**JUDGMENT** : **HIS HONOUR JUDGE GILLILAND QC** : Friday, 14 April 2000 :

1. This is an application under Part 24 to enforce in a summary manner an adjudication award made by Mr Owen and issued on 6th March 2000. Under that adjudication award Mr Owen directed, and made a peremptory order, that the defendant, Siemens plc, should pay a sum in excess of £100,000 plus VAT to the claimant, Nordot Engineering Services Limited.

2. The matter arises out of works which Nordot Engineering Services Limited carried out for Siemens at the Cottam Centre which was a joint venture between Siemens plc and Powergen at Cottam Power Station, on the Nottinghamshire/Lincolnshire border involving the provision of a gas turbine generating plant with the exhaust gases being used to provide steam generation in addition.

3. The work which was carried out by the claimant occupied, it would appear, most of 1999 and the total value of the work is in the region of £1 million. The dispute which arose between the parties was in relation to whether the claimant was entitled to payment for various items of plant and equipment which it supplied and the issue which the parties appear to have been at odds in relation to was whether there had been an agreement as to a particular set of rates or not. The claimant required adjudication, and gave notice in the ordinary way pursuant to the requirements of the 1996 Act. The defendant objected and said that the contract which was in existence between the parties was not a construction contract within the meaning of the 1996 Act.

4. The way the matter was put clearly appears in a letter which was written by a Mr Jekyll (who is described as the monitoring manager of the defendant) in a letter of 14th February this year. It refers to receipt of the referral notice. It is a letter written to the proposed adjudicator and the position adopted by Mr Jekyll in this letter is to be found in the last two paragraphs of the letter: *"Please be aware that the work that Nordot Engineering Services carried out here at CDC Cottam was purely mechanical works on power generation plant, pressure piping, assorted equipment and access platforms to the machinery. The work was carried out under NAECI Rules (the National Agreement for the Engineering Construction Industry) Our understanding is that such works are not considered to be 'construction operations' and, therefore, not subject to referral to adjudication under the provisions of the above mentioned Act."*

5. Earlier in the letter he referred to section 105(2)(c) of the 1996 Act which excludes from construction operations inter alia. *"The assembly, insulation or demolition of plant and machinery or erection or demolition of steelwork far the purpose of supporting or providing access to plant and machinery on a site where the primary activity is power generation."*

6. Power generation is the relevant industry referred to. The adjudicator referred the letter to the claimant's solicitors who replied by fax on 16th February 2000 asserting that what the claimant had done did fall within the Act and was a construction contract and they gave reasons. That fax was sent to Mr Jekyll at Siemens who, on 16th February replied, acknowledging receipt of Hammond Suddards' letter of 16th February to the adjudicator saying, "*We disagree with its content*" and he continues:

   *"Contrary to the statement contended within the letter Nordot did perform assembly and installation of plant and machinery on a site where the prime activity is power generation. Nordot did carry out works in relation to the erection or demolition of steelwork for the purpose of supporting or providing access to plant and machinery on a site where the prime activity is power generation as described in section 105(2)(c) of the Housing Grants Construction and Regeneration Act 1996. Nordot's work was on high pressure steam piping, associated equipment and access platforms to the machinery. The machinery is power generation machinery specific to that industry and the platforms are intimately associated with such and cannot possibly be reasonably considered a part. They do not form part of the building structure.*

   *We do not consider the work that Nordot Engineering Services Limited performed on CDC Cottam to be construction operation as defined under section 105(1) of the Housing Grants, Construction and Regeneration Act 1996. We will, however, abide by your decision in this matter and will comply with whatever decision you deem appropriate. Should you require it we can furnish you with a detailed list of all activities that Nordot undertook at CDC Cottam which supports our above statements."*

*7.* That letter was sent to the adjudicator, Mr Owen. Clearly he received it. He acknowledged that in a fax sent to both Hammond Suddards and to Siemens itself on 17th February. He says: *"I have considered the content of both submissions, and conclude that the submission of Hammond Suddards is correct and the statutory adjudication procedure applies as referred. For the avoidance of doubt the adjudication shall proceed in accord with my directions notice dated 11th February 2000."*

8. I should say it is apparent from the documentation that has been agreed between the parties that the adjudication was on documents only, and no one invited Mr Owen to inspect the site.

*9.* Following receipt of that letter there was a further letter from Siemens, again from Mr Jekyll dated 18th February in which, bearing the heading "CDC Siemens site management" in which he wrote: *"In the matter of adjudicating between Nordot Engineering Services and Siemens plc we respectfully request that you extend the deadline for our response to the referral notice served 10th February 2000 by two days to five o'clock on Wednesday, 23rd February 2000."*

10. That extension was duly given and shortly thereafter Siemens submitted its submissions in opposition to the claim. In those submissions it is quite clear it raised again the question of the jurisdiction of the adjudicator and made a number of submissions as to why the contract which existed between the parties was not, in fact, a construction contract within the meaning of the Act.

11. The first point which arises in this application is whether the effect of the correspondence which I have referred to was to confer ad hoc jurisdiction on Mr Owen to decide the question whether the contract which existed between the parties was a construction contract within the Act or not.

12. In approaching this question I have to approach it on the basis that Siemens are right in their contention that as a matter of strict construction of the Act this particular contract was not a construction contract. The question is whether parties either can, and if they can whether they have, entered into what can be termed an agreement to bind themselves to accept the decision of the adjudicator where the Act does not give the adjudicator power to decide the matter. This question has been the subject of some consideration. In a decision, **The Project Consultancy Group v Trustees of the Grey Trust** [1999] BLR 377, Mr Justice Dyson had to consider the question whether there could be an ad hoc submission of a matter to the adjudicator.

13. In that case the question arose in a somewhat different situation, there was a dispute between the parties as to when a contract had been entered into. If it had been entered into in May that was before the coming into force of the 1996 Act there would be no jurisdiction. If it was entered into subsequently there would be jurisdiction under the Act. The adjudicator held that (the contract had been entered into subsequently and that he had jurisdiction. The question which came before Mr Justice Dyson was whether his decision should be enforced under Part 24 of the CPR. In the event Mr Justice Dyson held that it was not appropriate to enforce the decision summarily and he refused, therefore, to make an order.

*14.* Mr Justice Dyson dealt with the submission that had been put to him by Miss Rawnsley. He dealt with it at paragraph 10 where the submission is put forward in this way: *"Miss Rawnsley submits that with the agreement of the parties the adjudicator was asked to decide the question of jurisdiction, namely whether the contract was concluded before or after 1 May 1998. She argues that this issue was plainly before the adjudicator and the defendant did not make it clear that its continued participation in the adjudication was under protest and without prejudice to its contention that the adjudicator lacked the necessary jurisdiction. Accordingly she contends that the adjudicator's decision on the date of the contract and thus the question of jurisdiction is binding on the parties."*

*15.* Mr Justice Dyson then referred to a number of matters, in particular to the correspondence which passed between the parties, and in paragraph 14 he continues; *"Miss Rawnsley submits that by putting forward their case to the adjudicator that the contract was made before the 1st May 1998 and that for that reason he had no jurisdiction the defence were submitting the question jurisdiction to. the adjudicator for his decision and agreeing to be bound by it. She relies on the principle enunciated by Mr Justice Devlin in* ***Westminster Chemicals & Produce Ltd- v Eicholz Aloeser*** *[1954] 1 LLR 99. Although that case concerned an arbitration,*

*I agree with what Mr Justice Devlin said was equally applicable to an adjudication, He said that if two people agree to submit a dispute to a third person then the parties agree to accept the award of that person or, putting it another way, they confer jurisdiction on that person to determine the dispute. If one of the parties thinks that the dispute is outside the agreement that they have made then he can protest against the jurisdiction of the arbitrator. If he protests against the jurisdiction of the arbitrator, which is merely an elaborate way of saying, 'I have not agreed to abide by your award, if he protests in that form, it is held that he can take part in the arbitration without losing his rights, and what he is doing in effect is that he is merely saying, "I will come before you but I am not by my conduct coming before you and arguing the case to be taken as agreeing to accept your award because I am not going to do so". In those circumstances he may or may not be allowed to take part in the arbitration. Customarily, I think he is but whether that be so or not, if he protests it is well settled that he enters into no agreement to abide by the award."*

16. In my judgment, it is clear from that passage I have read that Mr Justice Dyson accepted that it was open to the parties to agree that an adjudicator should have jurisdiction to decide whether the contract fell within the Act or not. It seems to me that is the only sensible interpretation of the language used by Mr Justice Dyson where he said that what Mr Justice Devlin had said was equally applicable to an adjudication. By acceptance of jurisdiction it is clear that Mr Justice Devlin in the passage that Mr Justice Dyson referred to was saying that it has to amount to an agreement to abide by the award or an agreement to abide by the decision.

17. On the facts of **Project Consultancy Group** Mr Justice Dyson was satisfied that, in fact, there had not been any such unequivocal agreement to abide by the decision of the adjudicator. He concluded, on the face of the documentation, that the stance which the objectors had taken was entirely consistent with what they had written in their letter of 9th March. It is a question of fact whether a party submits to the jurisdiction of a third party. In reading the correspondence, Mr Justice Dyson had little doubt on the matter.

*18.* The question whether parties can confer jurisdiction on an adjudicator was touched upon also by His Honour Judge Anthony Thornton QC in the decision of **Palmers Limited v ABB Power Construction Limited** [1999] BLR 426, 436. Paragraph 5S appears under the general rubric of dealing with the discretion of the court to grant a declaration of law. What had happened in that case was that there had been an objection to the jurisdiction of the adjudicator and application had been made to the court to determine whether in fact the contract in that case which involved the provision of scaffolding, fell within the Act or not. It was the conclusion of the learned Judge having reviewed the statutory provisions that all the scaffolding operations in question did constitute construction operations within section 105(1) of the Act. In dealing with the question whether he should grant a declaration or not, His Honour Judge Thornton said at paragraph 55: *"However, the adjudication scheme provided for by Part 2 of the Housing Grants Construction and Regeneration Act can only apply to disputes arising wider a construction contract. Here the principal dispute is one of jurisdiction being one as to whether there is in being such a contract at all. It is clearly appropriate for the court to intervene since only when it has declared that the relevant contract will an effective adjudication be possible. This is particularly so given that there is no statutory power given to an adjudicator if appointed to resolve disputes about his jurisdiction."*

19. Mr Williamson has drawn my attention to that passage and on behalf of the defendant has submitted that it is not open to parties to contract into the statute. Just as parties cannot contract out of the statute, so if the contract is not a construction contract properly so defined by the Act, it is not open to the parties to confer jurisdiction on the adjudicator to determine that question. Accordingly his decision cannot be binding and the court must, therefore, decide the matter when it comes to enforcement if he held that he did have jurisdiction.

20. It seems to me that the submission that it is not open to the parties to confer jurisdiction on an adjudicator is not sound in principle, I can see no reason as a matter of law, why parties cannot agree to abide by the decision of a third party if they so wish. Clearly that is appropriate in the case of arbitration. Why should it not be appropriate in the case of adjudication I ask? If parties with their eyes open enter into an agreement to the effect that "The adjudicator will decide this question and we

will be bound by his decision", why should the court not give effect to that agreement? There can be no public policy against that and the mere fact that the system adjudication is established by statute does not, it seems to me, make any difference. One could say exactly the same thing, as a matter of principle, in relation to the question of arbitration, There is no obligation to agree to arbitration before the parties agree to it. Similarly if parties wish to resolve a dispute and submit it to an adjudicator who derives his jurisdiction from the statute nevertheless, it seems to me, it is open to the parties to confer that jurisdiction on him by agreement should they wish.

21. Mr Justice Dyson clearly thought (that it was possible to do so, and there is no suggestion in the **Project Consultancy case** that it could not be done as a matter of law. It is right to say that no submission was made on this precise point but nevertheless where one is dealing with a matter of contract the court should give effect to the bargain; which the parties have made, if it can be done, and there is no good reason by way of public policy why the contract should not be enforced. I can see no such reason in the present case.

22. The point which His Honour Judge Anthony Thornton was making was a somewhat different point. That was not a case involving an attempt by the parties to confer jurisdiction on an adjudicator. The question he had to consider was whether the particular contract was a construction contract or not. He held that it was. That an adjudicator has to determine that point is one which is necessarily implicit and is likely to be implicit in a number of disputes which will arise under the 1996 Act. It seems to me it would be unfortunate if the position were that as soon as a party who objected to the adjudication were to raise the contention that this particular contract is not a construction contract that, therefore, the matter would then have to go off to the court for the determination of that issue before the adjudication can proceed. It seems to me it is much more sensible if, in fact, the adjudication proceeds and if a party does object to the jurisdiction of the adjudicator to make that clear, preserve his rights, and then argue the question of jurisdiction before the adjudicator making clear that he does not accept decision if it is against him and also dealing with the other matters which may arise in the course of the particular adjudication. There will then be a clear decision by the adjudicator at the end of the day and if there is a question as to its enforceability that can be dealt with in proceedings under Part 24 simply rather than having a separate application to the court and then the matter having to be referred back to the adjudicator if it is held by the court that this is a construction contract. It seems to me that is calculated to add to the costs rather than to save costs and it certainly is calculated to cause delay. The structure of the scheme is to enable disputes under construction contract to be determined quickly.

23. Logically, of course, if the contract is not a construction contract the dispute cannot be a dispute under a construction contract as indeed Lord Macfadyen pointed out in the more recent decision of **Homer Burgess Limited v Chirex Annan Limited**. That was decided on 9th November 1999 in the Outer House of the Court of Session in Scotland. The 1996 Act applies in both England, Wales and Scotland. It would be unfortunate if there were a difference of approach between the jurisdiction of the Scottish courts and that of the English courts.

24. It is quite apparent from Lord Macfadyen's judgment in that case that he took the view it was open to the adjudicator to decide a preliminary point, namely whether he had jurisdiction. In that case the question was whether the work in question involved plant or not. There was a clear exclusion of plant under section 105(2) in relation to certain industries. That case was concerned with pharmaceutical works but nothing turns on that point. Although the adjudicator in that case erred in his conclusions there is nothing in the judgment of Lord Macfadyen to support the view that as soon as the question of whether the adjudicator has jurisdiction or not is raised, that the adjudicator cannot deal with that matter. As I have indicated already, the sensible way is for whoever objects to raise the objection and to make clear that they are not going to be bound by the adjudicator's decision on that point if it goes against them. Obviously if it goes in their favour that is the end of the matter subject to an application, perhaps by the other side, to the court.

25. The question I have to decide in this case is not so much whether it is incompetent for the parties to confer jurisdiction because, in my judgment, they can. That is supported by what Mr Justice Dyson said but whether, on the facts of this case, one can properly say there has been a submission to the jurisdiction of the adjudicator depends on the fair reading and interpretation of the correspondence which passed between the parties and which essentially is to be found in Exhibit 4 to Mr Jekyll's affidavit. It was submitted by Mr Williamson that the court should bear in mind that the letter of 15th February from Mr Jekyll which contains the sentence, "We will, however, abide by your decision" was written by Mr Jekyll, who is a businessman. I was invited to infer that he had not had the opportunity of taking legal advice. That may or may not be correct. There is no evidence from Mr Jekyll on this matter or from anyone else on behalf of Siemens.

26. It is clear from the correspondence that Mr Jekyll was fully aware of the existence of section 105 of the Housing Grants Construction and Regeneration Act 1996. He was fully aware that there was an exclusion from the definition of construction contracts of certain contracts relating to the works of assembling, installation of plant or machinery at power station sites. The letter of 11th February from Mr Jekyll is, in my judgment, quite clear in what it is saying. The defendant through Mr Jekyll is saying it does not consider that the adjudicator has any jurisdiction, and it give its reasons. It is an argued point which is made to the adjudicator. It then goes on quite clearly to say:
*"We will, however, abide by your decision in this matter and will comply with whatever direction you deem appropriate."*

27. The defendant then offers to provide some further information as to the activities carried out by the claimant at its site. The words, "*We will, however, abide by your decision in this matter"* are, however, clear and are unequivocal. The language used is saying, *"We will accept the decision of the adjudicator on the question of whether this is a construction contract or not"*, I do not think the words can be limited simply to acceptance of any directions which the adjudicator may care to give because, as Mr Coulson has pointed out, in the letter, Mr Jekyll expressly goes on to say, "*We will comply with whatever direction you deem appropriate"*. It seems to me that Mr Jekyll is saying two things, *"We will abide by your decision and we will comply with your directions"*.

28. There is also a further letter I have been referred to whereby an extension of time was sought by Mr Jekyll following the decision of Mr Owen as communicated in his fax of 17th February. Mr Owen concluded that the claimant's solicitors were correct and that this was a construction contract. Clearly if one applied the analogy of arbitration it can be said at that stage the defendant was accepting the jurisdiction of the adjudicator and was asking him to grant an extension of time. He was adopting the procedure.

29. It is right that when the submissions came to be made by way of response the defendant did again raise the question of the jurisdiction of the adjudicator. Detailed and substantial submissions were made, concluding in paragraph 12, that the works carried out fall within the exception under section 105(2)(c) of the Act and the adjudication provisions do not apply and the adjudicator has no jurisdiction to hear this matter. It can be said that the point is made that he has no jurisdiction. However, my attention has not been drawn to any provision to indicate that Siemens were resiling from what had been said in the earlier letter that they would accept the adjudicator's decision.

30. It was submitted by Mr Williamson that this was merely one sentence in a letter that it would be unfair to read that letter of 16th February as being an agreement on the part of Siemens not merely to accept the decision of the adjudicator but also to accept the consequences which would flow from a decision of the adjudicator this was a construction contract, namely the obligation, if held liable, to pay monies, only being able to challenge that subsequently by litigation or by arbitration if they ware not agreed. With respect to Mr Williamson's submissions, he is seeking to put a gloss on what Mr Jekyll said in his letter of 16th February. That was a clear and unequivocal statement by the defendant that it would accept and be bound by the decision of the adjudicator. The language which was used is indeed essentially precisely the language that Mr Justice Devlin referred to in **Westminster Chemicals** and which was quoted with approval by Mr Justice Dyson in **Project Consultancy Group**. As Mr

Justice Devlin pointed out the substance of a submission to arbitration is an agreement to be bound by the decision of the arbitration and it seems to me the substance in this case, as clearly indicated in the correspondence, was an agreement on the part of the defendant to be bound - to abide by - and these are their words - the decision of the adjudicator.

31. Accordingly there was an ad hoc submission of the adjudicator in the sense that if the adjudicator were to decide the matter of whether this was a construction contract adversely to Siemens, they were agreeing to be bound by that decision (subject to, any later challenge) and I see no reason in principle, as I have indicated, why Siemens should not be bound by that arrangement. It is clear that this adjudicator proceeded on that footing. Siemens did not, it is right to say, seek to prevent the adjudication from going ahead. They made their submissions and the adjudicator decided against them on the merits of the case and I take the view that the court ought, under Part 24, to give effect to what was in judgment, a clear submission on the part of the defendant to the jurisdiction of the adjudicator in the present case. The correct and fair reading of the letter is that there was a voluntary submission of this question to the adjudicator for his decision and that they had agreed to be bound by it.

32. This was done with knowledge, as appears from the correspondence, of the provision of the Act and it was not a matter which can be simply regarded as a matter of oversight or of an incautious statement by an inexperienced businessman. Mr Jekyll was fully competent to argue the point and he did argue the point in the correspondence. Having done so, and having said he will abide by the decision, it seems to me that a defendant is bound by that. Accordingly I propose to enforce this adjudication award.

33. I have also had lengthy and interesting submissions addressed to me on the question whether, in fact, this particular contract was a construction contract within the meaning the Act. In view of the decision which I have reached on the first point it is not necessary for me to deal with this and I would prefer to leave what may well be an important point of principle for decision in a case where it is necessary for the court to decide the issue, namely where there arc contracts such as the contract in the present case whether that does fall within the exception in section 105(2)(c) or not. I do not propose to deal with that point in the present case. That is only calculated to cause possibly confusion and difficulty whichever way I were to decide and give rise possibly to other litigation. It is desirable that litigation should not be encouraged in the matter of adjudication.

MR. COULSON: *My Lord in those circumstances I would ask for summary judgment in the principal sum which is £109,712.01 and my instructions are that includes VAT. My Lord, my instructing solicitor is just calculating the interest figure on the amount since the claim was made.*

THE JUDGE; *From the date in March. Was interest awarded by the adjudicator?*

MR. COULSON: *It was. This is just interest since the claim was made. So it will be a relatively small amount. I don't have the figure to hand.*

THE JUDGE: *That is interest pursuant to statute, is that right?*

MR. COULSON; *Yes, my Lord, that is right. The only other matter is that obviously the claimant seeks its costs and has done a breakdown for summary assessment. My Lord, that will be separate. I am not sure if your Lordship has that.*

THE JUDGE: *I have got a copy, £17,900.*

MR. COULSON; *I don't know whether any points arise on the substance of that.*

THE JUDGE: *On the question of costs, on the right to costs, I take it you don't make any submissions on that?*

MR. WILLIAMSON; *Nothing on that. My Lord, before we come off the substance, first of all so far as interest is concerned obviously we would need to see what figure is proposed and check it.*

THE JUDGE: *I will direct that counsel agree and lodge a minute.*

MR. WILLIAMSON: *Secondly, before we get on to costs I would ask your Lordship to give permission to appeal on your Lordship's judgment, The reason I ask is that, in my submission, the point on which we have failed is one of importance in the context of adjudication and generally, that is to say whether you can contract into the Act. It is a short point factually but it may be of some importance legally and, judging from the authority which has been put before you today, there is no Court of Appeal authority it and it is a matter which one can anticipate will arise again in this context.*

MR. COULSON: *I would oppose that because it is a one-off point. It is that point in that paragraph in that letter.*

THE JUDGE; *This is an appropriate case to give leave to appeal. It does seem to me to raise what is a point of law of some general importance. I give leave to appeal.*

MR. WILLIAMSON; *So far as costs are concerned, I hope I will not be accused of forensic exaggeration in saying that we were astonished by the statement of costs which has been submitted. Before coming to the details just to give a few matters of perspective, this is a claim for £100,000. There are some interesting points of construction of the Act and your Lordship was good enough to say they were interesting. Your Lordship has heard about those but in terms of the fact there is very little complexity here. There have been two statements submitted, one by us and one by them, and so far as the statement submitted on behalf of the claimant, very little reference has been made to it in the course of argument, It is a statement which I think runs to seven pages with half a dozen exhibits. My Lord, in my submission, this is an astonishing bill to submit and our primary position is that this is not appropriate for summary taxation, There should be a proper taxation rather than dealing with the matter on the hoof at 4.15.*

*Can I just explain some of the difficulties, my Lord, that we have with this bill? First of all in terms of the fee earners no fewer than four people have been involved on behalf of the claimant. No explanation is given as to why a partner, a senior solicitor, an ordinary solicitor and a paralegal need to be involved in a simple Order 14 application as they once were. So far as preparation is concerned, which is the next line, according to my mathematics they have spent 34 chargeable hours in preparing for this application. That preparation, as I say, has given rise to a short statement and one or two court documents. As I understand the matter, that would be the chargeable hours of a lawyer in a firm such as Hammond Suddards for about a week and a half preparing for this simple application. My Lord, that is simply what is described as preparation and no detail is given as to what it consists of.*

*If your Lordship then goes over the page, we have meetings which are a further five and a half hours. What they were meeting about again is not disclosed. They then, seek to charge twelve hours for letters. I am told in respect of this application there have been approximately ten letters, none of them longer than a page, and most of them, simply enclosing formal documents or setting out the arrangements for this hearing. There are then eight hours of telephone calls, 8.2 hours of telephone calls, and 3.3 hours of dictation. This is all before the matter has even reached court, as we understand it. That attendance at court and travelling and waiting at court, that all relates to what I am trying to avoid calling an ex parte application but have failed in an attempt to abridge time which I understand came before your Lordship a little while ago. Then there is seven further hours for today's hearing. This is all before one comes to counsel. Then counsel has been put in for a written opinion, a telephone advice and a further telephone advice which, together, amount to £2,000 and then counsel's attendance today is £4,500. My Lord, one says again, this is all on a very short application, summary judgment on £100,000.*

*Then one comes to disbursements. Court fees I don't have much to say about but there are two extraordinary items here: photocopying of nearly £300. As we understand it is conventional to charge about 10p a sheet for photocopying. If that is right, they have photocopied nearly 3,000 pieces of paper in support of this application. Quite what they are one does not know and then £126 for word processing. I am told, and this certainly accords with my own experience, that it is conventional to wrap in such costs as that into the chargeable rate of the solicitors, which include their support staff. Again what that is, one does not know. Then there are counsel's fees.*

*I would respectfully submit that this bill, were it to be submitted to, a taxing master, would be savagely reduced and would be scrutinised in every line. It is quite inappropriate to proceed by way of summary assessment. My Lord, just to give you a flavour, according to my calculations, leaving aside any question of attendance at courts, just on preparation, they have spent 63 hours on this matter which is about two full working weeks for a solicitor preparing this and that is two and a half times the chargeable hours that Clifford Chance have put in on the other side. By way of comparison Clifford Chance, although based in central London with the overheads attendant thereon, have put in a bill for about £11,000 which is only two thirds or so of what Hammond Suddards claim here. For all those reasons, my Lord, you should not proceed to summary assessment but if you do, this bill should be reduced very subsequently to reflect the points that I have made.*

THE JUDGE: *Mr Coulson.*

MR. COULSON: *The difficulty, at now nearly 25 past 4 is that obviously those points are new and some of them I need to take detailed instructions on. It is always difficult when one is in this position. As I understand it, my learned friend's primary submission is that there ought to be proper taxation rather than a summary assessment.*

THE JUDGE: *Yes.*

MR. COULSON: *I think in those circumstances, my Lord, in view of the points that have been raised it might be difficult for me to object to that I am content with an order for my costs and for those costs to be assessed in the normal way other than summarily.*

THE JUDGE: *I think that is a very proper attitude, Mr Coulson. I am bound to say it does seem to me somewhat on the high side but there may be reasons I do not know about and accordingly, I will order that the defendant pay the costs of the application to be subject to detailed assessment in the usual way.*

MR. COULSON: *I am grateful, my Lord. So, my Lord, apart from the interest figure which we can communicate to the court that is everything.*

THE JUDGE: *Indeed. There will judgment, therefore, for the figure you, mentioned to me of £109,712.01 plus interest from the issue of proceedings to today's date at whatever is the appropriate rate. There will then Judgment for the combined total and costs as I have indicated. Thank you.*

Counsel for the Claimant: MR. COULSON

Counsel for the Defendant: MR. WILLIAMSON