

Centenary of the Commercial Court in London

On 2 October 1995 a dinner was held at the Guildhall in London to mark the centenary of the Commercial Court. The booklet, which included the menu and toasts, also contained some fascinating background to the Court as well as observations on its current operations.

Sir Thomas Bingham, Master of the Rolls

"On 1 December 1663, after dinner, Samuel Pepys dropped into the Court of King's Bench, sitting here in Guildhall. The case was concerned with a policy of marine insurance. It was a great occasion.

The Lord Chief Justice was presiding, and as Pepys recorded, "there was all the great counsel in the kingdom in the case".

Pepys was more amused than impressed, "but it was pleasant", he wrote, "to see what sort of mad sort of testimonies the seamen did give, and could not be got to speak in order, and their terms such as the judge could not understand, and to hear how sillily the counsel and judge would speak as to the terms necessary in the matter would make one laugh."

Were he to return today, he would find that all had changed, except, regrettably, the attire of the Judges, and changed, unusually nowadays, for the better. He would find the incoming cargo of cases neatly stowed on the tanktop under the superintendence of a master stevedore, and discharged through six or even seven hatches each weatherworking day, Saturdays, Sundays and holidays excluded unless used, by a team of Judges, Counsel and Solicitors in way of Court 10 and elsewhere who, if not always afloat, are safely aground.

To Judges and Practitioners of this experience the terms necessary in the matter are the current coin of everyday converse. They need not be told that NCAD stands for "notice of cancellation at anniversary date" or that HSSC stands for "heat, sweat and spontaneous combustion", apparently random aggregations of initials such as FC&S, PPI, RITC, FPA, are as intelligible to them as FOB and CIF to the man on the Docklands Light Railway. They are as familiar with bottomry bonds as with Euro bonds, bale bonds and performance bonds; with letters of mart and countermart as with letters of intent. They can distinguish at a glance between a beam and an intercostal, an angle bar and a z-bar frame, a strake and a stringer. They are no strangers to inherent vice.

In a Court such as this it comes as no surprise that more despatch is earned than demurrage paid. In some respects the world of maritime commerce does not change. The Lloyd's SG Policy continues to make reference to pirates, rovers and thieves. It remains the case, as Defoe observed in 1702, that:

*"some fit-out ships and double freights ensure,
And burn the ships, to make the voyage secure.
Promiscuous plunders through the world commit,
And with the money buy their safe retreat."*

Those with experience of Scuttling cases might also be inclined to question Shakespeare's optimistic view that:

*"When the sea was calm, all boats alike showed
mastership in floating."*

That is to underrate the nautical skills of the second engineer.

The mission of the Court has been to apply principles and practices worked out long ago to the rapidly changing problems of modern commerce, insurance and finance, developing new principles and practices to meet new needs.

The history of the Commercial Court over the past century has not been one of steady advance.

In the 1950s it almost wasted away. Despite the availability of two Judges of outstanding eminence, business was reduced to a trickle.

In 1957 fifteen actions only were tried. There followed a remarkable revival.

In recent years some four hundred cases or so have been set down in a year and well over a hundred have been the subject of substantial full-blown trials in such a period, in addition to numerous applications.

To this revival many contributed, some of the most important and distinguished contributors being present today.

I shall mention no names, save one, that of Mr David Bird, who has served the Courts as Clerk since 1977, bringing to his Office a degree of loyalty, dedication and discreet wisdom which it would be hard to match in the court service or any other service, public or private.

The Judges of the Commercial Court set out on their task with many inestimable assets.

A commercial and maritime tradition going back without interruption to Mediaeval times; an inherited inclination to test principles on the workbench of practical experience; a complete absence of Nationalistic bias; the assistance of an intelligent, energetic and progressively minded Bar; the services of highly specialised, highly expert and highly professional solicitors; the experience and expertise of owners and charterers, classification societies and P & I clubs, marine surveyors and naval architects, pilots and average adjusters, underwriters and brokers, bankers and stockbrokers, commodity dealers and trade associations, arbitrators and all who make up the commercial community; and the generous recognition and support given to the Court here in the heart of the City by the Lord Mayor and Corporation of the City of London.

It is appropriate on this Centenary to count our blessings and look back on the past with gratitude and a measure of pride, but it would be fatal to stop there. The world of commercial litigation is a competitive place, it owes no living to the Commercial Court in London: gains hardly made cannot be taken for granted. We must never forget that some of the major ambitions which inspired the Founders of this Court a century ago remain largely unfulfilled and as elusive as ever."