawte thought also that, when the

market is "high," the difference between the open market value and a mortgage valuation could be as much as 20 per cent. If Mr Gurrin's figure of £275,000 is reduced by 20 per cent it becomes £220,000. Further, and I repeat, when a valuer is to his knowledge valuing in a market in the condition which Mr Gurrin has asserted was prevailing in September 1973 he has the duty, in my judgment, to guard against over-confidence.

(viii) I therefore conclude on this part of the case that by reason of their breach of duty in failing to allow for the speculative content in their open market price in advising for mortgage purposes the defendants put forward a valuation which was by at least £55,000 more than any competent valuer could or should have put forward. If, instead of reducing their figures to allow for the speculative content, the defendants had chosen to make adequate reference in their report to the fact that their open market valuation was based upon view of the market which necessarily caused there to be within it a substantial speculative element, I have no doubt whatever, for reasons which I shall develop later with reference to the way in which the plaintiffs would have responded to advice about the Fire Precautions Act 1971, that the plaintiffs would have insisted upon having advice from the defendants as to a sensible deduction to be made in respect of it before making any loan. The plaintiffs would thus have got, in my judgment, either from the defendants or from other valuers, advice which in all probability would have caused the plaintiffs to have treated the defendants' valuation as reduced for mortgage purposes by at very least £55,000.

(ix) What is it proved that the plaintiffs would have done if they have received a valuation in the amount of £220,000, or had been advised to treat the valuation as no more than that sum for mortgage purposes? It was contended for the plaintiffs that, since the borrowers said that they must have £60,000, then, if the valuation was not in such a sum as would, on the 70 per cent principle,

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support an advance of £60,000, the plaintiffs would have advanced nothing. I cannot accept that submission. I do not doubt that the borrowers wanted £60,000, and said that it was essential for them to have it, but it was in no sense essential for the purposes of these plaintiffs to advance either £60,000 or nothing. In fact, the plaintiffs at first advanced £45,000 and were not bound to advance more. The borrowers were, as it was said, "thirsty for money." The probability is, in my judgment, that these plaintiffs would have advanced, or have offered to advance, precisely as much as, on the 70 per cent principle, they prudently could in reliance of the valuation which they got; and the borrowers would have taken the money. Accordingly, on this part of the case, I am satisfied that the plaintiffs were caused by the defendants' breach of duty to advance £60,000 whereas, if they had obtained from the defendants a valuation which was not in breach of the defendants' duty, they would have advanced no more than a figure which, for the sake of rounding the figures out, I shall take as £22,000. I shall expect counsel to check the arithmetic. Subject to that check, the apparent loss on this ground appears to be £38,000.

THE FIRE PRECAUTIONS ACT 1971

I return to the second or alternative part of the plaintiffs' case; namely that it was the duty of the defendants in valuing for mortgage purposes at least to warn the plaintiffs that a fire certificate would be necessary in respect of the Raglan Hall Hotel for due compliance with the Fire Precautions Act 1971; and that the necessary works would cost a substantial sum of money. The plaintiffs assert that if the defendants had discharged their minimum duty in this regard the plaintiffs would have made no advance at all to Albine, whatever the amount of the valuation.

It is possible to approach this part of the case by listing a number of facts which were not in dispute:

(i) The Fire Precautions Act 1971 was passed on May 27 1971. The purpose of the Act was to strengthen the law relating to fire precautions in places of public resort, such as hotels. Fire certificates were provided to be necessary for such places: it would eventually be unlawful to use premises as an hotel without the necessary fire certificate. The scheme which the Act set up required application to be made for a fire certificate to the fire authority, which authority could require plans of the property from the applicant. It then became the duty of the fire authority to inspect the premises to see to what extent the basic requirements of the Act were satisfied--for example, as to provision of means of escape; as to provision for securing that the means of escape could be effectively used at all times; and as to fire fighting equipment and fire alarms. After inspection the fire authority would either grant a certificate or tell the applicant what work would have to be done to obtain one. The Act expressly gave the fire authority power to extend the time for doing work necessary to obtain a certificate.

(ii) The Act of 1971 largely came into force on March 20 1972. The Act received publicity in the trade press and attention was drawn to the potential financial burdens imposed by the Act on hotel keepers. (See *Caterer and Hotel Keeper* for July 15 1971). The Act had given powers to local authorities to make loans for the cost of certain work made necessary by the Act.

(iii) Mr Henry, an officer of the fire prevention department of the Greater London Council, proved that from time to time inquiries were made by members of the public of his department as to the state of compliance of particular buildings. Their normal procedure in his department was to refer an enquirer to the applicant; the department was alive to its duty under section 21 of the Act which restricts disclosure of certain information. If a certificate is in existence they will say so. If an application has been made and is in course of being processed, they will say so. In 1973 about 90 per cent of hotels in his area had applied and had registered; and about 90 per cent of the hotels which had applied had not yet got their certificates.

(iv) Mr Marney, a fire officer at Edmonton, was personally involved with the Raglan Hall Hotel from 1974 to 1976 and produced extracts from the file. Architects acting for Albine had applied for a fire certificate in June 1972 and had invited inspection. Visits were paid to the hotel in July 1972 by fire officers, but those visits were paid to the hotel in July 1972 by fire officers, but those visits were with reference to work required for the obtaining of a justices' licence and not with reference to the Fire Precautions Act 1971. Visits of inspection for the 1971 Act purposes were eventually made; the initial inspection of September 28 1972 revealed that in 8-12 Queen's Avenue the three staircases were unprotected and the means of escape unsatisfactory--the work was given a high priority listing.

It is clear that the fire authority was willing to permit necessary work to be done in conjunction with the other work which Albine was doing or stating its intention to do to the hotel. By August 1973 some necessary work had been done to the ground floor--such as installation of fire alarms and smoke detector system--but no work had been done to the upper floors. Since Albine were then stating their intention to proceed with their Phase IV, which included work to the upper floors, the fire authority took the view that it would be unreasonable to require temporary work to the upper floors which would have to be dismantled when the proposed alterations to the upper floors were done.

For reasons which were not explained Albine had made no application at all in respect of 15 Queen's Avenue, the annex on the other side of the road, and in consequence, by 1973, nothing had been done with reference to that part of the hotel by the fire prevention department.

(v) A schedule of necessary work for 8-12 Queen's Avenue was eventually issued on July 2 1975 and was directed to the receiver. A schedule for No 15 was issued in September 1976. Delay, it was said, had been caused by Albine's difficulties and by the receivership.

(vi) The plaintiffs eventually obtained information from the receiver's file in the course of the hearing. The receiver spent £11,639.88 in respect of works required under the Fire Precautions Act 1971 at 8-12 Queen's Avenue alone. There is no evidence that the receiver spent any other sums. No 15 Queen's Avenue was sold on November 1 1976. It appears that it was sold before any work was done.

(vii) A number of serious fires in places of public resort, such as hotels, received publicity; and attention was thereby drawn to the terms of the Fire Precautions Act 1971 and to the fact that fire authorities would eventually enforce its requirements: see the *Caterer and Hotel Keeper* for July 15 1971; references to the Oban fire in the issue of August 2 1973 and to the Summerland disaster in the issue of August 9 1973; with comment in the issues of August 16 and August 23 of that year; and culminating in the assertion in the issue of September 6 1973 that "Fire law purge hits London."

(viii) If at the time that Mr Gurrin was preparing his valuation of September 1973 he had wished to discover what progress had been made towards the obtaining of a fire certificate for the Raglan Hall Hotel he could, with the consent of Mr Spiro and Mr Gourgey, who were in charge of the hotel, have discovered at least in general outline what sort of work would be required to be done to comply with the Act and what the approximate cost would be. No one suggested that Mr Spiro or Mr Gourgey would have withheld any necessary consent or information. They had architects who were dealing with the fire officers.

I turn now to the evidence for the plaintiffs on this point.

(a) Mr Cawte spoke thus: a valuer for mortgage purposes must have regard to all the possible negative factors which would reduce the attractiveness of the particular premises to a purchaser. Any need for expenditure would be of great importance, and in this connection the provisions of the Fire Precautions Act are highly important. A valuer ought to obtain information from the fire officer, if no fire certificate exists, as to the works required to be carried out, and should estimate the costs of those works. The cost of works must be subtracted from the valuation. If the hotel is in great demand, the amount of this reduction can pos-

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sibly be reduced, since some of the works may possibly be financed by income. If, however, the hotel is not in demand from purchasers it may be necessary to add to the cost of the physical works a proportion to take account of the upheaval and loss of rooms revenue during the course of the work being carried out.

In his analysis Mr Cawte had allowed £20,000 for the cost of works to comply with the Act. He had considered what he had been told was required to be done and made an estimate of the cost of all four properties. He had thought an external fire escape would be required. The schedules when produced by the fire officer showed that such escapes were not required. He reduced his estimate to £14,000 for all four properties at 1973 prices. The evidence obtained from the receiver shows that Mr Cawte's estimate was much higher than upon the evidence in this case is proved to have been the likely cost at 1973 prices.

(b) Mr Berney entirely supported Mr Cawte on this and Mr Berney had also allowed £20,000 for works required for fire certificate. Mr Berney had seen the specification of required work in the fire officer's files. He said he had reached his figure of £20,000 from what he had been told by Mr Gourgey and the fire officer.

(c) The defendants' case on this point was put to Mr Cawte: firstly, that by September 1973 valuers had little experience of the way in which the Act of 1971 was being implemented. With that he disagreed. Next, that the indications were that fire authorities were adopting a reasonably flexible approach so far as time to carry out works was concerned. With that he agreed.

Next it was put to Mr Cawte that prices being paid for hotels did not reflect their true investment potential, and that such prices were falsifying any figures basis of valuation. With that proposition he agreed.

It was therefore put to him that in such market prices you would "lose the cost of fire precaution work." Mr Cawte agreed that on such market prices you could lose the cost of fire precaution work to a very large extent, but he still asserted that it was the duty of the valuer to mention it. I understood his answers to mean that if a hypothetical buyer was willing to pay more than ordinary considerations of investment return he might well ignore any warning as to a future burden of the cost of fire precautions work in order to secure the hotel in such a market.

(d) Similar questions were put to Mr Berney. He said that, even assuming such a state of the market, the expense of complying with the Fire Precautions Act would not have been lost sight of by him, and that only "cowboy speculators" were not concerned with such matters. I think that Mr Berney did accept that if, and to the extent that, the market in truth did disregard normal investment return then such matters did cease to be a factor.

(e) Mr Gurrin and Mr Brett gave evidence fully supporting the propositions put to Mr Cawte and Mr Berney. I need not recite it in full detail. Mr Brett's valuation made no reference to the Act. In his proof he said that fire precautions were not regarded as being of prime importance in September 1973, and that the repercussions of the Summerland fire of August 1973 had not been felt by September of that year. He added that, for his valuation purposes, he had taken a basis from the defendants that a maximum figure of £4,000 would be required to obtain a fire certificate.

(f) The last refers to a matter of some complication which must be briefly mentioned. Mr Gurrin in his evidence in effect made two assertions about the fire certificate works: firstly, in accordance with the case put in cross-examination as I have described it, that the state of the market was such that purchasers were not concerned with the cost of carrying out fire certificate works and that therefore it was irrelevant to his estimation of the open market price and to his valuation report; and, secondly, that he had made inquiries and was given the impression that in fact works had been carried out to meet the requirements of the Act of 1971. That turned out to be a reference to the letter of November 29 1972 to Mr McLeod of the defendants in which one item in Phase I was said to be: "Works to GLC fire officer's requirements £3,350." Mr Gurrin said that Mr Spiro told him that Mr Spiro had not had a schedule of work, but he had done all the work. Mr Gurrin said that he took Mr Spiro's word for that; he checked with the architect; and he thought that the item of £3,350 was for work relevant to the fire certificate under the Act. He did not know, as was shown to be the fact, that that expenditure referred to the application for the justices' licence and not to the Fire Precautions Act 1971.

He did, however, know the basic requirements of the Act of 1971. He did not think it prudent to inquire of the GLC. He did not think he would have got any information if he had asked. He thought that the necessary work had been done for the requirements of the Act. He was therefore pressed with the suggestion that, since his valuation showed that he knew no work had been done to the upper floor by 1973, he could not have thought that work to satisfy the requirements of the Act had been done to the upper floors; and that, since no work had been done to no 15 at all, he could not have failed to see that no work relevant to the Act of 1971 had been done there. His reply in effect was that he could not remember, but in any event he was valuing property and it was not necessary to draw attention to fire certificate works. He must have supposed that Spiro had got away with it. He was probably easily satisfied because he did not think it important.

Upon the evidence then, what was Mr Gurrin's duty with reference to the fire certificate work? For reasons which I have already given, it was in my judgment the duty of a valuer preparing a valuation for mortgage purposes to make appropriate allowance for any significant defect or problem in respect of which the pur-

chasers in the market would calculate that they would have to spend money before being able to operate the hotel to make the estimated net income.

I have no doubt whatever that ordinary inquiry in September 1973 would have produced readily information in general outline as to the nature and extent of works which would soon be necessary to comply with the requirements of the fire authority. That information would have enabled the defendants to make an estimate of the approximate cost of such works. Mr Turner for the defendants submitted that if the figure of £11,639 is treated as three-quarters of the cost, and reduced approximately to 1973 prices, a figure in excess of £8,000/£9,000 could not properly be taken. I do not think I do injustice to either side if I take the lower figure of £8,000.

The burden of having to spend such a sum of money within a short period of time--such as 12 months or thereabouts--was plainly, in my judgment, a significant defect or problem.

For the purposes of the first part of this case, as I have said, I have been unable to conclude that a competent surveyor could not in September 1973 have formed the view that the purchasers in the market seeking such an hotel as this would have been willing to pay prices not justified by ordinary considerations of investment return, and Mr Cawte, upon that hypothesis, agreed that "You could lose the cost of the fire precautions work to a very large extent." Giving full force to that answer it is nevertheless my unhesitating conclusion that it was the duty of a valuer valuing for mortgage purposes in September 1973 either to make due allowance for the probable cost of fire certificate works or to inform his client, the intending lender, that he had not done so because, in his view, the market was such that purchasers would pay no attention to it.

My reasons for reaching that conclusion are these:

> (1) The burden facing owners of hotels under the Act was well known in 1973. If a mortgagee had to enforce his security he would or might well have to spend the money to get the fire certificate or find that purchasers were calculating the cost of such work in working out what they would pay. For reasons explained above the defendants had no right, in advising an intending lender, to assume that the state of the market in which buyers ignored such costs would continue.
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> (2) I unhesitatingly prefer the evidence of Mr Cawte and Mr

> Berney on this part of the case. Further, I do not accept that in September 1973 Mr Gurrin ever had any credible or reasonable basis for believing that the full work necessary for compliance with the Act of 1971 had in fact been done.

What, then, is proved to have followed to the detriment of the plaintiffs from the failure of the defendants to allow for the fire certificate costs or to advise the plaintiffs adequately that they had not done so? It was submitted for the plaintiffs that, since compliance with the Act of 1971 was, after completion of due process under the Act, a precondition to lawful operation of the hotel, the plaintiffs had proved that, if the defendants had done what I have concluded they should have done, the plaintiffs would have advanced nothing to Albine. Mr Joseph and Mr Birn so stated. I am not satisfied of that assertion and I reject the submission. In order to explain my reasons for so deciding it is necessary to deal with some evidence which I have not as yet mentioned.

There was firstly evidence from the plaintiffs' side from a Mr Kanter, a brother-in-law of Mr Joseph, about an interview he had with Mr Gurrin on December 13 1974. Mr Kanter was engaged in a preliminary reconnaissance. He made a record of his meeting immediately after it. I found Mr Kanter to be a wholly candid and convincing witness. Mr Gurrin has not said anything of any significance to the issues in this case inconsistent

with what Mr Kanter says Mr Gurrin told him then. I have not found Mr Kanter's evidence of any assistance in resolving any matter in dispute.

The next matter is more difficult and perplexing. In about January 1975 Mr Joseph telephoned Mr Brett. He had, he said, been given Mr Brett's name as a competent valuer by a friend, a Mr Selby. Mr Joseph had already received Mr Cawte's valuation, which was dated January 8 1975. Mr Joseph's account of the conversation was this: he described getting the valuation in September 1973 but did not at first give the amount. Mr Brett said that he knew the Raglan Hall Hotel; Mr Joseph then told him the amount of the valuation as £275,000, and there was, said Mr Joseph, then a big laugh at the other end of the phone. Mr Joseph then said that there had been no mention in the valuation of the fire certificate, and Mr Brett said he could not believe it: everyone knew about fire certificates in 1973. Mr Joseph asked Mr Brett what the hotel was worth in 1973, and Mr Brett said top weight £150,000, and today £100,000. When cross-examined Mr Joseph was asked this question: "Since you had this encouraging conversation with Mr Brett, why not instruct him to do a valuation?" Mr Joseph's reply was that they had investigated and found Mr Brett to have no qualifications, and his firm had only been in existence six months.

Mr Brett's account was different. He said that Mr Joseph told him that the defendants had overvalued the hotel and asked if Mr Brett would provide a valuation. Mr Brett said he would. Mr Joseph said that a valuation would only be of any use if it was very low. Mr Joseph asked what the fee would be if the valuation was £100,000, and Mr Brett told him £250. Mr Joseph then said that if the valuation was low another figure would be paid. Mr Brett then closed the conversation and at once telephoned Mr Gurrin to repeat it.

Mr Gurrin produced a typed note of what he said Mr Brett told him in that phone call. It is dated January 31 1975. It contains more detail and in particular that with reference to payment a figure around £500 was intimated. Mr Joseph said that there was no truth in these allegations at all. Mr Turner, although he used slightly less blunt language, for the defendants submitted that Mr Joseph had tried to bribe Mr Brett to make a low valuation, and when Mr Brett refused to be bribed Mr Joseph then lied about the conversation. Accordingly, said Mr Turner, the evidence of Mr Joseph should be rejected when he says that he would or would not have done this, that or the other if the valuation had contained certain advice.

My conclusions about that phone call are as follows: Mr Brett was a friend and colleague of Mr Gurrin. It is not in dispute that he made a phone call to Mr Gurrin immediately after he had spoken with Mr Joseph. I do not think he would in probability have committed himself either by a scornful laugh, or by an oral valuation of £150,000, in such a conversation to a stranger seeking help to sue Mr Gurrin's firm. I think Mr Brett would have been non-committal. He may have laughed. I think Mr Joseph probably did encourage him by offering him a fee over scale. I do not think Mr Joseph offered a bribe and said anything fairly to be interpreted as a promise of reward for a dishonest report. No one has suggested that Mr Joseph has not sincerely believed that Mr Gurrin's valuation was much too high.

In the result I saw nothing in Mr Joseph's evidence about this conversation to make me doubt the honesty of Mr Brett or the sincerity of his valuation, or his evidence to this court. In fact I have not accepted that valuation or Mr Brett's evidence in full for the reasons I have given, but my view of Mr Brett's evidence has not depended in any way upon this telephone conversation or Mr Joseph's evidence about it. The evidence about this conversation, on the other hand, did nothing whatever to increase my confidence in Mr Joseph's evidence.

I did not reject the plaintiffs' main case upon this point, namely that they would have made no advance whatever to Albine if there had been reference to the absence of a fire certificate, on the ground of credit, however. I have rejected it because I regard it as wholly improbable. I think that Mr Joseph was angry about this valuation and the capacity of valuers to assert that they can be in the event disastrously wrong and yet have done their duty in every respect. Valuers are not alone in that capacity. I do not think his recollection now of

what he would have done in September 1973, if differently advised, is a reliable recollection. That is not surprising. His loss was no doubt painful and bitter.

It is not necessary, however, to rely upon Mr Joseph's current recollection for evidence of how he would have reacted in September 1973 to any indication of a defect in or problem about the security such as the lack of a fire certificate and the eventual need to spend such a sum as £8,000 to obtain the fire certificate. Mr Joseph was in this transaction proposing to lend a much larger sum than he had lent before. When Mr Joseph received Mr Gurrin's valuation he was puzzled by the reference to residential tenants and to the basis of the valuation as "with full vacant possession." He therefore went to another valuer, Mr Sheldon, and asked whether these residential tenants were a help or a disadvantage. That was, in my judgment, a striking thing for him to do--particularly in light of the fact that, as was pressed upon him in cross-examination, he did nothing to discover to what extent the borrowers could out of income pay the interest and other payments due under the first and second mortgages. Mr Joseph relied upon the fact that Albine had paid their debts before and, no doubt, upon the belief that Mr Spiro was not entering into these transactions with the intent of losing all he had.

Mr Sheldon advised by letter of October 17 1973. Mr Sheldon did not inspect the property but relied upon the defendants' valuation. This advice was received by Mr Joseph before the plaintiffs lent any money. Mr Sheldon accepted Mr Gurrin's valuation and argued that the presence of residential tenants increased the value, for the reasons there explained. He did not, of course, know how Mr Gurrin had calculated in his breakdown. A normal occupancy rate to Mr Sheldon was 4/7ths, or, I think, about 58 per cent, and not Mr Gurrin's 65 per cent.

Mr Sheldon's views, however, do not matter. The taking of his advice by Mr Joseph proves to my satisfaction that Mr Joseph would, as he did, check on anything in the defendants' valuation which he did not fully understand. I have no doubt whatever that if there had been a reference to the absence of, and need for, a fire certificate in the valuation Mr Joseph would have required and would have got full advice about it. He would have discovered that the approximate cost of complying with the Act was £8,000, or thereabouts. He would have been told--and accurately

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told--that there was no real risk of the hotel being shut down for want of a fire certificate, provided Mr Spiro did what he was asked; and Mr Spiro would have protested his intention of so doing. Mr Joseph would, I am sure, have reduced the valuation for the purposes of an advance by the amount of the potential liability for fire certificate work. But he would not have refused to offer as a loan 70 per cent of the valuation, making allowance for the cost of fire certificate work, and of the first mortgage, and I am equally sure that Albine would have accepted what was offered. Mr Joseph most certainly would not have ignored notice in the valuation of a potential liability of £8,000, but I am quite unable to accept that he would have refused to offer any advance.

For these reasons I would have found, whatever my conclusion on the first part of the case, that the plaintiffs were entitled to succeed on this ground to the limited extent I have explained. The valuation should not therefore have exceeded £220,000 less £8,000 for fire certificate works. The plaintiffs, if my calculations are correct, would therefore not have lent more than £16,300. The loss proved is accordingly, subject to checking of arithmetic, the sum of £43,700.

The plaintiffs had back £9,075 by way of interest payments. I accept Mr Turner's submission that the proper approach is for credit to be given for the full sum recovered against the sum paid out, and the plaintiffs' claim for interest is to be considered in respect of the balance as from the date of payment. I reject the argument that the plaintiffs are entitled to the 30 per cent interest they would have got if the borrowers had performed their contractual obligations. I will hear counsel as to the rate of interest.

The claim to costs on the abortive proceedings on the loan on my findings does not arise. The plaintiffs would have been taking proceedings with equal lack of utility in respect of the smaller loan they would have made if they had received a valuation which was not in breach of the defendants' duty. No submissions were made in final speeches with reference to the counterclaim. I believe that Mr Owen indicated that he could not resist the counterclaim, but I will hear him about that in case I have misunderstood anything that he said.

The plaintiffs were awarded £43,700 less £9,075, ie £34,625, with interest at the rate of 9 per cent per annum from October 23 1973, and costs. A counterclaim by the defendants in respect of a fee for the valuation was conceded without argument in view of an admission of contractual liability on the pleadings.