BUILDING LAW REPORTS

BUILDING LAW REPORTS

EDITED BY

Humphrey Lloyd, M.A., LL.B. (Dub.)
one of Her Majesty's Counsel

and

Colin Reese, M.A. (Cantab.)
of Gray's Inn, Barrister-at-Law

VOLUME
4

Theme

Sub-contracts

GEORGE GODWIN LIMITED

First published in Great Britain 1977 by
George Godwin Limited
The book publishing subsidiary of
The Builder Group
1-3 Pemberton Row, Red Lion Court,
Fleet Street, London EC4P 4HL

Reprinted 1981

Volume 4: ISBN 0 7114 3209 0

Printed and bound in Great Britain
by The Pitman Press, Bath

Building Law Reports

Themes:

1976

1. Set-off and Claims for Damages for Delay
2. Set-off and Damages for Defects
3. Liability and Limitation

1977

4. Obligations and Duties of the Professional Man
5. Civil Engineering Contracts
6. Indemnities

1978

7. Cases on the JCT Form of Contract
8. Contracts of Employment
9. Cases on Contracts in General

1979

10. Professional Duties and Copyright
11. Cases of Current Interest and from the Commonwealth
12. Cases of Current Interest and from the Commonwealth
    Cumulative Index to Volumes 1-12

1980

13. Cases of Current Interest and from the Commonwealth
14. Sub-contracts
15. Arbitration

Editors' Preface

We accepted the publishers' invitation to become editors of the Building Law Reports because we agreed with them that there are many in the construction industry (and the legal profession) who would like to have more readily available cases of relevance to them and to common problems. We shall therefore try to select decisions which are likely to meet such a need. At times this will necessarily mean that some of the cases may be old; they will then have been included because of the principles that they state or illustrate. Except where cases are chosen for their topicality we shall generally try to include cases on the grounds of principle rather than because of the particular decision or its facts.

At the request of the publishers we shall try to assemble in each volume cases on a special theme or themes and we shall also accompany each case with a commentary. The commentaries will attempt to develop the points made by the case.

Where we express opinions that cannot be directly supported by specific authority then that opinion must be regarded as our own opinion and treated accordingly. Whilst we shall not shirk from providing material for discussion, we shall try to eschew controversy.

H. J. LL.
C. R.

The Professional Man–his duties and obligations

The theme of this volume is the obligations and duties of the professional man, the architect, surveyor or engineer. This article is intended to provide a guide in outline to those duties and to act as an introduction to the cases to be found on the following pages. A fuller treatment of the subject will be found in works of authority (such as *Halsbury's Laws of England* Vol 4 of which paragraphs 1301 onwards deal with architects, engineers and surveyors) and text books (such as *Hudson on Building Contracts,* 10th Ed (1970) edited by I. N. Duncan Wallace QC). As a matter of convenience the term 'architect' will be used from time to time in the following paragraphs to denote the professional man (unless the context indicates otherwise).

The Contract of the Professional Man

The ordinary rules of the law of contract apply to contracts made by an architect, engineer or surveyor. If therefore it is desired to incorporate any of the standard conditions of engagement, such as those published or recommended by the RIBA, RICS or ACE it will ordinarily be necessary expressly to agree on the extent to which they are to be incorporated. The standard conditions do not constitute contracts by themselves. In certain cases the course of dealing between the parties or the knowledge acquired by the prospective client by the nature of his business may give rise to the implication that the conditions are to be implied. The case of *Sidney Kaye, Eric Firmin & Partners v Bronesky* is included in this volume at page 1 as an illustration of these principles. (This has been reported at (1973) 226 EG 1395).

If a contract does not provide expressly for its termination by the unilateral act of one party or the other or both, it does not necessarily follow that such provision is to be implied. Accordingly, a client who prevents an architect from completing his commission may be liable in damages to the architect; equally an architect who abandons his commission before completion may also be liable to his client. As regards third parties such as the contractor, the client can, it is submitted, withdraw the architects authority at any time without notice.

The contract should deal expressly with the extent of the services and what is to happen if additional work is required. *Gilbert & Partners v Knight* which is to be found at page 9 (and is reported at [1968] 2 All ER 248; 205 EG 993) is a salutary example showing how in the absence of such provision no additional fees are chargeable unless by agreement the old contract is set aside and the new contract made. If there is no agreement as to remuneration the client would necessarily be bound to pay a reasonable sum. It may not be the same as the amount recoverable had any Scale been incorporated. The amount of the reasonable sum is a question of fact for the judge or arbitrator.

The authority of the architect to bind his client should be clearly set out. The appointment of the professional man to exercise the functions of architect, supervising officer, quantity surveyor, or engineer under a contract will normally prevent his client from avoiding liability for acts done by

that person within the scope of his authority granted to him by the contract with the contractor. However this does not mean that an architect could order as a variation something which the contractor was already bound to carry out. On the other hand, however, an architect has normally no other implied or ostensible authority to commit his client to expenditure. Similarly he has no power to vary or waive the terms of the contract either before or after it is made. His client will, however, be bound by any misrepresentation made by him (see the Misrepresentation Act 1967) or by any failure on his part to do that which the client has contracted for, such as the supply of information to the contractor.

Sutcliffe v Thackrah is included in this volume (at page 16) because it is clear authority for the proposition that an architect is liable to his client if he fails to exercise reasonable skill and care when issuing interim certificates. (The case is reported at [1974] AC 727.) It is submitted that there is no reason in principle why the architect should not similarly be liable in respect of other certificates, although whether liability extends to the final certificate may depend upon the terms of the contract. In certain contracts the certifier may be truly an arbitrator when issuing the final certificate. Under the ICE conditions it is an open question whether the engineer would be liable to his client if he failed to exercise reasonable skill and care when making a decision called for under clause 66. The decision in *Sutcliffe v Thackrah* does mean that in practice it may not be so necessary in the future for a client to distinguish between the exercise of functions as an agent (when the contractor and client may be bound by whatever is done by the architect) and the exercise of functions as a certifier when, depending on the terms of the contract and the ambit of the arbitration clause, he may not be so bound.

It is always necessary to delegate in the course of any business and a client cannot complain if this is done because the person who has delegated his responsibilities remains liable for whatever has been delegated. It requires express permission from the client to enable a professional man to divest himself of liability by delegation. The case of *Moresk Cleaners Ltd v Hicks* is included in this volume (at page 50) to illustrate this point. (It is reported at [1966] 2 Lloyds Rep 338.) The RIBA Conditions of Engagement permit delegation if the client is informed and consents to it.

An architect engineer or surveyor supervising work is not normally expected to inspect or examine every part of the works, although he ought to examine the execution of work of prime importance. In *East Ham Corporation v Bernard Sunley & Sons Ltd* [1966] AC 406 Lord Upjohn put it in this way (at page 443):

> 'As is well known, the architect is not permanently on the site but appears at intervals, it may be of a week or a fortnight, and he has, of course, to inspect the progress of the work. When he arrives on the site there may be very many important matters with which he has to deal: the work may be getting behind hand through labour troubles; some of the suppliers of materials or the sub-contractors may be lagging; there may be physical trouble on the site itself, such as, for example, finding an unexpected amount of underground water. All these are matters which may call for important decisions by the architect. He may in such circum-

> stances think that he knows the builder sufficiently well and can rely upon him to carry out a good job; that it is more important that he should deal with urgent matters on the site than that he should make a minute inspection on the site to see that the builder is complying with the specifications laid down by him . . . It by no means follows that, in failing to discover a defect which a reasonable examination would have disclosed, in fact the architect was necessarily thereby in breach of his duty to the building owner so as to be liable in an action for negligence. It may well be that the omission of the architect to find the defects was due to no more than error of judgment, or was a deliberately calculated risk which, in all the circumstances of the case, was reasonable and proper.'

The principal supervisor may be liable in certain circumstances for the negligence of a clerk of works or resident engineer *(Leicester Guardians v Trollope* (1911) 75 JP 197). It is accordingly desirable to establish in the contract the extent to which such inspectors are responsible to the principal supervisor or whether they are responsible only to the client. In the *East Ham* case *(supra)* Lord Upjohn referred to the position of the clerk of the works under the pre-1963 Standard Form of Building Contract in the following terms:

> 'There may or may not be a clerk of works employed by the building owner, and no doubt, if appointed, a clerk of the works is under a duty to communicate matters which come to his attention to the architect. But he is not there as a representative of the architect; he has no architectural skills. It has been agreed between the parties that the "reasonable examination" referred to in clause 24(f) must be an examination by the architect himself and not by some clerk of the works appointed under clause 8. I therefore regard the question as to whether a clerk of the works had been appointed as irrelevant upon this question.'

Clauses 24(f) and 8 there referred to were the precursors of clauses 30(7) and 10 in the 1963 editions of the Standard Form of Building Contract.

The duties owed by a professional man to his client arise normally in contract (but see the judgment of Lord Denning MR in *Sparham-Souter v Town and Country Developments (Essex) Ltd* 3 BLR 70 and reported at [1976] QB 858). The duties themselves depend on the contract in question. The interests of the client have been well summarised in *Hudson on Building Contracts* 10th Edition, 1970 at page 124 as follows:

> '(i) A design which is skilful, effective to achieve his purpose within any financial limitations he may impose or make known, and comprehensive, in the sense that any necessary and forseeable work is omitted;
>
> (ii) The obtaining of a competitive price for the work from a competent contractor, and the placing of the contract accordingly on terms which afford reasonable protection to the employers' interest both in regard to price and the quality of the work;
>
> (iii) Efficient supervision to ensure that the works were carried out conforming in detail to the design; and

(iv) Efficient administration of the contract so as to achieve speedy and economical completion of the project.'

There is also a classic statement of the duties of an architect or engineer set out on page 103 of *Hudson* which it would be otiose to repeat here.

The standard of care to be exercised whilst discharging the duties contracted for is that ordinarily to be expected of a professional man:

'Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. It is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.'

The above extract is from the judgment of McNair J in *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 at page 586, and was approved by the Privy Council in *Chin Keow v Government of Malaysia* [1967] 1 WLR 813, and has recently been applied in *Greaves (Contractors) Ltd v Baynham Meikle & Partners* to be found at page 56 of this volume; (it is reported at [1975] 1 WLR 1095; [1975] 3 All ER 99; [1975] 2 Lloyd Rep 325).

In the ordinary course of events for the purposes of contract the cause of action will occur at the time when the breach occurs or if there is a later date, at the latest date when the breach could have been retrieved. It should be borne in mind that duties as to design are continuing ones and will continue to be performed, depending upon the extent to which the design was complete at the commencement of the execution of the works, and as to what is encountered during the execution of the works (see *Brickfield Properties Ltd v Newton* [1971] 1 WLR 862 at 873 F, per Sachs LJ: 'The architect is under a continuing duty to check that his design will work in practice and to correct any errors which may emerge').

Duties may also be owed in tort to others. They are likely to be duties with regard to danger to life and limb rather than saving a person from financial consequences of his contract. This volume includes three of the leading cases: *Clayton v Woodman & Sons (Builders) Ltd* (to be found at page 65 and reported [1962] 1 WLR 585 [1962] 2 All ER 33); *Clay v A. J. Crump & Sons Ltd* (to be found at page 80 and reported [1964] 1 QB 533, [1963] 3 All ER 687) and *Oldschool v Gleesons (Contractors) Ltd & Anor* (to be found at page 103 but so far unreported). With these cases might usefully be read Lord Pearson's speech in the *East Ham* case *(supra)* particularly at pages 448–9, of which this is only an extract:

'The architect's duty is to the employers and not to the contractors, and the extent of his obligation to make inspection and tests depends upon his contract with the employers and the arrangements made and the circumstances of the case. *Prima facie* the contractors should be and remain liable for their own breaches of contract, and should not have a general release from liability in respect of all breaches which the archi-

tect should have detected but failed to detect throughout the currency of that contract.'

Should the client have occasion to bring proceedings against the professional man it would be necessary for him to call independent expert evidence in all but the simplest of cases: *Worboys v Acme Investments Ltd* (to be found at page 133 and reported in *The Times* 26 March 1969 and 210 EG 335).

The measure of damage in cases of professional negligence is often difficult to assess, particularly where authority has been exceeded by ordering variations which the client had not consented to and perhaps thereby the budget is exceeded. It is thought that applying the ordinary rules as regards the measure of damages, the client will be able to recover the cost of the unauthorised work (which he will presumably have had to pay to the contractor) even though such a result may mean that the client will have the benefit of the additional work without paying for it. On the other hand arguments are available to reduce the measure of damages if the additional work did add materially to the capital value of the buildings: see for example *Hollebone v Midhurst and Fernhurst Builders* [1968] 1 Lloyd Rep 38 and *Harbutts Plasticine Ltd v Wayne Tank* [1970] 1 QB 447.

In negligent valuations the leading case is *Philips v Ward* which is included in this volume at page 142. (It is reported at [1956] 1 All ER 874 [1956] 1 WLR 571.

Contents

Index prepared by Christopher Lewsley BSc (Hons), PhD, C.Eng, MIStructE, of Lincoln's Inn, Barrister-at-Law.

SIDNEY KAYE, ERIC FIRMIN & PARTNERS v LEON JOSEPH BRONESKY

23 January 1973

Court of Appeal

Cairns, Lawton and Scarman LJJ

In 1971 the plaintiffs, who were a firm of architects, entered into a contract with the defendant, who was a property developer, in connection with the development at Taggs Island in the Thames at Hampton, Middlesex. The terms of the contract were embodied in a letter dated 28 May 1971.

Clause 9 of the letter stated that 'The RIBA Conditions of Engagement so far as it is consistent with the foregoing shall apply.' The earlier clauses of the letter contained provisions relating to the calculations of fees and copyright.

The RIBA Conditions of Engagement referred to contain in 1.70 the following provision:

> 'Where any difference or dispute arising out of these conditions of engagement cannot be determined in accordance with clause 1.60 it shall be referred to the arbitration of a person to be agreed between the parties or failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, a person to be nominated at the request of either party by the President of the Institute of Arbitrators'.

The plaintiffs commenced an action in which they claimed £78,425 as damages for breach of the contract, arising out of the alleged repudiation of the defendant of the contract. The damages were split between a claim for £58,888 for work done and a claim for £19,537 for loss of profit on the remainder of the work.

The defendant applied to stay the action in accordance with section 4 of the Arbitration Act 1950 on the grounds that the Conditions of Engagement formed part of the contract; that clause 1.70 therefore formed part of the agreement between the parties; and that there were disputes between the plaintiffs and himself which fell within clause 1.70 and that therefore the action had been commenced in respect of the matter agreed to be referred to arbitration.

It was argued on behalf of the plaintiffs that:

(1) The conditions of engagement only applied to matters not covered by the first eight clauses of the letter; and

(2) The real dispute between the parties arose under the terms of the letter and therefore

(3) There was no agreement to refer such a dispute to arbitration.

The Master had refused to stay the proceedings; on appeal, Croom-Johnson J had reversed that order and had ordered that the proceedings should be stayed. The plaintiffs appealed from that decision.

HELD: dismissing the appeal
per Cairns and Scarman LJJ

1. The RIBA Conditions of Engagement did not themselves constitute a contract; they could have no operation as between an architect and his client except by incorporation in a contract.

2. The arbitration clause was undoubtedly incorporated in the contract and it was sensible and businesslike to interpret it as covering any dispute under the contract.

3. The judge was right in holding

(a) that the dispute between the parties which led to the termination of their employment, namely whether the plaintiffs were entitled under the RIBA conditions to a sum claimed by them (not the sum claimed in the action) was a dispute which fell within 1.70 of the conditions of engagement; and

(b) that since the defendant had raised the question as to whether the plaintiffs had completed the final design as provided by clause 2.30 of the RIBA conditions, a dispute had arisen which also fell within the conditions of engagement since it was relevant to look at the definition of 'final design' in the conditions.

per Lawton LJ

4. By May 1971 the plaintiffs had already done work for three years for the defendant who, since he was a property developer, was acquainted with the normal contractual relationship between an architect and his client; as a result by necessary implication the RIBA Conditions of Engagement therefore applied.

5. Against that background the letter of 28 May 1971 did not show that the parties contemplated interfering with the ordinary professional relationship between an architect and client except with regard to the matters stated in the first eight paragraphs.

6. However since the dispute required reference to the Conditions of Engagement it ought to be referred to arbitration.

Kenneth Bagnall appeared on behalf of the appellant plaintiffs, instructed by Kenneth Brown Baker Baker.
T. Bingham QC and Stephen Desch appeared on behalf of the respondent defendant, instructed by Richards Butler & Co.

Commentary

This case is of general interest for its illustration of how care should be taken to ensure that the RIBA Conditions of Engagement are effectively incorporated as part of the contract between architect and client. It used not to be uncommon for there to be argument as to whether the parties intended to incorporate only the RIBA Scales of Fees or only the RIBA Conditions of Engagement or both. With the introduction of the current Conditions of Engagement that particular problem is less likely to be prevalent. Nevertheless questions may still arise as to the extent of the architectural services to be carried out, the architect's right to charge for additional services, questions of copyright, or the right to terminate the engagement. These are all matters which are expressly dealt with in the conditions and which might not form part of the contract if it only referred to the fees payable.

Similarly whoever commissions the architect ought to have had the opportunity of reading the conditions carefully and ought to do so before accepting them.

The judgment of Lawton LJ is also of interest. It should however be borne in mind that unless the scale fees are expressly agreed an architect will only be entitled to be paid a reasonable sum for his services. The scale may be of some assistance to a court in determining the amount payable but it will not be binding. The fact that 'it is the duty of members (of the RIBA) to uphold and apply the Conditions of Engagement' is a matter between an architect and the RIBA; it is of no direct concern to the client unless, as Lawton LJ, pointed out, he must be taken to have known of the basis upon which an architect ought to carry out his services, and has not dissented from that basis so that he is by implication bound by it. Nevertheless difficult questions will arise when there are changes in the Conditions of Engagement so it should never be assumed that even a client who is familiar with the conditions is in fact aware of and has assented to the conditions then in force.

Where the client is bound by the conditions only by implication, he will still not be bound by the provisions relating to arbitration since Part I of the Arbitration Act 1950 only applies to written agreements to arbitrate (see Section 32).

Finally, the case is a useful example of how the incorporation of provisions relating to arbitration can deprive a plaintiff of the advantages of the procedures of the courts.

SIDNEY KAYE, ERIC FIRMIN & PARTNERS v LEON JOSEPH BRONESKY

23 January 1973 *Court of Appeal*

Cairns, Lawton and Scarman LJJ

CAIRNS LJ: In the action which gives rise to this interlocutory appeal the plaintiffs are a firm of architects and the defendant is a property developer. A contract was entered into between the plaintiffs and the defendant in 1971 for the plaintiffs to act as the defendant's architects in connection with development at Taggs Island in the River Thames at Hampton, Middlesex. The plaintiffs had in fact been working on the project obtaining planning permission etc, since about 1968, but the terms of the contract which was to govern their relations were contained in a letter dated 28 May 1971, which is fully set out in the statement of claim.

The statement of claim alleges that on 20 December 1971, after the plaintiffs had done a lot of work – completed final designs and prepared many working drawings, the defendant determined there appointment as architects and thereby repudiated the contract; and they claim £78,425 damages made up of £58,888 for work done and £19,537 damages for repudiation, that is to say, loss of profit on the remainder of the work.

Now, the contract, by clause 9 of the letter, incorporated, in so far as was consistent with the terms set out in the preceding paragraphs of the letter, a document called 'RIBA Conditions of Engagement', which contains elaborate provisions as to the terms which architects are required by their Institute to incorporate in a contract; and those Conditions of Engagement contain an arbitration clause. Accordingly the defendant applied – and there is no question that he applied at the proper stage in the action – to a Master under section 4 of the Arbitration Act for a stay of the action. Master Lubbock heard the application and refused a stay; but on appeal the judge in chambers, Mr Justice Croom-Johnson, reversed that order and granted a stay; and the plaintiffs now appeal from that order of the learned judge.

The arbitration clause is the clause numbered 1.70 in the Conditions of Engagement; and it provides:

> 'Where any difference or dispute arising out of these conditions of engagement cannot be determined in accordance with clause 1.60 it shall be referred to the arbitration of a person to be agreed between the parties or failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, a person to be nominated at the request of either party by the President of the Institute of Arbitrators'.

Clause 1.60 which is there referred to is a clause providing for the reference of disputes to the RIBA for a ruling; but it contains the proviso that such a ruling is sought on a joint statement of undisputed fact. This is not a case

where the facts are undisputed, and it is common ground that clause 1.60 could not here have been implemented.

The question that arises is whether the present dispute is 'a dispute under the Conditions of Engagement' within the meaning of the clause. Mr Bagnall, who has appeared for the plaintiffs in this appeal, has made it clear that although before the Master it was contended that even if the arbitration clause was applicable, he should not in his discretion stay the action, that argument was not pursued before the judge and it is not sought to pursue it in this court.

The judge made a careful examination of the statement of claim, of the contract letter and of the Conditions of Engagement, and he reached the conclusion that the dispute was a dispute within those conditions: for these reasons: first, that in the statement of claim it is alleged that the defendant determined the plaintiffs' appointment because they had made a claim on him for £11,200 for work which they said had become abortive because of a change in the defendant's instructions to them. There is, therefore, an issue between the parties whether this sum was properly claimed by the plaintiffs. It should be made clear that there is no claim for that sum in the action; but the relevance of it is in relation to deciding the question of whether there was a repudiation by one side or the other. Now, that claim having been made for £11,200, when one comes to consider whether it is a claim properly made or not, the learned judge took the view that it was relevant to look at the Conditions of Engagement. Clause 4.80 provides for:

> 'Extra work at any time owing to changes in an approved design resulting from changes in the client's instructions or any other cause beyond the control of the architect.'

Therefore it was said and was accepted by the judge that this introduced a dispute arising out of the clause of the Conditions of Engagement.

Next, there is a dispute as to whether the plaintiffs had completed the final design. This represented the first stage under the contract as defined in the letter of 28 May which in clause 1(a) refers to 'completion of final design'; and this it was said – and the judge accepted – introduced a definition of 'final design' which is contained in clause 2.30 of the Conditions of Engagement, where 'final design' is defined as:

> 'Preparing, in collaboration with the quantity surveyor and consultants if appropriate, a scheme design consisting of drawings and outline specification sufficient to indicate spatial arrangements, materials and appearance. Presenting a report on the scheme, the estimated cost and timetable for the project, for the client's approval.'

Now the plaintiffs are saying that final design has been completed. The defendants are saying it has not. And therefore, says the judge, it is relevant to see what was meant by 'final design', and that involves looking at the definition in the Conditions of Engagement.

The plaintiffs contend that these provisions in the Conditions of Engagement are merely peripheral to the dispute and that the real dispute arises under the terms of the contract letter which are a variation of the conditions;

and indeed Mr Bagnall's submission to the court was that the effect of the first eight clauses of the letter was completely to displace the Conditions of Engagement.

The defendant has served a cross notice of appeal contending that various other provisions of the Conditions of Engagement also form part of the dispute. He has, however, raised by that cross notice a more fundamental point which was argued before the judge, namely, that the words 'difference or dispute arising out of these Conditions' in 1.70 of the Conditions of Engagement are to be interpreted as including any dispute which arises under a contract incorporating these conditions. In my opinion that contention is well founded. The Conditions of Engagement do not by themselves constitute a contract at all; they can have no operation as between an architect and his client except by incorporation in a contract. Almost any dispute that arises between the parties is likely to involve examination both of the conditions and of terms of contract set out expressly, for instance as to the character of the buildings, dates and so on. It would be quite impracticable to break the dispute into parts and say 'this part arises under the conditions but this does not'. There are not two contracts between the parties, but only one; and to give a sensible and businesslike meaning to the arbitration clause which undoubtedly was incorporated in the contract, I think it should be interpreted as covering any dispute under the contract.

If that were wrong, I should still uphold the judge's decision on the grounds which he himself applied to the case; and I would add the further ground that in connection with the issues that arise as to the determination of the contract, it is relevant to take into account the provisions of clauses 2 and 7 of the letter. Clause 2 opens with the words 'If for any reason your engagement is terminated prior to completion of the development' – and clause 7 says:

> 'You will not exercise your right to terminate the engagement unless any payments due to you as above remained owing and unpaid for 14 days after the date on which the same should have been paid.'

Both of those clauses involve the assumption that there is some right to terminate provided for somewhere in the contract. The only place where that can be found is in clause 1.30 of the conditions which provides:

> 'An engagement entered into between the architect and the client may be terminated at any time by either party on the expiry of reasonable notice, when the architect shall be entitled to a remuneration in accordance with Section 8.4 of these conditions.'

Now it is true that the provisions of that clause were varied by the express terms of the letter, but it remains the fact that it is necessary to examine that clause in order to see what the effect of those two clauses of the letter is.

For these reasons I am of opinion that the learned judge came to the right conclusion and I would dismiss the appeal.

LAWTON LJ: I too would dismiss the appeal. As I have come to that con-