

**CHAIRMAN'S LUNCH**  
**Held at Barrington House, Gresham Street, London EC2**  
**on Wednesday, 15th June 1988**

Andrew Pincott, Chairman of the BILA Committee, had invited Anthony Colman, Q.C. to address the audience at this well-established event in the BILA calendar. He introduced Mr. Colman by mentioning that he had practised at the Commercial Bar for 25 years and that he was the author of the leading text on the practice and procedure of the Commercial Court.

Mr. Colman then proceeded to fascinate his audience with a most entertaining review of the history of the Commercial Court since the Commercial List was originally set up 87 years ago by judges of the Queen's Bench Division.

Mr. Colman pointed out that there had been a revolution in civil trials over the course of the past 25 years and that now all types of civil action were under review by the Civil Justice Review Board. He said that it was, of course, in the Commercial Court that so many major issues in the field of insurance law were resolved or, sometimes, left unresolved.

The Commercial List as set up in 1901 by a small group of judges with a commercial background was intended to be an exclusive court for commercial cases. The City had been finding civil litigation very slow with trials likely to be interrupted when judges went out on circuit. Furthermore, pleadings were very complicated and there were often detailed debates on the question of discovery of documents. The whole business was becoming very, very costly.

Not only that, cases were often heard by judges who were not aware of the implications of the commercial issues involved. For instance, a judge may find himself trying a case with a marine issue, without ever having cast eyes upon a marine policy. This whole unhappy situation led to a flight from litigation.

When originally set up, the Commercial List was an immediate success. There was all of a sudden judicial expertise with judges being hand-picked as people who knew a lot about commercial law. There was a new-found procedural efficiency with the interlocutory hearings taking place before the commercial judges themselves. They personally were responsible for indicating the most efficient form of trial and they became famous for their boldness in identifying the issues.

This new approach was very effective and became very attractive to the commercial community.

The Commercial Court, however, lost support during the period from approximately 1930 to 1950. It became a backwater dealing chiefly with marine problems. But in 1960 the Lord Chancellor set up the Commercial Court Users' Conference with the brief of identifying how to attract cases back. The report which was produced indicated that there should be a right of automatic entry to the court and this tended to have a dramatic effect on the number of cases set down for trial. Whereas in 1965 only 25 cases were heard, this number had risen by 1974 to 130 and in 1981 446 cases had been listed for trial.

There are now a good deal more judges in the Commercial Court with 5 always available and most are fully occupied almost all the time.

A lot of the cases in the Commercial Court concern insurance problems in general, whereas earlier cases set down for trial concerned chiefly marine issues and in the field of reinsurance the problems tended to be located in the marine facultative market.

The late 1970's saw an absolute explosion in reinsurance law and there is every sign that this explosion is continuing at the present time. The cases tend to be very complicated and last for a long time. Why this is the case is possibly partly due to the great impact of the participation in the London Market of "fringe" companies and the general trend has been towards a great increase in the number of reinsurance disputes being heard by the Commercial Court judges. However, the judges now sitting in that court are fully familiar with the mechanics of the London Market and with the kind of information which is generally used in reinsurance contracts.

There has, however, been a lot of pressure on judges' time and this has led to tremendous delays in obtaining a date for a trial. One possible solution to this recent negative development would be to increase the number of judge hours available to the Commercial Court by putting a minimum financial figure of e.g. £50,000 on any Commercial Court action. This could, of course, have implications for the insurance industry with a very large number of representative actions.

Mr. Colman finished his presentation by stating that he could say with some confidence that the judgments being delivered in the Commercial Court were of a very high standard, particularly in insurance matters.

F.G.C.