
The Birth of the Commercial Court

Mr Justice Mathew heard the first "commercial case" on Friday 1 March, 1895. He gave directions for the trial of a dispute between Flemish cloth manufacturers and their London agent. This birthday of the Commercial Court followed upon the memorandum of the judges of the Queen's Bench Division, issued by the Lord Chief Justice, Lord Russell, in February 1895, that there should be a Commercial List for London cases arising from the transactions of traders and merchants in the City of London.

Over the next hundred years, this judicial initiative has proved to be one of the most successful and enduring judicial experiments, implemented without legislation or governmental assistance, to the enormous benefit of the City of London and the international commercial community trading through London. As with subsequent commercial judges, Mr Justice Mathew brought to the bench a wealth of practical experience as a senior and successful practitioner in the field of commercial law. Such commercial judges did not require indoctrination in the general principle of commercial law and practice; and commercial disputes could be heard and decided quickly and effectively.

It had not always been so before 1895. Indeed, the "True Begetter" of the Commercial Court was said to have been Mr Justice Lawrance. He was an honest gentleman, popular and respected, eventually, as a criminal judge; but he knew little of commercial law and practice. Nonetheless, in May 1891, Mr Justice Lawrance was required to try in the High Court a complicated dispute over a general average statement by adjusters in the City of London: *Rose v Bank of Australasia*. By all accounts, the judge's conduct of the trial was at least unfortunate and the judgment was much delayed, its text bearing little evidence of great study or scholarship. Although on appeal the result was later upheld by the House of Lords, it is possible that in the circumstances Mr Justice Lawrance's correct conclusion was no more than accidental.

In the account of MacKinnon LJ, it was evident to those attending the trial that Mr Justice Lawrance "*knew as much about the principles of general average as a Hindoo about figure skating. He listened with a semblance of interest to Cohen and Corell Barnes, reserved judgment and forgot all about the case. After a long delay he was somehow reminded that he ought to give judgment.*" Arthur Cohen QC, one of the greatest lawyers of his time, and Gorell Barnes QC, later Lord Gorell, were the leaders for the parties, whilst the juniors were T E Scrutton and Joseph Walton. It was Scrutton who recorded the City's outrage over Mr Justice Lawrance:

"What is this system you are offering us? Let us have Judges who understand our disputes. We have no desire to bring our cases on as a means of educating people who have never heard of the matters involved before."

Within four years, the "Commercial Court" was in place; and it was Scrutton who duly anointed Mr Justice Lawrance as the "True Begetter" of the Commercial Court. Mr Justice Mathew was followed by many distinguished Commercial Judges, not least Scrutton himself in 1910; and from 1916 in

the Court of Appeal. Scrutton's father was a shipowner; at the Bar he acquired an enormous practice in commercial law; and he also produced lasting works on the law of shipping and copyright. It was said of him as a judge that he was "*appallingly learned in the law and in the tortuosities of its application to commercial life ..., as to shipping law he is a walking encyclopaedia.*" Tall and stoutly built, with an imposing beard, Scrutton was the embodiment of the close relationship between the Commercial Court and commercial men, which continues to the present day. □

Mr V V Veeder QC

The Commercial Court

The Commercial Court, as presently constituted, consists of 10 judges of the Queens Bench Division of the High Court, of whom 5 or 6 sit in London at any one time to hear cases commenced in or transferred to the court on the grounds that they are of a specialist commercial nature.

Historically, the Court has particularly specialised in resolving shipping disputes arising out of Charterparties and Bills of Lading, with three other major areas of activity: Insurance and Reinsurance, Banking and International Sale of Goods. Parties also bring disputes arising out of Agency and Distributorship contracts, Joint Trading ventures and Carriage by Land and Air. Statute also assigns to the Court limited supervisory powers in respect of arbitration disputes.

The commercial judges are appointed from practitioners at the Bar, experienced in commercial matters. Their knowledge of the relevant law and market background is attractive to commercial litigants, who are largely represented by a relatively small number of firms of solicitors and barristers from chambers expert in commercial litigation. Some lay clients who are repeatedly involved in litigation before the Court, notably the ship owners' P and I clubs, several of the major insurance companies and Lloyd's syndicates, various banks and major participants in international oil, feedstuffs and other commodity contracts, take an active interest in the work of the Court and are represented on the Commercial Court Users Committee. This committee (with commercial judges and appellate judges among its members) holds several meetings a year under the chairmanship of the Judge in Charge of the Commercial List, with the Department of Trade and Industry and Lord Chancellor's Department also represented. Such meetings make a significant contribution to maintaining good public relations with the users and a ready understanding of their needs and difficulties.

The Court's special procedures for case management and prompt disposal of cases are set out in the "Commercial Court Guide" (now in its 3rd edition) which, within the general Rules of Court, has for some years now set the pace in adapting and improving general court procedures.

Over half of the cases commenced in the Court involve foreign litigants on *both* sides. There are three main reasons

for this. First, the location in London of various markets and exchanges which provide for litigation or arbitration of disputes in London; second, the worldwide incorporation into marine and other commercial contracts of English law and Jurisdiction clauses; and the attractions of the Commercial Court, applying English law and procedures as a forum for litigation. As such, the Commercial Court serves not only the City of London but the world's commercial community and it is proud to do so.

With the City retaining its position in world markets and the recent strides made in computerisation and electronic communication, the demand for the Court's services is likely to increase. Already the emphasis of its work is less predominantly maritime and increasingly concerned with the insurance, banking and regulatory fields which, in turn, throw up ever "heavier" cases.

With its recent increase in manpower, the Court has responded to this challenge and is able to provide trial dates acceptable to those who seek its services. The Court intends to continue to satisfy the demands upon it, adapting its procedures and improving its techniques of case management in order to rise to any further challenges which the next hundred years present. □ The Honourable Mr Justice Potter

Newton's First Law

During submissions in a claim for compensation where the plaintiff had fallen from the first floor of a construction site and was seeking damages on the basis, inter alia, of the builder's breach of a regulation under the *Construction Safety Act* required fencing to be erected around any workplace which was more than 1.8 metres above the level below.

Watson: Your Honour, the plaintiff has not established any liability for breach of the *Construction Safety Act* regulations. The only evidence he gave was that he fell from the first level to the ground. He did not tender any evidence as to how far he fell and, your Honour cannot assume that he fell more than 1.8 metres. Your Honour would take judicial notice of the fact that, in some buildings, the first level is below the ground: Your Honour would be familiar with the Supreme Court where the first level is actually three storeys below the ground level.

Leslie AJ: So in your submission, the plaintiff fell up, did he? □



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