

In charging the jury the judge directed them to disregard the evidence as to the seven bills, but inadvertently said they might take into consideration the items of special damage. The jury returned a general verdict for £3,000 in favour of the plaintiffs. The Court of Appeal (as the House of Lords found) having wrongly ordered judgment to be entered for the defendants the plaintiff appealed to the House of Lords (Lord Finlay, L.C., and Lords Haldane, Atkinson, Shaw and Phillimore) and claimed that judgment should be entered in their favour for the amount of verdict less the sum of £460 which they consented to abandon. The defendants asked for a new trial on the ground of excessive damages. Their Lordships (Lords Atkinson and Phillimore dissenting) held that the case came within Ord. XXXIX. r. 6 (Ont. Jud. Act., s. 28), and that there had not been any substantial wrong occasioned by the misdirection, as the plaintiff agreed to the reduction from the verdict of the special damage proved in respect of the seven bills; and therefore there should not be a new trial, but judgment should be entered for the plaintiffs for the amount of the verdict less the £460. Their Lordships who dissented thought that there should be a new trial and that merely to reduce the damages as proposed was in effect invading the province of the jury.

CONTRACT—BUILDING CONTRACT—EXTRAS—WRITTEN ORDER OF
ENGINEER—CONDITION PRECEDENT—DISPUTES ARISING OUT
OF CONTRACT—ARBITRATION—POWERS OF ARBITRATOR.

Brodie v. Cardiff (1919) A.C. 337. This was an appeal from the decision of the Court of Appeal *In re Nott and Cardiff* (1918) 2 K.B. 146 (noted *ante* vol. 54, p. 432). By a building contract it was provided that disputes arising out of the contract were to be referred to arbitration. Disputes having arisen an arbitration took place, for the purpose of ascertaining the amount payable under the contract, which provided that extras were not to be paid for except when done on the written order of the engineer in charge. During the progress of the work the engineer required works to be done which he claimed were required by the contract but which the contractors contended were extras. The engineer refused to give any written orders for these items. The contractor carried out the work as ordered, and claimed to be paid as to the disputed items as for extras. The arbitrator found that the items were in fact extras, and that the contractors were entitled to payment therefor notwithstanding that the engineer refused to give a written order therefor. The Court of Appeal overruled Bray, J., who had held that the arbitrator had power to do as he had done, but the House of Lords (Lord Finlay, L.C., and Lords Atkinson, Shaw, Sumner and Wrenbury) have unanimously reversed the Court of Appeal and restored the order of Bray, J.