

**THE
PRACTICE AND PROCEDURE
OF THE
COMMERCIAL COURT**

By

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PREFACE

The last ten years have seen changes of major importance in the work, practice and procedure of the Commercial Court. From being a fairly minor side street in the 1950s the Court had, by 1980, become a central thoroughfare accommodating an ever-increasing volume of traffic. A forum in which one judge was intermittently employed in hearing all the commercial summonses and all the actions and special cases stated by arbitrators had become what Sir John Donaldson, M.R., has recently described as “the curia franca”—the busiest commercial tribunal in the world, frequently sitting in five divisions and in the course of a year disposing of as much interlocutory work as the whole of the rest of the Queen’s Bench Division.

It is not only in the volume of the Court’s work that great changes have occurred, but also in the nature of the work. What might with justification be described as the most far-reaching judge-made change in the common law in recent times—the *Mareva* injunction—owes its development in large measure to the work of the judges of the Commercial Court. The administration of the *Mareva* jurisdiction has occupied a large part of the time of the Court during the last eight years and uniform principles of practice have been developed. A very substantial body of case-law has emerged; much of it not previously collected and considered in a convenient form.

The second major development in the work of the Court in recent years has been the creation and subsequent administration of the Arbitration Act 1979. Born out of the Report on Arbitration of the Commercial Court Committee published in 1978, the Act has brought about considerable changes in the work of the Court. The hearing of special cases stated by arbitrators under the Arbitration Act 1950 has declined and will shortly disappear entirely but has been replaced by the deluge of applications for leave to appeal against arbitration awards under the 1979 Act. A practice has been developed for dealing with these applications and a substantial section of this book has been devoted to a discussion of the principles set out in the large number of recently decided cases.

Apart from dealing in detail with these two major areas of the Court’s work—the *Mareva* injunction and the Arbitration Act 1979—this book sets out to help the overworked practitioner in his day-to-day work in dealing with commercial actions and arbitration work in the Commercial Court by attempting to supply him with what, it is hoped, will be most of the answers to most of the questions

on practice and procedure which he may need to answer at short notice, particularly on a Friday afternoon. Inevitably though, some of the answers will have to wait for future editions of this book.

By the very nature of the topics covered by this book, it has been necessary to set out procedural steps in considerable detail. The descriptions of the administrative operations involved in commercial litigation would have been quite impossible without the ample and enthusiastic help of David Bird, the Listing Officer of the Commercial Court, whose interest in this book and constant encouragement have been of immense assistance and support. I am also most grateful to Sir John Donaldson, M.R., Lord Justice Goff and Mr Justice Mustill, all of whom have given up valuable time to discuss this book and its contents.

In connection with the precedents of orders, summonses, originating summonses and motions which are to be found in the chapters on *Mareva* injunctions and on the Commercial Court and Arbitration proceedings, the work of Victor Lyon has been of the utmost assistance and is greatly appreciated.

Finally, the physical task of putting into legible form the author's disparate, random and often barely comprehensible thoughts has been skilfully accomplished by Jan Campbell, Gillian Beard, Karen Woodall and Shirley Rodriguez.

I am also most grateful to Philip Littler and Paul Vivian of my publishers for their enthusiastic help and suggestions on lay-out and presentation and not least for their tolerant acquiescence in the delays and late alterations of which this author has been substantially guilty.

A. D. C.

Temple, London, EC4.
10 May 1983.

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