

Procedure of the Commercial Court". All else aside it is refreshing to read such lucid and down to earth language in a legal text book – an object lesson, indeed, as to why the Commercial Court came into existence in the first place!

It is hard to believe today that it is as recently as 1960 that the then Lord Chancellor, Viscount Kilmuir, had to appoint a Commercial Court Users' Conference to enquire into why it was that there had been such a decline in the business coming before the Court. Nonetheless, it remains the case that many experienced litigators (but not perhaps the majority of those reading this Journal) venture into the Commercial Court just once or twice in a career. For them this is the ideal book containing as it does such a useful exposition of what it is that exactly constitutes a commercial case, practical tips as to how the Court's procedures differ from those of other divisions and, in addition, a most useful collection of precedents. Equally, all but the most arrogant of the Court's habitual visitors will return time and time again to its pages to check their practice and precedents.

I do have one grouse. As the author says in his preface, the striking feature of the Commercial Court is that it is always on the move. The Third Edition, indeed, sees substantial and essential amendments to those sections which deal with witness statements and Mareva Injunctions. It also contains substantial appendices to cover practice directions and statements of Commercial Judges; the guide to Commercial Court practice; extracted Rules of the Supreme Court and relevant statute and Rules of the Supreme Court relating to arbitration proceedings. Much of this practice and procedure will be out-of-date before the next edition is published. The book should, therefore, be looseleafed with regular up-dating if practitioners are to feel as confident as they can in 1991 that they can turn to its pages in 1992 and 1993 for a definitive view of current Court practice.

Roger S. Doulton

4. COLLATERAL WARRANTIES

A Practical Guide for the Construction Industry.

By David L. Cornes and Richard Winward.

The Authors, both partners in Winward Fearon & Co., London Solicitors specialising in construction matters, describe their purpose in writing this book,

“to try to explain the law behind collateral warranties and the issues that arise in providing and considering them so as to de-mystify the subject and to clear away some widely held myths”.

As far as this reviewer, at least, is concerned they have succeeded. Since the changes in the law of tort as a result of *D. & F. Estates: Murphy* and others and the resulting flight to collateral warranties, there has been a dire need for such a work. Whether it is read as a whole or used as a work of reference it will assist not only those in the construction industry for whom it was specifically written, but also their insurance brokers, insurers and others.

The book, 214 pages in 10 chapters and two appendices, deals with the legal principles surrounding collateral warranties, goes on to deal in more detail with such crucial concepts as 'reasonable skill and care' and insurance implications, looks usefully at practical considerations and concludes with a look to the future. Appendix 1 contains the CoWa/F agreed Collateral Warranty Agreement and Appendix 2 the RIAS approved form of Duty of Care Agreement for use in Scotland, but there is a timely warning that English and Scottish law differ and that collateral warranties suitable for one system of law should not be used in the other.

In Chapter 2 the Authors deal with the history of the law from *Donoghue* through *Hedley Byrne* and *Dutton* to *Murphy*. In this reviewer's opinion they rightly warn that *Junior Books* is even now a twitching corpse. While the judiciary may find the relationship between a nominated specialist sub-contractor and the employer unique in the general run of relationships, it is certainly not unique in the construction industry. Lord Roskill's 8 points in his judgement in *Junior Books* were all but satisfied in *Greater Nottingham Co-op –v– Cementation*. It is at least arguable that it was only the fact that there was a contractual relationship between the sub-contractor and the employer, albeit a contract which failed to deal with the point at issue, that precluded *Junior Books* being followed in the *Greater Nottingham Co-op* case. If that be so then insurers may well still be exposed to a potential liability under a collateral warranty despite the contractual exclusion, if it can be shown that liability would have existed, perhaps under Lord Roskill's 8 points, had that collateral warranty not been executed. If we may borrow the Authors' phrase "only time will tell".

In opening the chapter on Insurance Implications the Authors warn that
"Architects..... should simply not be asked to give Collateral Warranties which may result in Professional Indemnity Insurance cover not being available to meet a claim brought under the provisions of that Warranty".

They point out that tenants, purchasers or funds gain nothing if the wording of the collateral warranty precludes an indemnity under the policy. Commercial pressures to give such collateral warranties can be resisted using this argument and many would see the Scottish Architects' attempts to charge 10% of their fee for the giving of

collateral warranties as a reasonable approach.

Chapter 9 contains useful tables designed to identify terms which need to be included in collateral warranties when used with the J.C.T. Standard Forms of Contracts. Later, when reviewing the CoWa/F Form of Collateral Warranty, a number of valid criticisms are made, including the point that the term “practical completion” familiar to J.C.T. users becomes “taking over” in the British Property Federation Edition of the A.C.A. Form of Building Contract. Such are the dangers of using two standard forms together even when both are B.P.F. approved.

In their review of possible future solutions, the Authors refer to the “BUILD” Report and the subsequent forms of 10 year structural defects covers now available. They rightly point out that such covers would be of greater value if, as envisaged by the report, rights of subrogation against the construction team were to be waived by insurers. Such waivers are available but at a premium. As these covers gain in acceptance, selection against Insurers becomes less of a problem and premiums subsequently reduce, it is to be hoped that the need for collateral warranties will diminish. In the meantime, those involved in the negotiation of the terms of collateral warranties whether as tenants, funds or on behalf of the construction industry, will find this book of great assistance and at £29.95 good value.

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