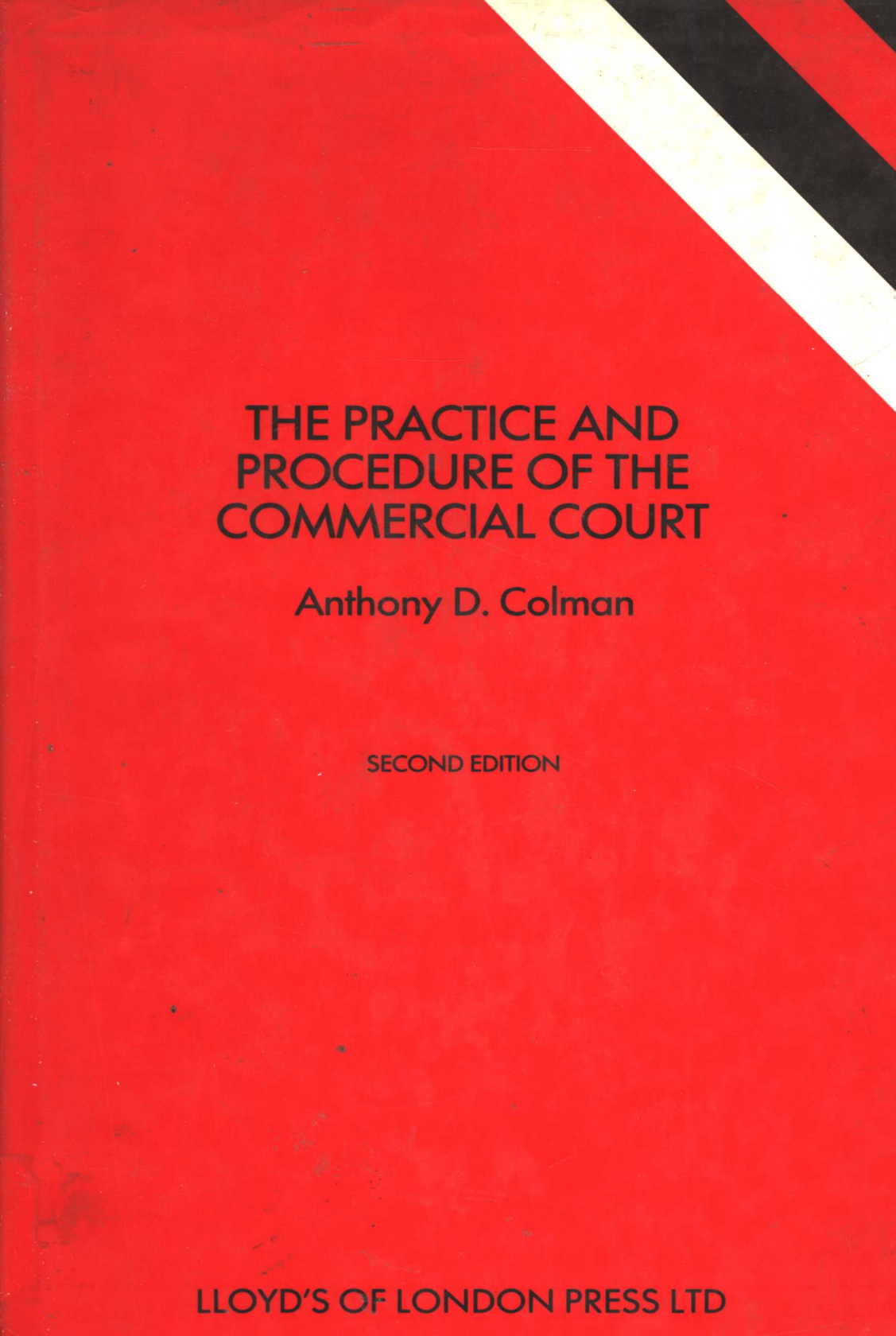




THE PRACTICE AND PROCEDURE OF THE COMMERCIAL COURT

Anthony D. Colman

SECOND EDITION

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THE PRACTICE AND PROCEDURE OF THE COMMERCIAL COURT

By

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PREFACE TO THE SECOND EDITION

Less than three years have passed since I wrote the preface to the First Edition of this book. It is perhaps some indication of the very dynamic nature of the Commercial Court that the changes in procedure and practice since then have been so great that another edition has become necessary so soon.

There have been three major areas of development affecting practice and procedure which are likely to be of everyday importance to those practising in the Commercial Court.

The first has involved changes in the procedure relating to appeals from arbitration awards under the Arbitration Act 1979. The changes in Order 73 have replaced the original open court hearings of applications for leave to appeal made by originating motion to hearings in chambers with application now made by summons. Furthermore, in *The Antaios* the House of Lords has re-emphasized the very stringent tests for obtaining leave to appeal first adumbrated in *The Nema* and has explained how succinct the hearings of applications for leave to appeal should be. These developments have been considered in Chapter 8.

Secondly, the Report of the Commercial Court Committee Working Party has been accepted by the Committee in the course of 1986 and it is intended that most of the recommendations will be introduced by a Guide to Procedure which is likely to be issued in the course of this year. These recommendations, which are directed to the more efficient use of the Commercial Court's time and resources, propose substantial changes in the preparation for and conduct of the longer interlocutory summonses which are discussed in Chapter 5. It is also proposed to introduce the exchange of the statements of witnesses of fact before trial and to require all parties to actions to complete and lodge at the Commercial Court Office a check list in the form of answers to a comprehensive questionnaire designed to ensure that before a matter comes on for trial proper preparations have been made by all the parties concerned. These proposals are also considered in Chapter 5. Further important changes are proposed in the presentation of oral evidence at trials and in the conduct of trials by counsel. These are considered in Chapter 7. The formulation of these procedural changes which has been proposed is set out in the text, but at the time of final editing the ultimate draft has not yet been adopted.

Thirdly, the practice relating to Mareva injunctions has been consolidated following the birth and major development of this remedy during the ten

years before the First Edition. The underlying principles for granting these injunctions have been further considered by the Court of Appeal in *Ninemia Maritime Corporation v. Trave Schiffahrtsgesellschaft* and there has been further consideration by the courts of the conduct of banks when served with notice of *Mareva* injunctions in *Oceanica Castelana Armadora v. Mineral importexport*. These developments are discussed in Chapter 6.

Just as the descriptions in the First Edition of the administrative operations involved in commercial litigation would have been impossible without the ample and enthusiastic help of David Bird, the Listing Officer of the Commercial Court, so also the Second Edition has been greatly assisted by his intimate knowledge of the machinery of court administration. And just as Sir John Donaldson, M.R., Lord Goff and Lord Justice Mustill gave up valuable time to discuss the First Edition and its contents, so also has Mr Justice Bingham greatly assisted, particularly in relation to the proposed procedural changes referred to in this Edition.

Again I am much indebted to Victor Lyon for many of the precedents of orders, summonses, motions and originating summonses.

Finally I should like to thank my publishers for their amazingly tolerant attitude to the broadside of last-minute additions with which they have been bombarded.

Temple, London, EC4
2nd April 1986

A.D.C.

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