the Referee was competent to evaluate.

So far as the failure to permit the defendants to respond to the plaintiffs' submissions by requiring all parties to provide submissions at the same time was concerned, the Court commented that the usual and safer practice is to permit a respondent to respond to a claimant and that there needed to be sound reasons for any departure from this practice and that none were advanced.

Mr Justice Cole stated that, in his view, the legislature should give consideration to amending the Suitors' Fund Act 1951 to permit orders to be made that the cost of references which proved to be of no utility should be paid from such fund. Mr Justice Cole stated that, in his view, it was unfair to the parties that they should be required to meet the costs of failed references, particularly as the references are a compulsory process ordered by the Court and which may be ordered, whether the parties consent to that course or not. In this instance, the Court ordered that the costs of the reference be costs in the cause.

- John Tyrril

Unreasonably Terminating The Contractor's Engagement

In 9 Australian Construction Law Newsletter at p 25 there is a report of the decision of Cole J in *Minister for Public works v Renard* concerning the interpretation of Clause 44 of the National Public Works Conference General Conditions. On 19 February, 1990 the NSW Court of Appeal granted Renard leave to appeal. Clause 44 gives the Principal the power to take work out of the hands of the Contractor when the Contractor defaults.

In another case, *Minister for Public Works v Renard (Renard No. 1)* reported in 7 Australian Construction Law Newsletter at p 15, Brownie J in the NSW Supreme Court said that there is an implied condition that the Principal will act reasonably in deciding whether to take over work under Clause 44. However, Cole J in the decision reported in 9 Australian Construction Law Newsletter at p 25 distinguished the decision of Brownie J and held that the Principal was not obliged to act reasonably when deciding whether to take over work under Clause 44.

In yet another case, also reported in 9 Australian Construction Law Newsletter at p 25, Giles J in the NSW Supreme Court held that there is no principle of law that the Principal must act reasonably when making a decision under Clause 44 *(Hughes Bros Pty Limited v Trustees of the Roman Catholic Church)*. It will be interesting to see the views of the Court of Appeal on the issue of reasonableness.

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