

## HIGH COURT

JOHN JOHNSTON AND MARY JOHNSTON

PLAINTIFFS

AND

ALLIED IRISH BANKS LIMITED

DEFENDANT

Judgment delivered by Mr. Justice Barr on the 1st day  
of December, 1987.

THE PLAINTIFFS' CLAIM

The following is a resumé of the Statement of Claim delivered in these proceedings:-

The plaintiffs, who are mother and son, reside at Ballinastraw House, Monamolin, Gorey, Co. Wexford and carry on the business of farming. On 6th April, 1979 the plaintiffs entered into a contract with one, Bert Allen, and purchased 222 acres of farmland at Oulart Ard, Co. Wexford, for the sum of £800,000. Pursuant to this agreement a deposit of £200,000 was paid by the plaintiffs to the vendor and the balance of the purchase price was to be paid on 1st May 1980. When that contract was made the plaintiffs' bank account in relation to their farming activities was at the Bank of Ireland, Gorey. It was known and understood between the plaintiffs and the Bank of Ireland that adequate loan facilities would be made available by that bank to enable them to conclude the agreement for the purchase of the lands at Oulart Ard. After the contract with

Mr. Allen had been made and the deposit of £200,000 had been paid to him pursuant thereto the plaintiffs were approached by the manager of the defendant's branch at Gorey who requested them to transfer their business to the defendant bank. At all times material hereto the defendant, its servant or agent, well knew that the plaintiffs had entered into the Oulart Ard contract; that a deposit of £200,000 had been paid by the plaintiffs to the vendor and that their existing bankers, the Bank of Ireland, would provide facilities to them in respect of completion of the sale. It was further pleaded that the defendant, its servant or agent, represented to the plaintiffs that it would make available in respect of the closure of the Allen sale and generally better financial facilities and/or overdraft facilities than the plaintiffs' existing bankers provided that the plaintiffs would transfer their business forthwith to the defendant and open an account at their branch in Gorey and, furthermore, that adequate financial cover from the defendant for the plaintiffs to so conclude that sale would be provided by the defendant.

In course of the trial I acceded to an application by counsel for the plaintiffs to amend the Statement of Claim by adding a further specific representation allegedly made by the defendant's manager at Gorey for the purpose of inducing them to transfer their farming account to his bank. The amendment was in the following terms:-

"6(3) (a) The defendants would take over the liabilities of the plaintiffs to the Bank of Ireland Limited;

(b) provide the sum of £600,000 to the plaintiffs

on the 1st May 1980 for the purpose of closing the said sale of the lands at Oulart Ard;

(c) not to require the plaintiffs to sell any lands before the 1st May 1980;

(d) that monies (not exceeding £150,000) part of the said £600,000 would be left outstanding on long term loan to the plaintiffs and that the balance of the £600,000 would be recouped to the defendants by the sale of lands by the plaintiffs."

It was further pleaded that

(i) the foregoing representations were made orally on several occasions between the months of April-June, 1979 and subsequently by the defendant's servant or agent to the plaintiffs and in particular the first named plaintiff, and are to be inferred from a letter of the 26th June, 1979 from the defendant to the plaintiffs.

(ii) When making the alleged representations the defendant, its servant or agent, intended and well knew and ought to have known that the plaintiffs would rely on them and would be induced thereby to enter into an agreement with the defendant to open a joint account at its branch at Gorey.

(iii) In the premises the defendant, its servant or agent,

was under a duty to take care in the making of the representations.

(iv) Acting on the faith of the foregoing representations and induced thereby the plaintiffs transferred their business to the defendant at its branch in Gorey and entered into an agreement with the defendant to open a joint account with them and thereby forfeiting the benefit of the facilities afforded by the Bank of Ireland.

It was pleaded that pursuant to the terms of their contract with Mr. Allen the plaintiffs entered into possession of the lands at Oulart Ard prior to the closing date of the sale and proceeded to farm the lands. Prior to the closing date of the sale and while the balance of the purchase money was still outstanding the defendant negligently and in breach of agreement failed, neglected and refused to provide the loan facilities to conclude the sale as had been agreed with the plaintiffs.

It was further pleaded that in the premises the defendant was negligent in making the alleged representations which induced the plaintiffs to transfer their bank account to them and were in breach of contract in failing, neglecting and refusing to make available to the plaintiffs the loan facilities which they had agreed to provide which were necessary for the closure of the sale with Mr. Allen. The plaintiffs claimed that by reason of the defendant's negligence and breach of contract they had suffered substantial loss and damage, some particulars of which were specifically pleaded. They claim damages for breach of contract; negligent

misrepresentation; negligence and also other ancillary relief.

In its Defence the defendant denied negligence and breach of contract and traversed all of the matters pleaded in the Statement of Claim. It also counterclaimed for the sum of £339,720-90 as money due and owing by the plaintiffs to the defendant and continuing interest at normal bank rates.

At the trial of the action it was agreed by counsel for all parties that the hearing would be limited to an investigation of the liability aspect of the plaintiffs' claim and that, subject to the determination of that issue, there would be a subsequent hearing relating to the plaintiffs' claim for damages (if found entitled thereto) and of the defendant's counterclaim.

THE FACTS:

The second plaintiff (Mrs. Johnston) is a middle aged lady who comes from farming stock and has long experience of farm management on a substantial scale. Prior to the events with which this action is concerned she was reputed to be a shrewd, intelligent and knowledgeable farmer who, assisted by her sons, John and Richard, had built up a prosperous business from the time when she took over management of it from her late husband in or about 1966. This assessment is not in dispute. The late Mr. Johnston owned and farmed 178 acres at Cullindra, Co. Wexford, for many years and the family resided there. He became too ill to manage the business in 1966 and on his death two years later Mrs. Johnston inherited the property. Her son John was then sixteen years of age and her other son, Richard,

was twelve years old. Both were at school. The family engaged in mixed farming comprising sheep and cattle-rearing together with some tillage. In 1967 Mrs. Johnston bought a farm of 62 acres at Ballinastraw (known as Swaine's farm) which some years later she gave to Richard. In 1974 she purchased a further 82 acres at Ballyfoley. The expanded farm comprised good quality land but a practical difficulty was that Ballyfoley is about four miles from the home farm at Cullindra.

John and Richard joined their mother in the family business on leaving school. Some years later Richard received a gift of Swaine's farm from Mrs. Johnston but he ran it subject to her overall direction and supervision. As the 1970's continued John took a progressively more important role in the management of the main farm and a relationship in the nature of an equal partnership seems to have developed between him and his mother over that period, but she continued to play an important role in decision-making on all major developments, particularly as to further expansion of the business. The family resided at Cullindra until the dwelling-house there was destroyed by fire in December, 1980. It was stated that most of the records relating to the farm were destroyed in the fire.

The Johnstons' bank account in connection with the farm was with the Bank of Ireland at Gorey for many years prior to the death of Mr. Johnston Senior and that arrangement continued thereafter. The branch manager there from 1969 until his retirement in 1985 was Mr. Hugh O'Donnell. He gave evidence that he regarded Mrs. Johnston as a very capable woman and her two sons as hard working farmers. It is evident from Bank of Ireland records that he considered the Johnstons to be

desirable and valuable farming customers. Through his good offices the Bank of Ireland provided them with short-term lending facilities each year for the purchase of stock, fertilizers, seed and other such commodities. I am satisfied that over the years the account operated harmoniously and to the reasonable satisfaction of both sides. However, as will appear later in more detail, the Bank of Ireland refused several applications for bridging finance and loans in connection with the purchase of land and I am satisfied that in April, 1979 when John Johnston contracted to purchase Mr. Bert Allen's farm at Oulart Ard he and his mother must have been well aware that they were unlikely to obtain bridging finance or a term loan from the Bank of Ireland for land purchase and that the most they could reasonably hope for was some assistance by way of short-term loan which would cover one or, at best, two of the deposit instalments.

In addition to the main farm account with the Bank of Ireland, there was also a second current account in the name of Richard Johnston in relation to his activities at the Swaine farm. However, this account was supervised by Mrs. Johnston whose signature was required on all cheques drawn upon it. Mr. O'Donnell gave evidence that he regarded all the Johnstons' farming activities as one even though there were two separate accounts. I am satisfied that Mrs. Johnston played an important role in the management of Richard's farm and was at all times well aware of his activities in that regard.

Many aspects of Irish agriculture prospered in the 1970's through the participation of this State in the common agricultural policy of the E.E.C. This resulted in a substantial escalation in the price of farmland which continued

throughout the second half of the decade. It is evident that the Johnstons participated in the general prosperity. In addition to the enlargement of the farm through the purchase of more land, it appears that they were also able to effect a number of significant permanent improvements. All of this was achieved substantially out of income and the only significant borrowing appears to have been in connection with the purchase of the 82 acre Ballyfoley farm in 1974. The Bank of Ireland granted a term loan of £40,500 in that regard payable over five years. Mrs. Johnston deposed that in fact the entire loan was repaid ahead of time. In that atmosphere of success and affluence the Johnstons decided in October, 1977 to bid up to £380,000 for a 260 acre farm near Gorey known as Mount Benedict. Mrs. Johnston approached Mr. O'Donnell and through him applied to the regional office of the Bank of Ireland at Wexford for a loan of £280,000 to cover about two thirds of the anticipated purchase price. It was intimated that Mrs. Johnston proposed to cover the balance of the purchase price by selling the 82 acre farm at Ballyfoley prior to the closing date for Mount Benedict. Mr. O'Donnell informed his superiors that he expected that Ballyfoley would realize £120,000. Mrs. Johnston sought the loan of £280,000 from the bank on terms that there would be a moratorium on capital repayment for the first year when interest only would be discharged and the entire loan with continuing interest would be paid over a seven year period thereafter at £59,500 per annum. Further details regarding the funding of the proposed purchase are set out in the Application for Accommodation furnished by Mr. O'Donnell to his superiors and dated 11th October, 1977. This application was declined for the reasons set out in a memorandum from the assistant



general manager of the regional office at Wexford to the Gorey branch dated 14th October 1977 - see also Mr. O'Donnell's letter of explanation to Mrs. Johnston of the same date. It is evident from a study of the documentation relating to the Mount Benedict loan application that the proposition put forward by Mrs. Johnston was probably unwise. It is the first indication that she and her family were becoming substantially less cautious in their expansionary plans than is likely to have been the case some years earlier. They did not persevere with that particular transaction.

In 1978 the Johnston family took the view that it would be in their best interest to purchase a substantial holding of top quality land comprised in one spread which they could farm as a single unit. It seems that their broad intention was to purchase a suitable farm with bridging finance from the Bank of Ireland and then re-pay the bank by selling their existing lands on a market which was continuing to rise month by month. In December of that year Mrs. Johnston approached Mr. O'Donnell and informed him that she had an opportunity to purchase a stud farm comprising 267 acres of prime quality land at Balrath near Ashbourne, Co. Meath, for the sum of £940,000. The property comprised, inter alia, a very fine house together with a farmyard with wintering facilities for 220 cattle. Mr. O'Donnell made enquiries and advised his superiors that the property was one of the finest farms in the Ashbourne area and was of exceptional quality. Mrs. Johnston had already paid £5,000 for an option to purchase. She sought a bridging loan of £500,000 in addition to existing facilities which she and John had from the bank and proposed that she would sell her own holding of 178 acres the following June/July from which she expected to

realize an average of £3,000 per acre. The payment of £500,000 would entitle her to vacant possession of Balrath and she would immediately plough approximately 180 acres of that land and the remainder of her own lands giving in all 389 acres of tillage. She explained that the balance of the purchase price (£440,000) would be left outstanding for a further year at which time she would sell so much of her remaining lands in Wexford as would be necessary to realize that sum. This proposition was originally put forward by Mr. O'Donnell on a tentative basis to his superiors in a memorandum dated 28th December, 1978. It is set forth in more precise detail in an Application for Accommodation dated 5th January, 1979. On that date Mrs. Johnston and her son, John, called on Mr. O'Donnell and requested that their proposition regarding Balrath be put to the bank on a more formal basis. The proposal made on that date differed from the original one in that in its revised form it involved two bridging loans. The first for £500,000 in February on execution of the contract to purchase; this was to be repayable in the following September, 1979 and a second loan of £440,000 was to be advanced in that month out of which she would pay the balance of the purchase price. It was proposed that the bulk of the latter loan would be repaid in October, 1980, and that the remainder then outstanding would be converted to a seven year loan or alternatively Richard's residential farm of 62 acres would be sold to discharge the remainder of the debt. The Form of Application indicates that the proposition was put forward by Mr. O'Donnell with "his strongest possible recommendation". Notwithstanding that, the application was declined by the bank. Mr. O'Donnell wrote to Mrs. Johnston on 15th January, 1979, advising her that the bank

had declined her proposal regarding the purchase of Balrath. He set out at some length a criticism of the project which he had received from the bank's agricultural adviser and which indicated that Mrs. Johnston had been over optimistic in assessing her capacity to repay the loans in question.

Mrs. Johnston did not abandon her intention to purchase Balrath. Two of her brothers, Joseph and James Stedman, farm 800 acres near Arklow and are regarded by the Bank of Ireland as being of particularly strong financial standing and good repute. It appears that they came to her assistance and agreed to fund a substantial part of the purchase price for the property in Co. Meath with the result she was able to reduce her application for bridging finance to £500,000 repayable on 1st September, 1979 out of the proceeds of sale of her home farm at Cullindra. This application was granted subject to a guarantee of the transaction by the Stedman brothers.

Mrs. Johnston duly contracted to purchase Balrath, but within days of so doing she sold on the benefit of the contract to a disappointed bidder and thereby realized a net gain of £274,000. It was also unnecessary to sell any of the existing family lands. In retrospect, it is perhaps unfortunate that the Balrath deal resulted in such a spectacular windfall for the Johnston family because it seems to me that it fuelled a degree of recklessness in land purchase transactions which became manifest two months later in the Oulart Ard deal with Mr. Allen.

A substantial part of the profit from the Balrath transaction was used by the plaintiffs to pay off all debts then outstanding and the balance remaining of £110,000 was placed on deposit with the Bank of Ireland.

In or about March, 1979 John Johnston, with the support and approval of his mother, entered into negotiations with Mr. Bert Allen, a neighbouring farmer, to purchase his farm of 222 acres at Oulart Ard for £666,000 (i.e. £3,000 per acre). The Johnston family then had in mind financing the project essentially out of the sale of part of their own lands. I am satisfied they believed then that land prices would continue to rise in course of the following twelve months as they had done over the previous several years and that this prompted them to enter into the remarkable deal which is comprised in Mr. Johnston's contract with Mr. Allen of 6th April, 1979. This provided that there would be a deposit of £66,666 payable on execution of the agreement and that two further payments of a like amount would be made on 5th May and 5th June, 1979 respectively, making in all the sum of £200,000; that the purchase price was £800,000 (i.e. an increase of £134,000 being interest on the agreed price for one year at 22.5%); the purchaser to be given immediate possession of the property and payment of the outstanding balance of £600,000 to be postponed to 1st May, 1980. This deal was entered into by the Johnstons without consultation with the Bank of Ireland or any other financial institution and it appears that they also did not seek advice from any land valuer as to the prospects for the sale of agricultural land over the following 12 months. The deposit of £66,666 payable on the signing of the contract was provided out of the net profit from the Balrath deal. The original intention of the plaintiffs was to obtain a loan from the Bank of Ireland to assist them in making the two further payments due to Mr. Allen in the following May and June and that they would discharge the balance of the purchase price

(£600,000) due in May, 1980 from the sale of part of their existing farm. The success or failure of the deal depended on obtaining an appropriate loan from the Bank of Ireland and, more particularly, on land prices continuing to rise by at least 22% in the period up to the closing date. I have no doubt that when contracting with Mr. Allen and in course of subsequent negotiations with the Bank of Ireland, the plaintiffs confidently believed that the strong demand for good quality agricultural land would persist; that the price of such land would continue to rise; that in the premises it would be in their best interest to postpone the sale of their own lands until the Spring of 1980 and if that course were taken, they could expect to be in funds to discharge the balance of the purchase price in the following May without the necessity for further borrowing. This was borne out by Mrs. Johnston in her evidence. She also stated that she was alive to the fact that bank interest rates were then rising. It follows that the Johnstons must have been aware of the corollary that substantial bridging finance for land purchase transactions was becoming progressively less attractive for borrowers. Mrs. Johnston deposed that on the day the Allen contract was signed she called to see Mr. O'Donnell and told him about the deal. She did not seek bridging finance relating to the closing of the sale but explained that she needed help with the deposit (meaning the payments due in the following May and June). She stated in evidence that her intention then was to fund the closing of the Allen deal in May, 1980 from the sale of the lands at Ballyfoley and Cullindra. Mr. O'Donnell agreed to make an application to the bank along the lines which she had proposed. The proposition he put forward on behalf of the

Johnstons is set out in an Application for Accommodation dated 11th April, 1979 which he submitted to his Regional Office. He sought a loan of £120,000 to enable the plaintiffs to postpone the sale of stock for some months; to fund the purchase of feed, fertilizer, further stock for summer grazing and overwintering as required and also the instalments due to Mr. Allen in the following May and June. Mr. O'Donnell stated specifically in the memorandum that the question of the payment of the balance of the purchase price to Mr. Allen was not discussed at the interview, but he expressed the view that this would be met by the sale of some of the existing holdings of land. He once more commended the Johnston family to his superiors and gave the application his emphatic blessing. Nonetheless, it was refused - see memorandum from the assistant general manager, Regional Office, Wexford, dated 30th April, 1979. It was pointed out therein that "particularly in the present lending climate, the bank could not, again, be seen to finance what would appear to be another speculative land deal." The bank records indicate that the refusal was conveyed to the Johnstons by telephone and that John Johnston responded by putting forward a new proposition which for the first time comprised an application for a loan to cover part of the balance of the purchase price due to Mr. Allen. Details of the proposal are set out in a memorandum from the Gorey branch to the assistant general manager, Wexford dated 8th May, 1979 which is in the following terms:-

"I refer to my Application for Accommodation of the 11th ult., and your Decision Memo of the 30 idem. Because of the present postal dispute, which now appears to be affecting telephones in this area

also, we have only now been able to contact the Johnstons in connection with your Decision Memo.

In the paragraph headed "recommendation" in the Application for Accommodation dated 11 April I mentioned that it was felt that settlement of the remainder of the funds in 1980 would be effected by the sale of some of the existing holdings of land. In a telephone conversation today, Mr. Johnston outlined a proposal for meeting the £600,000 due on 1 June 1980 (sic). It is their intention to sell sufficient land to raise the sum of £400,000 and they estimate that this will involve the sale of 150/175 acres. This will leave a shortfall of approximately £200,000. Having discharged their liabilities to the bank from the sale of their stock and the proceeds of the 1979 harvest, it would be their intention to borrow the remainder of the funds needed to close the deal. At the present time the amount of money to be borrowed cannot be confirmed as it is dependent to a large extent on the situation after the 1979 harvest. They have not yet decided whether the application for the funds required will be submitted to the bank or the A.C.C. or what percentage of the required funds will be on the basis of long term money as against stocking loan to replace the stock sold. I should be obliged therefore if you would now reconsider the application in the light of the above information. It would be appreciated if you could treat the

Application as urgent."

The records of the Bank of Ireland indicate that this proposition also was declined and that, in the end, the best the bank was prepared to do for the Johnstons was to renew the overdraft facility of £20,000 each which Mrs. Johnston and her son, John, already enjoyed and to grant a stocking term loan of £65,000 to 30th July, 1979 and a fertilizer term loan of £15,000 to 30th November, 1979 - see memoranda dated 15th May and 28th May, 1979.

The foregoing history of the background to Mr. Johnston's negotiations with the defendant bank (A.I.B.) in the latter part of May, 1979 indicates that his intention then was to obtain a loan of £120,000, for as long as could be arranged, for the purpose of providing for stocking, seed and fertilizer, and to assist in funding the payments due to Mr. Allen in May and June, together with securing a further loan of approximately £200,000 to cover part of the balance of the purchase price due to the vendor in May, 1980. It is evident that he did not have any intention of raising money to cover the entire balance of £600,000 outstanding on the Allen deal but, on the contrary, he fully intended to raise £400,000 from the sale of certain existing lands prior to the date for closing the Allen contract. I am satisfied that the sort of financial deal Mr. Johnston wanted was on the lines set out in Mr. Flanagan's memorandum of 8th May, 1979 to the Regional Office of the Bank of Ireland; that he was disappointed with their response and was prompted thereby to open negotiations with A.I.B. in the hope of obtaining a similar deal from them. I am also satisfied that at that time



Mrs. Johnston would have preferred to sell more land than her son wished to part with, i.e., sufficient to cover the entire outstanding balance of £600,000 due to Mr. Allen and that she would have preferred also to remain with Mr. O'Donnell and the Bank of Ireland with whom she had had a good relationship for many years.

Apart from one crucial matter, there is no significant controversy between the parties regarding the sequence of events and the circumstances which led to the transfer of the Johnstons' farming account from the Bank of Ireland to the A.I.B. branch at Gorey. I am satisfied that, on the one hand, Mr. Johnston was interested to explore the possibility of negotiating a financial package with the defendant broadly on the lines of that which had been recently declined by the Bank of Ireland and, on the other hand, Mr. Gibbings, who had been recently appointed manager of the A.I.B. branch at Gorey, was anxious to secure the Johnstons' account because he knew that they were important members of the local farming community of good standing and he also believed that if he obtained their account it might well open the door to capturing other important accounts in the area. I have no doubt that Mr. Gibbings regarded the acquisition of the Johnston account as a major prize which was worth pursuing with determination and enthusiasm. I accept that in course of negotiations he probably made many of the puffing statements ascribed to him and assured the Johnstons that if they transferred to A.I.B. his bank would look after their financial needs better than the Bank of Ireland had done.

Early in May, 1979 Mr. John Johnston was introduced to Mr. Gibbings by Mr. Lorcan Allan T.D. and a general

conversation took place touching upon the recent acquisition by the Johnstons of Oulart Ard; the intentions of Mr. Gibbings to expand the business of his bank in the Gorey district and the alleged superior strength of A.I.B. over the Bank of Ireland in the area of agricultural finance. No arrangement for a further meeting was suggested by either party at that time.

Subsequently, another meeting was arranged at Mr. Johnston's request and this took place about two weeks later in the office of Mr. Gibbings. Mr. Johnston attended on his own. He referred to the outstanding contract with Mr. Allen and gave the manager an outline of the Johnstons' farming activities. He explained that all their financial business was with the Bank of Ireland except for a small transaction with the A.C.C. Mr. Gibbings indicated that he would like to see the operation at first hand and bring with him the bank's Agricultural Officer, Mr. Derry O'Donovan, by whom he would require to be advised in the matter. A few days later on 22nd May, 1979 Mr. Gibbings and Mr. O'Donovan inspected the Johnstons' farm and had detailed discussions with John Johnston and his mother. Richard may have been present also at some stage in the course of the day but he does not appear to have taken part in the negotiations. On 5th June Mr. Gibbings received a detailed written report from Mr. O'Donovan relating to his inspection of the Johnstons' farm; their financial requirements and his recommendations. The plaintiffs do not dispute the facts as set out in the report but contend that it is incomplete. In particular, it is agreed that as to payment of the balance of the purchase price on foot of the Allen contract in May, 1980, this would be funded by the sale of

certain lands and residual borrowing of £150,000 from A.I.B. over a ten year term with annual repayments of £32,700. There is some controversy as to whether Mr. Gibbings and Mr. O'Donovan were told that one of the parcels of land to be sold in connection with the closure of the Allen contract was in fact part of the lands at Oulart Ard. It does not seem to me that that was of particular importance one way or the other. The plaintiffs were already in possession of the Allen property and, as they wished to hold on to their lands for as long as possible on what was a rising market at that time, there would appear to have been no special difficulty apparent then in putting the parcel in question up for sale early in 1980 and arranging a closing date to coincide with the main contract. The crucial difference between the respective witnesses on what transpired in the course of negotiations at Cullindra on 22nd May and subsequently between the Johnstons and Mr. Gibbings at meetings in the bank at Gorey relates to an offer of bridging finance covering the entire sum of £600,000 due to Mr. Allen in the following year. Mr. Johnston was the primary spokesman for his family on 22nd May. He alleges, and his mother also stated in evidence, that it was pointed out to Mr. Gibbings and Mr. O'Donovan that some of the acreage to be sold was in fact a segment of the Allen farm which they did not yet own and could not sell until after that sale was closed, and that they wished to obtain a bridging loan of £600,000 which would give them more time to dispose of all of the lands earmarked for sale. They contend that Mr. Gibbings acquiesced in that proposal and intimated that bridging finance covering the entire balance outstanding would be made available on the closing date. Mr. Gibbings and Mr. O'Donovan denied that the question of

bridging finance was even mentioned at that meeting. Their evidence was that the package negotiated did not include any form of bridging finance and they understood that the lands earmarked for sale were to be disposed of prior to the closing date of the Allen contract. Mr. Gibbings conceded that he may have supported the Johnstons in their intention to hold the lands for sale until 1980, but he stated that he did not say anything about holding any of the lands until after the closing of the Allen sale, nor was there any mention by the Johnstons of a postponement beyond that date. Mr. O'Donovan stated that his recollection was that the lands referred to in paragraph 7b in his report comprised property already owned by the Johnstons. He had no doubt in his mind that bridging finance was never discussed. He explained that a bridging loan of £600,000 at 15% interest per annum would cost £7,500 in interest per month. No such provision is included in the projections made by him and furnished with his report which would have been the case if the bridging loan alleged had been mooted.

Having received Mr. O'Donovan's report, Mr. Gibbings furnished it to his superiors with his own report and recommendation dated 15th June, 1979. He recommended that A.I.B. should grant an overdraft facility of £20,000 "in respect of present overdraft at Bank of Ireland, Gorey for general working capital. One year term loan £100,000 in respect of part purchase price of 222 acres for £800,000". He also recommended acceptance of Mr. O'Donovan's proposal that a ten year term loan of £150,000 be provided in connection with the closing of the Allen contract with an annual repayment of £32,700. He received a memorandum in reply dated 19th June, 1979 approving of the proposed overdraft subject to review by

30th of April, 1980 and the proposed loan account of £100,000 subject to a substantial reduction from harvest proceeds and review by 30th April, 1980. The memorandum concludes with the following paragraph:-

"While no definite decision has been made with regard to the proposed long term loan, the proposed package outlined at 9(a) in the A.R.O.'s Report should be sympathetically viewed next May when completion of the purchase is due to take place, and for this reason the rate category of the loan plus 1% has been applied."

Mr. Gibbings then sent a letter to the plaintiffs dated 26th June, 1979 which is in the following terms:-

"Further to recent discussions, we are now pleased to advise that our Area Office have agreed to sanction the necessary accommodation as requested, on the following terms:-

AMOUNT

Overdraft £20,000  
at 13 <sup>3</sup>/<sub>4</sub>  
per cent per  
annum varying.  
Loan account  
£100,000 at  
16 <sup>3</sup>/<sub>4</sub> per  
annum varying.

REPAYMENT

Overdraft subject to  
review by the 30th April  
1980 and subject also to  
the usual conditions  
applicable to such  
borrowings i.e. that the  
Account go into credit  
for a period of at least  
30 days during the term.

Loan account subject to  
a substantial reduction  
from harvest proceeds  
and a review by 30th  
April, 1980.

SECURITY

Offered - Verbal Deposit  
Deeds of 240 acres in the  
name of Mary E. Johnston.  
Verbal Deposit Deeds of  
82 acres in the name of  
John Johnston.

Their solicitor's  
Undertakings to forward  
Title Deeds of 222 acres  
at Oulart and in the  
meantime to hold in trust  
for the bank."

This letter makes no reference to bridging finance and I reject the submission that any such intention can be implied from it. However, Mr. Gibbings concedes that in course of meetings at his office, the first with Mr. Johnston alone and the second with both plaintiffs, he specifically informed them that A.I.B. would grant them the proposed ten year-term loan of £150,000 in connection with the closing of the Allen deal if in the meantime the conditions attaching to the overdraft and one year-term loan were duly complied with. The end result was that the plaintiffs were being offered by A.I.B. a financial package which differed in two significant respects from that provided by the Bank of Ireland and it came close to the last proposition which Mr. Johnston had put up to the latter and which had been declined. The immediate facility being offered

by both banks was the same i.e. £120,000, though the composition of it differed. The Bank of Ireland was offering an overdraft of £20,000 to each of the plaintiffs; a stocking term-loan of £65,000 to 30th July, 1979 and a fertilizer term-loan of £15,000 to 30th November, 1979. By contrast, the loan of £100,000 from A.I.B. was not subject to review until 30th April, 1980 and required only "a substantial reduction from harvest proceeds" in the meantime. However, the essential difference between what was on offer from the respective banks was the promise of a ten-year term loan of £150,000 from A.I.B. in the following May. I have no doubt that that factor was crucial in persuading Mr. Johnston that the farming account should be transferred to A.I.B. and that it was used by him to persuade his mother to acquiesce in the proposed plan for closing the Allen sale as outlined in Mr. O'Donovan's report, and in the transfer of the account from the Bank of Ireland.

Mr. Johnston stated in evidence that at both of his meetings with Mr. Gibbings in June, 1979 he was again specifically assured that bridging finance of £600,000 would be forthcoming from A.I.B. in the following May. Mrs. Johnston's evidence regarding the meeting which she attended was to the same effect. Mr. Gibbings and Mr. O'Donovan denied that any such offer was ever made and they say that bridging finance was not even discussed at any time.

The plaintiffs' account with A.I.B. ran into troubled waters almost as soon as it was opened. The intention was that the latter would pay off whatever was due to the Bank of Ireland at the time of transfer. Mr. Gibbings has stated that when he took over the account he understood that the amount of debt to be cleared with the Bank of Ireland was about £20,000

and this is what he told his superiors in his Application dated 15th June, 1979. Mr. O'Donovan also referred in his report to a debt of £20,000 then due to the Bank of Ireland by the plaintiffs. The Johnstons dispute this and say that they told Messrs. Gibbings and O'Donovan that they owed £120,000 to the Bank of Ireland. Whatever confusion there may have been in that regard, it transpired that A.I.B. was obliged to pay £190,000 to discharge the Johnstons' debt to the Bank of Ireland. This gave rise to some acrimony between the plaintiffs and Mr. Gibbings, including complaints by him in correspondence regarding failure to honour promises about reducing the unauthorised debt to its permitted limit. The Bank of Ireland records indicate that towards the end of July, 1979, while that controversy with A.I.B. was in progress, Mr. Johnston approached his former bankers to inquire if they would be prepared to take his and his mother's farming account back again. The Bank of Ireland were not interested in doing so. Whatever the motivation for that request, it seems highly unlikely that if, as alleged by Mr. Johnston, he had been offered bridging finance of £600,000 by A.I.B., he would have abandoned all prospects of securing that sum, bearing in mind that he was well aware that the Bank of Ireland was not prepared to fund the purchase of the Allen lands. In the event the Johnstons remained with A.I.B. and within a few months the account was working satisfactorily within the prescribed limits.

Another significant event also occurred in July, 1979. A proposition on behalf of the plaintiffs was put to Mr. Gibbings in a letter from Mr. Frank McFeeley of Oliver Freaney and Company, Chartered Accountants, dated 5th July - See book 3A pages 14 - 17. Mr. McFeeley also gave evidence.



He was retained by the plaintiffs to put forward a proposal to A.I.B. on their behalf for substantial financial assistance in connection with a grain handling project on which they wished to embark. He called to the farm on 2nd July and obtained from Mr. Johnston and his mother all the details he required about the project and their farming activities generally, including details as to their present financial situation and liabilities. In short, the application was for a term loan of £60,000 repayable over a five-year period and an overdraft facility of £385,000 from September, 1979 to 31st January, 1980. The concluding passage in the application to Mr. Gibbings is as follows:

"PRESENT FINANCIAL SITUATION

All lands at Cullindra, Ballinastraw and Ballyfoley are free from any debts and incumbrances. The lands at Oulart Ard were purchased in April, 1979 for £800,000. A deposit of £200,000 has been paid by our clients and under the purchase arrangement the balance outstanding of £600,000 falls due for payment on May 6th, 1980. It is our client's intention to sell a portion of their other lands to meet this liability.

We understand that a working capital facility of £120,000 has been secured from your bank to finance day to day farm operations. To our knowledge there are no other debts existing in respect of farm machinery and equipment or stocking loans."

I accept Mr. McFeeley's evidence that there was no reference by the plaintiffs to a bridging loan of £600,000 in connection with the Allen contract; that if there had been he would have

referred to it in his letter and, furthermore, if there was such an arrangement he would have taken the view that there was no hope of obtaining the grain drying loan from A.I.B. Mr. Gibbings had no prior knowledge of that particular proposal and he expressed himself as being most surprised by it. He informed the Johnstons that his bank was not interested in the proposal. In the event they proceeded with the project having arranged a loan of £50,000 from the A.C.C. and a loan of £100,000 from Allied Irish Finance Company which was arranged by Mr. McFeeley on their behalf.

The next important event, according to each of the plaintiffs, is that in January, 1980 they received a typed letter from Mr. Gibbings informing them that his bank had decided not to make available the promised bridging finance of £600,000 to close the Allen sale. They said that the reason advanced in the letter was the present economic climate and that land prices were then falling. (They were unable to produce the letter because they said that it had been lost in a fire which destroyed the dwelling-house at Cullindra in December, 1980.) The plaintiffs gave evidence that, having received the letter, they went to see Mr. Gibbings immediately. It was alleged that he was most apologetic and said that he was very sorry but land prices were beginning to fall and that there had been recent changes in the bank as a result of which he had not the same authority as he had in the past. There was no copy of the alleged letter or any confirmation of it in the records produced by the defendant. Mr. Gibbings denied ever having written such a letter or that he ever had any conversations with the plaintiffs regarding the withdrawal of bridging finance by his bank.

The next event of note was that a property called Byrne's farm comprising 116 acres adjoining the Swaine (Ballinastraw) lands farmed by Richard was purchased by Mrs. Johnston in February, 1980 for £420,000 (i.e. £3,621 per acre). This purchase was made for Richard's benefit to enlarge his farm from 62 acres to 178 acres. The deposit of £105,000 and, it seems, part of the remainder of the purchase price, is alleged by Richard to have been paid out of the proceeds of the sale of grain and livestock by him in the previous autumn. The balance of the purchase price was paid by way of bridging finance from the Investment Bank of Ireland arranged through Mr. O'Donnell at Mrs. Johnston's request in the sum of £200,000. (The account relating to Richard's farm had remained with the Bank of Ireland). The latter amount and interest was to be repaid out of the subsequent sale of shares in Mrs. Johnston's name then valued at £200,000 but which were rising at that time. It was stated by Richard and his mother in evidence that these shares were bought by her on his behalf out of profits from the Swaine farm and con-acre lettings taken by him. I have some doubt about this contention, but it is not strictly relevant to the matters in dispute in the action. However, if as alleged by Mrs. Johnston and her son, John, they had ordered their affairs on the expectation of bridging finance in the sum of £600,000 which A.I.B had promised to provide when required for closing the Allen sale, and if they received a letter from Mr. Gibbings in January, 1980 informing them that A.I.B. was not prepared to honour that agreement, I apprehend that Mrs. Johnston would not have purchased the Byrne farm in the following month but would have retained all available Johnston family assets until some alternative arrangement had been made

to pay the Allen debt and it is highly probable that the shares would have been utilised in that regard. Furthermore, the price per acre paid by her for the Byrne farm does not indicate a down-turn in the market.

The remainder of 1980 was a disastrous period for the plaintiffs. The grain drying project ended in failure because a fire is alleged to have destroyed the dryer and with it a large quantity of grain. The lands at Ballyfoley were put up for sale in the Spring of the year, but the only offer forthcoming was from Mr. Bert Allen and it was for an amount which was substantially less than the plaintiffs hoped to obtain. Their auctioneer advised them against acceptance. The time for closing the Allen sale in May arrived and the Johnstons had not succeeded in disposing of any of the lands which had been earmarked for sale with the result that it was not possible to close the sale. Efforts appear to have been made once again to obtain bridging finance from the Bank of Ireland and to encourage Mr. Allen to accept £400,000 in discharge of the debt, but in each case without success. Proceedings were brought by the vendor on foot of the Oulart Ard contract in which he claimed the outstanding balance of £600,000 and he duly obtained judgment against Mr. Johnston. This created further difficulty for the plaintiffs in obtaining credit from their suppliers and others. Ultimately a compromise was arrived at with Mr. Allen whereby the lands were returned to him and he retained the sum of £200,000 which he had received under the contract.

It appears that the accumulation of disasters culminating in the destruction by fire of her home at Cullindra in December, 1980 affected Mrs. Johnston's health and she was

unable to take part in business affairs for some years thereafter. The first written complaint made on behalf of the plaintiffs to the defendants alleging failure on the part of A.I.B. to honour its obligations to them and intimating a claim in that regard is contained in a letter from their solicitor, Mr. Redmond, of M.J. O'Connor & Co. dated 8th June, 1984 to the Office of the Law Agent in response to a letter dated 29th May, 1984 to Mr. John Johnston in connection with his own and his mother's account with A.I.B., Gorey which called upon them to make immediate proposals satisfactory to the bank to discharge the substantial debts due on foot of their current account and loan account. Whatever about Mrs. Johnston's capacity to deal with business affairs prior to that date, there does not seem to be any good reason why Mr. Johnston should not have instructed his solicitor to make a claim on the defendants and to put in train proceedings against them long before then if he genuinely believed that A.I.B. had dishonoured an agreement to provide bridging finance for closing the Allen deal as part of the inducements made on behalf of the bank to persuade him and his mother to transfer their account from the Bank of Ireland. I do not accept his explanation in that regard that he did not know what to do and that for a long time he was hoping that the bank would change its mind and retrieve the situation for him. If there is substance in the plaintiffs' claim then, however upset Mr. Johnston may have been by all that had happened to him, there is no reason why he should not have consulted his solicitor soon after the settlement with Mr. Allen following the judgment which he had obtained against Mr. Johnston in July, 1980 whereby the lands at Oulart Ard were surrendered to the vendor and the Johnstons abandoned the sum of £200,000

which they had paid on foot of the contract. Finality as to the Oulart Ard contract had been reached at that stage and it must have been evident to Mr. Johnston, if his evidence regarding the offer of full bridging finance were true, that there was then no further possibility of help from A.I.B. It is also remarkable that it was not until the Statement of Claim was amended in course of the trial that the precise contention made by the plaintiffs as to bridging finance for the Allen deal was first stated in specific terms.

CONCLUSIONS

I am satisfied that the plaintiffs' claim against the defendant is not well founded; that they were not induced to transfer their farming account from the Bank of Ireland to the defendant's branch at Gorey by any representation that A.I.B. would provide the sum of £600,000 to the plaintiffs on 1st May, 1980 for the purpose of closing the sale of the lands at Oulart Ard; that there was no agreement between the parties to that effect or any arrangement that the plaintiffs need not sell any lands to realise money for the purchase of Oulart Ard before 1st May 1980. In addition to the views which I have expressed herein, I am also impressed by the fact that the plaintiffs' version of events is unsupported by any independent evidence and in important particulars is inconsistent with documentation furnished by the Bank of Ireland and A.I.B. The evidence of Mr. Johnston regarding his family's dealings with their former bankers was in fact misleading and in part untrue to his certain knowledge. By contrast, the evidence of Mr. Gibbings

and Mr. O'Donovan is substantially borne out by contemporaneous documentation the authenticity of which is not in dispute.

Approved.

A handwritten signature in cursive script, appearing to read "P. H. Law". The signature is written in dark ink and is positioned below the word "Approved."

27<sup>th</sup> November, 1987.