Arbitration and the Courts: Arbitration Systems in England and Wales and Recent Changes in Arbitration Law

A paper given at the Bermuda Conference by **Johan Steyn, QC**

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Introduction

It is probably inevitable in modern society that there will be some measure of judicial control of the arbitral process. The merits of the competing principles of finality and legality, and the definition of the scope of judicial control, give rise to perplexing problems. Opinions vary from country to country as to the desirable scope of judicial control, and in most countries opinions on such matters have varied from time to time. Oliver Wendel Holmes wrote:[1]

> "The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it is contained only in the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become."

So it is with English arbitration law.[2] In order to understand the distinctive features of the present day relationship between English courts and arbitral tribunals, a glimpse at the past is necessary.

History

By the end of the 16th century two kinds of arbitrations took place in England. Firstly, there were references by the King's courts to arbitrators when it was considered that the matters in question were more suitable for hearing by arbitrators than a jury. Secondly, there were adjudications by private tribunals to which the parties had agreed. References by the courts were enforceable by contempt of court proceedings. However, the courts had no control over private arbitrations. Awards were only enforceable by resorting to cumbersome formalities, such as an exchange of penal bonds. In 1609 it was held that the authority given to private arbitrators was revocable until an award was made.[3] This did not matter unduly if a refusal to honour an arbitration agreement led to a judgment on an adequate penal bond. However, by a statute enacted in 1687 it was provided that in an action on any bond given for performance of any agreement, execution should only issue for damages actually suffered.[4] In practice such damages were nominal and in effect arbitration agreements were unenforceable. In the next year Parliament intervened and provided that if an agreement to arbitrate so provided, it could be made a "rule of court".[5] This device was no doubt modelled on references by the King's courts which I have already mentioned. An attempt to revoke a submission which had been made a "rule of court" was punishable as a contempt of court. Until a submission had been made a "rule of court" it was revocable and there was no way of enforcing it. Subsequently, the court was regularly given certain additional powers of supervision by consent of the parties such as the power to remit in certain circumstances. The processes of the English courts and arbitrations had become inextricably entwined.

By the beginning of the 18th century the principle was already established that:

> "There must be no Alsatia in England where the King's writ does not run."[6]

The rule that an agreement to exclude the jurisdiction of the King's courts was void as subversive of public policy was already regarded as settled law.[7] The remedy was by way of *certiorari;* the King's Bench Division was invited to quash the award for error of law or fact upon its face.[8] The court could not correct the award: it could only set it aside. This meant that the parties had to start again. Moreover, judges tended to be hostile towards arbitration. It has been said that such judicial attitudes "originated in the contests of the different courts for an extent of jurisdiction, all of them being opposed to anything that would altogether deprive every one of them of jurisdiction."[9] Traces of judicial hostility to arbitration are to be found in judgments well into the second half of the 19th century.[10]

It was not until the great wave of law reforms of the 19th century that the basis of modern English arbitration law was created. The Civil Procedure Act of 1833 enlarged the supporting powers of the court by providing that the court could compel attendance of witnesses and order production of documents. The Common Law Procedure Act of 1854 was the great landmark in the development of English arbitration law.

For the first time the courts were given the powers of staying legal proceedings in cases where parties had agreed that existing or future differences should be referred to arbitration. The Act of 1854 furthermore empowered arbitrators to state their awards in the form of a "Special Case" for the opinion of the court, but the court had no power to order an arbitrator to do so. Lord Diplock has shown that this was an adaptation of a similar procedure by Criminal Courts of Quarter Session.[11] While this new remedy could be excluded by agreement between the parties, the ancient power of the Sovereign's courts to quash for error of law on the face of the award could not be excluded. The Arbitration Act of 1889 abolished the system of making submissions rules of court and amended and consolidated enactments in relation to arbitration. In the context of the relationship of the courts and arbitrators, the most significant amendment was contained in Section 19. It provided that any arbitrator may at any stage of the proceedings and shall, if so directed by the court or a judge, state in the form of a "Special Case" for the opinion of the court any question of law arising in the course of the reference. This was the foundation of the "Special Case" procedure which was to exercise a powerful influence on English arbitration law and practice until last year. Whatever the original conception of this remedy might have been, it became in the course of time an unlimited right of appeal from arbitrators' decisions on points of law. From the start it was considered that the Act prevented the parties from contracting out of the "Special Case" procedure. It was only in 1922, however, that the Court of Appeal finally decided that any agreement which purported to exclude the right of a party to resort to the "Special Case" procedure was contrary to public policy and invalid.[12]

In 1895, and in response to the demands of the City of London, the Commercial Court was created by a simple resolution of the Judges of the Queen's Bench Division. This court only hears commercial causes and in practice the supervision of arbitrations forms a large part of its work. Only judges with specialist experience in commercial law and thoroughly conversant with arbitration law and practice sit in the Commercial Court. This development marked the end of the era in which judges had jealously viewed arbitrations as rival tribunals. On the other hand, it is germane to the subject of this lecture to mention that from 1895 until last year commercial judges have made ample use of their supervisory powers under the "Special Case" procedure.

During the first half of this century legislation was mainly concerned with the carrying out of international agreements relating to arbitration and with making arbitrations more effective.[13] The Arbitration Act 1950 consolidated earlier legislation. Leaving aside the Arbitration Act 1975, which gave effect to the New York convention on the Recognition and Enforcement of Foreign Arbitration Award,

there was no legislation in the arbitration field until last year. It is, therefore appropriate to take a critical look at the relationship between the English courts and arbitration as it existed under the Arbitration Act 1950.

The Merits of the System

The arbitration system as it existed until last year attracted a good many customers to London. During the last few years arbitrators of the London Maritime Arbitration Association made about 1,000 awards per year—nearly all of them international. This is, of course, only a small percentage of maritime arbitrations actually commenced in London. During the same period arbitrators of the London Court of Arbitration and the Institute of Arbitrators (now the Chartered Institute of Arbitrators) made several thousand awards per year—again a small percentage of arbitrations actually commenced. The City of London provides a great variety of arbitration procedures ranging from quality arbitrations and arbitrations on documents to full scale hearings with discovery of documents, exchange of experts' reports, oral evidence and addresses by counsel. The courts recognise that the nature and extent of judicial supervision must vary with differences in arbitration procedures In the words of Mr Michael Mustill, QC (now a judge in the Commercial Court):

> "Subject to a very few overriding rules of public policy, if the parties have agreed to arbitrate in a particular way, their choice is effective and binding. If there is no express agreement, the courts will look for an implied agreement and will have regard (for example) to the practice in the trade from which the dispute arises and the identity of the chosen arbitral tribunal. The court will also have regard to the way in which the parties have begun to handle the dispute; if the reference begins informally, it is unlikely that the parties wish it subsequently to take a more legalistic shape and vice versa."[14]

The approach of the courts to arbitration has changed. Since the founding of the Commercial Court a judicial philosophy of benevolent support of the arbitral process has developed. This approach is to be found in judgments of the court generally. It is also possibly illustrated by the recognition of improvements in arbitration procedures in advance of similar developments in the practice of the courts. For example commercial arbitrators in the City of London have for many years in appropriate cases given awards in foreign currency[15] but the courts only started to do so in 1977.[16] Similarly, commercial arbitrators have for many years awarded interest at the rate appropriate to the currency, while this development in the courts is recent.[17] In arbitrations the rule of practice that a cause of action must be completed before an action may be instituted finds no counterpart.[18] The rule that one may sue only once on a particular cause of action is relaxed in the field of arbitration e.g., in the construction field where serial arbitrations are commonplace.[19] The flexibility shown by English courts in the arbitration field is also illustrated by the principle that although an agreement to agree on certain essential matters is generally unenforceable,[20] the agreement may be valid if it contains an agreement to submit differences to arbitration, the unresolved matters being treated as differences under the arbitration clause.[21]

Finally, and here I know that I may be entering the quick sands, the English courts strongly believe that legal certainty in commercial relationships is of paramount importance.[22] For this reason the English courts have traditionally insisted that arbitrators must in general apply a fixed and recognisable system of law, which usually will be English law. Arbitrators are not allowed to apply some different criterion, such as their individual views on abstract justice or equitable principles.[23] The existence of the "Special Case" procedure by and large caused English arbitrations to be conducted in accordance with the legal rights and obligations of the parties. It also led to the development of a large and coherent body of commercial law. All this assisted arbitration in London.[24]

The Demerits of the System

On the other hand, it came to be recognised in recent years that the English arbitration system tilted too far in favour of the principle of legality. First, there was the continued existence of power to remit or set aside an award for error of law on the face of the award. There have been very few reported instances during this century of awards being set aside on this ground. Indeed, my researches show that in the last 30 years such challenges have succeeded on only five occasions.[25] The reason is simple: in order to avoid a challenge of the legality of their award, arbitrators either gave no reasons at all or only gave reasons on the understanding that the reasons were not to be used in any legal proceedings concerning the award.[26] Nevertheless, while this common law remedy was seldom invoked, there was a consensus that its very existence inhibited the proper working of the arbitration system. It discouraged the giving of reasons, and unmotivated award may cause enforcement problems in some countries. The case for legislative intervention was overwhelming.

In the second place there were many complaints that the "Special Case" procedure was being abused. Parties to arbitration agreements who wanted to put off the day of final reckoning, were often able to dress up something as a question of law and to persuade an arbitrator or the court that the award should be in the form of a "Special Case". This caused wholly unwarranted delays and defeated the reasonable expectations of parties.[27] Two decisions contributed to the problem. In 1973 the Court of Appeal held in effect that a "Special Case" had to be stated unless the request was plainly frivolous.[28] This made it difficult for arbitrators or judges to refuse applications for "Special Cases". In 1976 it was held to be permissible to state the question for the decision of the court in the widest possible terms so as to cover any issue which might conceivably arise. The formula which gained approval was "whether on a proper construction of the contract, and on the facts found, the respondents were liable to the claimants".[29] These decisions, and notably the first, led to a great increase of applications for "Special Cases". In a particularly flagrant case Mr. Justice Kerr protested that whilst "Special Cases" in commercial arbitrations used to be the exception, they had become the rule.[30] Law reform had become essential.

The third cause of dissatisfaction related to the rule, which had been regarded as settled law at least since 1922, that the parties cannot validly contract out of the "Special Case" procedure. Particularly in relation to so called supranational contracts (e.g., contracts with foreign governments or state agencies) there was a growing body of evidence that the "Special Case" procedure discouraged foreign parties from contracting subject to London arbitration clauses. In 1978 in *Eagle Star Insurance Co Ltd* v *Yuval Insurance Co Ltd.*, the Court of Appeal appeared to break new ground.[31] The Court of Appeal had to decide whether an arbitration clause in a reinsurance contract was valid despite the fact that the arbitrators were enjoined to decide:

> ". . . according to an equitable rather than a strictly legal interpretation of the provisions of the agreement."

The Court of Appeal unanimously upheld the validity of the clause. Lord Denning M.R. held:

> "I must say that I cannot see anything in public policy to make this clause void. On the contrary the clause seems to me to be entirely reasonable. It does not oust the jurisdiction of the courts. It only ousts technicalities and strict constructions. That is what equity did in the old days. And it is what arbitrators may properly do today under such a clause as this . . . So I am prepared to hold that this arbitration clause, in all its provisions is valid and of full effect, including the requirement that the arbitrators shall decide on equitable grounds rather than a strict legal interpretation. I realise, of course, that this lessens the points on which one party or the other can ask for a "Case Stated". But that is no bad thing. "Cases Stated" have been carried too far. It would be to the advantage of the commercial community that they should be reduced and a clause of this kind would go far to ensure this." Lord Justice Goff and Shaw agreed. On the face of it this is a judicially sanctioned way of contracting out of the "Special Case" procedure. However, this decision attracted little interest and oddly enough it was not even reported in the official law reports.[32] It is difficult to reconcile it with earlier decisions of high authority. In the absence of a House of Lords decision confirming *Eagle Star* v *Yuval*, commercial lawyers could not safely

advise their clients that this was an effective way round the rule that the jurisdiction of the courts may not be ousted. This is no doubt the reason why this decision has not in fact been used as a basis for contracting out of the "Special Case" procedure. The cause for dissatisfaction accordingly remained.

Movement for Reform

While reform of the system had been under consideration for some years,[33] the final impetus was given by the publication in July 1978 of the Report on Arbitration of the Commercial Court Committee presided over by Mr. Justice Donaldson, now a member of the Court of Appeal.[34] This committee consisted of all the commercial judges and representative members from the Bar, the solicitors' profession and arbitral organisations and from the following business sectors: banking, shipping, insurance, protection and indemnity associations and commodity markets. The legislation to which I now turn followed, by and large, the recommendations of this report.

The Arbitration Act 1979: A Compromise

The Arbitration Act 1979 came into force on 1st August 1979. It represents a compromise between the views of those in England who prize finality in arbitration awards above all, and those who insist on a rigid adherence to the principle of legality. The Act of 1979 introduces a number of changes but I shall confine my remarks to three main areas.

(1) *Abolition of "Special Case" procedure and creation of a limited right of appeal on points of law:*

Section 1 (1) abolishes the "Special Case", consultative case relating to questions of law arising in the courts of the reference and the jurisdiction to set aside or remit an award on the ground of error of fact or law on the face of the award. In the place of the abolished remedies two new remedies are created. Section 1 (2) creates a limited right of appeal on any question of law arising out of an arbitration agreement and Section 2 (1) provides that the High Court shall have a limited jurisdiction to determine any question of law arising in the course of the reference. In order to make the limited right of appeal effective, Section 1 (5) provides that if reasons are not, or are insufficiently set out in an award, the court may order reasons or further reasons to be stated. However, if no reasons were given, no order for the giving of reasons will be made unless a reasoned award was requested or special reasons exist why no such request was made.[35] The right of appeal is conditional upon the consent of all the parties or the leave of the court being obtained. A prerequisite of the granting of leave is that the determination of the question of law concerned could substantially affect the rights to the parties. If this requirement is fulfilled, the court has a general discretion to grant or refuse leave.[36] The court will have to be persuaded that there is a serious question of law involved. If leave is granted, it may be upon terms. It is thought that the court will make liberal use of the power of imposing conditions by ordering:

(a) an expedited hearing; and/or
(b) the bringing of money awarded into court or the giving of security; and/or
(c) the giving of security for costs.

In one of the two applications for leave to appeal, which have so far come before the Commercial Court, the judge granted leave subject to substantial security being provided in respect of the sums awarded and in respect of the costs of appeal. It is not without significance that the appeal was then abandoned.[37] Contrary to what many thought was intended, the granting or refusal of such leave is probably appealable.[38] It is likely that this particular right of appeal will soon be abolished and in the meantime it is considered likely that the Court of Appeal will discourage such applications. From a decision of the High Court on an appeal there is a limited right of appeal, namely if the High Court or Court of Appeal give leave *and* it is certified by the High Court that the question of law is one of general public importance[39] or is one which for some other special reason should be considered by the Court of Appeal. There is every reason to think that these new provisions will work satisfactorily. The court's discretion to grant or refuse leave to appeal and notably the power to impose conditions, should be an effective filtering process and should largely eliminate the abuses associated with the "Special Case" procedure.[40]

The second new remedy is for the determination of preliminary points of law arising in the course of the reference.[41] Here the court will not conduct an initial filtering process. On the other hand, the court will only have this jurisdiction if the arbitrator or all the parties consent. Even then the court will only be able to entertain such an application if the determination of the application might produce a substantial saving of costs *and* the determination of the question of law concerned could substantially affect the rights of one or more of the parties to the agreement. There is only a limited right of appeal from the decision of the High Court, the limitations being as described above in relation to an appeal from the High Court to the Court of Appeal. Applications for the determination of preliminary points of law by the court will probably be comparatively rare.

(2) *Contracting Out*

A great debate as to the extent to which contracting out should be permitted in relation to the new appeal procedure led to a compromise.[42] Under the Act of 1979 exclusion agreements concluded *after* the commencement of the arbitration are always valid. Exclusion agreements concluded *before* the commencement of the arbitration are validated in all except the following cases:

(i) Domestic arbitration agreements: Here the rationale was that parties to domestic arbitration agreements are often of unequal bargaining power and that the weaker party needs the protection of an entrenched judicial review.[43]
(ii) Special category disputes, that is:
  (a) disputes within the Admiralty jurisdiction of the High Court,[44] which is a useful way of describing the great majority of shipping disputes which are referred to arbitration in the City of London;
  (b) disputes arising out of contracts of insurance;
  (c) disputes arising out of commodity contracts.[45] Here one is usually dealing with parties of equal bargaining power and the policy considerations previously mentioned do not apply. The reason for the special treatment of such contracts is that it was found by the Commercial Court Committee that there was no evidence in these fields of any widespread desire to be able to contract out of a right of judicial review.[46] The matter is, however, under review and the Secretary of State may by order *inter alia* abolish one or more of these exceptions to the liberty to contract out.[47]

With regard to the special category disputes, the Act of 1979 specifically provides that contracting out is permissible if the award or question of law relates to a contract which is expressly governed by some foreign system of law. This provision may lead to odd consequences, e.g., in relation to a commodity contract subject to the law of Bermuda (which effectively is English law), an exclusion agreement would be valid. In the City of London this point is apparently known as "the Bermuda hole".[48]

Interlocutory Orders

Under English law arbitrators have no power to impose sanctions for a refusal or failure to comply with their interolcutory directions relating to pleadings, particulars, discovery, and so forth. By Section 12 (6) of the Arbitration Act 1950 such powers are vested in the Court. Section 5 of the Arbitration Act 1979 makes provision for an application by an arbitrator or a party to extend the arbitrator's powers. Section 5 (2) provides that if an order for an extension of powers is made, the arbitrator shall have power:

> "to the extent and subject to conditions specified in that order, to continue with the reference in default of appearance or of any other act of the parties in like manner as a judge of the High Court might continue with proceedings in that court where a party fails to comply with an order of that court or a requirement of rules of court."

While the language is perhaps not entirely clear, it would seem that this provision confers on the High Court jurisdiction to vest an arbitrator with powers similar to those possessed by a High Court judge in relation to non-observance of orders or rules of court. Those powers would include the dismissal of a claim and the striking out of a defence. The question might justifiably be asked: why were those powers not simply

conferred on all arbitrators? This point was considered but the balance of opinion, legal and commercial, was against conferring such a power on arbitrators.[49]

The Bremer Vulkan Case

While these legislative changes are the most important developments in English arbitration law in this century, a recent decision of the Court of Appeal is also likely to have a considerable effect on the future of English arbitration practice. The background is as follows: Eleven years ago, the English courts started to strike out claims for want of prosecution.[50] This applied not only to hopeless causes but also to *prima facie* meritorious claims. The consequences have been beneficial: practitioners learnt that they ignore the time tables provided by the rules of court at their peril. The question arose whether arbitrators have a similar power. There were conflicting decisions on this point.[51] In *Bremer Vulkan* v *South India Shipping*[52] which concerned two arbitrations to which the Act of 1979 did not apply, the Court of Appeal held that under English law arbitrators have no power to strike out for want of prosecution. The next question was whether the court could do it. The Court of Appeal held that:

(a) A term imposing a duty on a Claimant not to be so dilatory in proceeding that there could no longer be a fair hearing must be implied in every arbitration agreement;

(b) Breach of such an implied term amounted to a repudiation entitling the Respondent to rescind the contract and also sue for an injunction restraining the Claimants from continuing with the arbitration and/or damages in respect of wasted expenditure.

Leave to appeal to the House of Lords was granted. One appeal is proceeding and is due to be heard later this year. I hope I tread on no toes when I say that it is expected that the decisions of the Court of Appeal will be upheld. Assuming that to be the case, the results on arbitrations in the City of London should be beneficial. The existence of the power to strike out claims—and one apprehends defences[53]—in arbitrations, should encourage compliance with arbitrators' directions.

Conclusion:

The relationship between the courts and arbitrations in England has been fundamentally altered. The principle of English arbitration law that arbitrations must be conducted in accordance with settled principles of law has not been abandoned. However, substantial concessions in favour of the principle of finality have been made. The courts have also been clothed with new powers by statute, and have themselves developed new powers, which should enable them to act more effectively in support of arbitrations. It is not claimed that the new system is perfect. On the contrary the manner in which the Act of 1979 is working is under review by the Commercial Court Committee with a view to recommendations for further reform.[54] In the meantime one is entitled to say that a not unreasonable balance has been found between the competing principles of finality and legality.

References:

1. The Common Law, Macmillan Edn., 1968, p. 1.
2. While my lecture is concerned with the law of arbitration of England and Wales, I shall for convenience refer to England and English arbitration law.
3. *Vynior's* Case 8 Coke Rep. 816.
4. 8 & 9 Wm III c II, s 8.
5. 9 Wm III c 15. This statute probably sanctioned what was already happening in practice. See *Hide* v *Petit* 0Ch. Chas. 185 (1670).
6. *See Czarnikow* v *Roth, Schmidt & Co.* [1922] 2 K.B. 478 at p. 488, per Scrutton LJ. Alastia was the name given to an area between the Thames and Fleet Street in London, formerly used by Carmelite Friars, which in the 17th century was a refuge for criminals and bankrupts.
7. *Hill* v *Hollister* 1 Wils 129 (1746).
8. *Kent* v *Elstob* (1802) 3 East 18.
9. *Scott* v *Avery* 5 H. L. C. 811 at p. 853, per Lord Campbell.
10. *W. Naumann* v *Edward Nathan & Co. Ltd.* (1930) 37 Ll. L. Rep. 249 at p. 250, per Scutton, LJ.
11. The Fourth Alexander Lecture delivered to the members of the Institute of Arbitrators (now the Chartered Institute of Arbitrators) on Tuesday 28th February 1978, published in the April 1978 issue of *Arbitration*, the Journal of the Institute.
12. *Czarnikow* v *Roth Schmidt & Co.* [1922] 2 KB 478.
13. The Arbitration Clauses (Protocol Act of 1924); the Argitration (Foreign Awards) Act 1930 and the Arbitration Act of 1934.
14. Arkiv for Sjorett, 1977. See also *W. Naumann* v *Edward Nathan & Co. Ltd.* (1930) 37 Ll. L. Rep. 249 (procedure) and *French Government* v *Tsurushima* 8 Ll L. Rep. 403, at 404 (evidence).
15. *Jugoslavenska Oceanska Plovidba* v *Castle Investment Co. Inc.* (*The Korara*) [1973] 2 Lloyd's Rep. 1.
16. *Schorsch Meier GmbH* v *Hennin* [1975] QB 416; *Miliangos* v *George Frank Textiles Lrd.* [1976] AC 443.
17. *Helmsing Schiffahrts GmbH & Co. K. G.* v *Malta Drydocks Corporation* [1977] 2 Lloyd's Rep. 444.
18. *Alfred C. Toepfer* v *Cremer* [1975] 2 Lloyd's Rep. 118, at p. 125.
19. *Purser & Co.* (*Hillingdon*) *Lrd.* v *Jackson* [1977] 1 C. B. 166.
20. *Courtney and Fairbairn Lrd.* v *Tolaini Bros.* (*Hotels*) *Lrd.* [1975] 1 WLR 297.
21. *F. & G. Sykes* (*Wessex*) *Ltd.* v *Fine Fare Ltd.* [1967] 1 Lloyd's Rep. 53; *Vosper Thorneycroft Ltd.* v *Ministry of Defence* [1976] 1 Lloyd's Rep. 58.
22. *In Valleji* v *Wheeler* (1774) 1 Cowp. 145 Lord Mansfield said: "The great object should be certainty; and -herefore, it is of more consequence that a rule should be certain than whether the rule be established one way or the other; because speculators in trade then know which ground to go upon." For a recent restatement of this principle, see *China National Foreign Trade Transportation Corporation* v *Eylogia Shipping Co.* SA (*The 'Mihalios Xilas'*) [1979] 2 Lloyd's LR 303, at p. 313, per Lord Salmon.
23. *Orin Componia Espanola de Seguros* v *Belfort Maatschappy voor Algemene Verzekringeen* [1962] 2 Lloyd's Rep. 257 at p. 264.
24. It is interesting to note that by the Administration of Justice (Scotland) Act 1972, s. 3, the "Special Case" procedure was introduced in Scotland subject to the right of the parties to contract out.
25. *Compania de Naviera Nedelka SA of Panama* v *Tradax Internacional SA of Panama City* (*The 'Tres Flores'*) [1972] 2 Lloyd's Rep. 384, at p. 391, per Mocatta, J.
27. *In Antco Shipping Ltd.* v *Seabridge Shipping Ltd.* (*The 'Furness Bridge'*) [1979] 2 Lloyd's Rep. 267 it was held that the arbitrators have power to state a case subject to conditions, which may include the imposition of a condition that money be paid forthwith. This decision did not eliminate the abuse because it is clear from the judgments of Lord Justices Lawton and Lanes that they did not contemplate the imposition of such a condition except where a certain sum was undoubtedly due and not affected by the "Special Case".
28. *Halfdan Greig & Co. A/S* v *Sterling Coal and Navigation Corporation* (*The 'Lysland'*) [1973] QB 843.
29. *Ismail* v *Polish Ocean Lines* (*The 'Ciechochinek'*) [1976] QB 893.
30. *Granvias Oceanicas Armadora SA* v *Jibson Trading Co.* (*The 'Kavo Peiratis'*) [1977] 2 Lloyd's Rep. 344.
31. [1978] 1 Lloyd's Rep. 357, at p. 362, per Lord Denning MR, at p. 362, per Goff, LJ; at p. 364, per Shaw LJ.
32. See Dr. F. A. Mann, 94 Law Quarterly Review 486.
33. See the Report of Committee on the Law of Arbitration, 1927 (Cmnd. 2817) and The Commercial Court Users Conference Report, 1962 (Cmnd. 1616), par. 30.
34. Cmnd. 7284.
35. In practice the parties have three options: (a) to have no reasons at all; (b) to have reasons subject to the above-mentioned confidentiality understanding; and (c) to have reasons under Section 1 (5). Possibly a practice will develop for arbitrators to ask at the end of the hearing what the parties' wishes are.
36. *B. T. P. Tioxide* v *Pioneer Shipping Ltd. & Another* (*The 'Nema'*), unreported, 2.11. 1979, per Goff, J.
37. See *Mondial Trading Co. GmbH* v *Gill & Duffus Zuckerhandelsgesellschaft*, 3.12.79, unreported, per Goff, J. The other decision is *B. T. P. Tioxide Ltd* v *Pioneer Shipping Ltd.* 2.11.1979, unreported, per Goff, J.
38. *Pioneer Shipping Ltd.* v *B. T. P. Tioxide Ltd.* (*The 'Nema'*), CA, reported only in *The Times* of 15.11.1979.
39. The meaning of these words was considered in *B. T. P. Tioxide Lrd.* v *Pioneer Shipping Ltd*, 2.11.1979, unreported, per Goff, J.
40. See RSC Order 73, as amended by RSC (Amendment No. 3) 1979 SI 1979, No. 522.
41. S. 2 (1).
42. S. 3 and S. 4.
43. Report on Arbitration of the Commercial Court Committee, 1978, par. 47.
44. See Administration of Justice Act 1957, s. 1 (1)(a).
45. See S. 4 (2) and The Arbitration (Commodity Contracts) Order 1979, SI 1979, No. 754.
46. Report on Arbitration of the Commercial Court Committee, 1978, par 48.
47. S. 4 (3).
48. Sir Michael Kerr, The Arbitration Act 1979, 1980 Modern Law Review 45, at p. 55.

49. The Report on Arbitration of the Commercial Court Committee, 1978, par. 57.
50. See *Allen* v *Sir Alfred McAlpine & Sons Ltd.* [1966] 2 QB 229; *Birkett* v *James* [1978] AC 297.
51. See *Crawford* v *A. E. A. Prowting Ltd.* [1978] iQB 1; *Bremer Vulkan Schiffbau* v *South India Shipping Corporation* [1979] 3 AllER 194 per Donaldson, J.
52. [1980] 1 All ER 423.
53. *Bremer Vulkan Schiffbau* v *South India Shipping Corporation* (1980) 1 All ER 420, per Lord Denning at 432a but see Roskill, LJ, at 447f.
54. The Commercial Court Committee is a standing committee. At present it has under consideration legislation to empower consolidation of related disputes, an alternative to the existing system of "sealed offers", abolition of the term "misconduct" in relation to procedural errors and various other matters.

Practical Guidance for Employers on New Accident Notification Regulations

A booklet* giving practical guidance to employers on the new simplified procedures for notifying accidents and dangerous occurrences at work which come into operation in Great Britain on 1st January 1981, has been published by the Health and Safety Executive (HSE).

The effect of the new Notification of Accidents and Dangerous Occurrences Regulations 1980,** as regards the general run of accidents, will be to eliminate the present costly and time-consuming system whereby employers are required to notify accidents twice, to different departments on different forms at different times.

The booklet explains that employers will no longer have to report accidents direct to HSE unless they are fatal or cause major injury or are defined "dangerous occurrences". HSE will be notified by the Department of Health and Social Security (DHSS) about other less serious accidents, the majority, which result in absence from work for more than three days, when employees claim industrial injury benefit and the employer concerned makes his report to DHSS. Form B1 76 has been revised to meet the joint needs of HSE and DHSS. However, notification in the case of fatal and major accidents and dangerous occurrences will have to be given by the quickest practicable means (the telephone in most cases) to HSE or appropriate enforcing authority to enable any necessary investigation to begin promptly. Written confirmation of such accidents will have to be given within seven days on a separate direct reporting form which is being introduced. It is hoped that the regulations will lead to prompt reporting of serious accidents and incidents and there should also be fuller reporting of less serious accidents. Overall, more reliable statistical information relating to accidents and dangerous occurrences should become available enabling valid comparisons to be drawn between occupational groups. The information collected will enable the Health and Safety Commission and Executive to measure more accurately safety performance, judge trends, formulate policy and allocate resources more effectively.

* Guidance Booklet. The Notification of Accidents and Dangerous Occurrences Regulations 1980 (HS(R)5), HM Stationery Office, price £1.50 plus postage. ISBN 011 883413 4.

** The Notification of Accidents and Dangerous Occurrances Regulations 1980 (SI 1980: No. 804) HM Stationery Office, price £1.25 plus postage. ISBN 011 006804 1.

FIND—A Business Success

For the first time, industry will have at its fingertips, a computerised information source. Replacing time-consuming and inefficient searches through trade directories, it will supply, via a telephone call, information required on products and services. Known as FIND, which stands for File of Industrial Data, it is to be launched in January 1981.

FIND is a computerised data storage and retrieval system, designed specifically for industrial and commercial use. It is capable of storing full and relevant details on entire ranges, as well as services, currently available in the UK. As each item is individually categorised and indexed, selected information is produced within seconds of request.

Karen Edwards is one of the newly formed team of "Finders" working for the new computerised information source FIND - File of Industrial Data. Aptly named "Finder," she is able, utilising her VDU and keyboard, to provide detailed information on products and services available throughout the UK.

The retrieval in this specially designed computer takes only three seconds with an avarage verbal response time in thirty seconds.

FIND enables information to be available to all trade users entirely free of charge. A telephone call will connect the user to a trained operator who will produce the required data on a VDU within seconds and immediately relate it to the enquirer. The information can also be sent to the user in print out form, if required, free of charge.

FIND makes a nominal charge to subscribers for promoting their entire product range which is a very cost effective method of marketing and advertising. The FIND facility for immediate and continual updating means the removal of yet another frustration for buyers and sellers; ie. it eliminates obsolete and therefore useless information.

FIND is designed not only to be a valuable sales aid for British industry in the UK, but also to be of assistance in the export market. As a follow-up to the UK launch, an intensive campaign will be mounted throughout 1981 to expand the services of FIND in promoting information on British industry, technology and services overseas. This is particularly relevant within the EEC which currently accounts for over 42% of British exports. The promotion will include full use of direct mail, exhibitions, public relations and an advertising campaign conducted by Saatchi & Saatchi.

FIND is headed by entrepreneur, computer and marketing specialist Raphael Gabay and has received approval and financial support of the Government—a combination of enterprise and security. The system is of vital interest to the widest spectrum of the British business community from Accountants to Zymologists. It is fully operational now with a fast growing collated data base which already exceeds ½ million products.

To mark the commencement of this new computer-based telephone life-line to industry, an official opening ceremony was held at the House of Commons on 8th January, 1981.

New Periodical Launched

The first 80-page issue of a new international journal—Construction Papers—has been published by the Chartered Institute of Building.

Linking the theory and practice of building, Construction Papers will cover a wide range of topics, with high quality papers assessed by expert referees. It will be published three times a year and is available on subscription. The first issue contains papers on building drainage research; cost control for public sector housing; a case of sulphate attack on concrete floor slabs; water movement in porous building materials; and mathematical modelling for planning and control of the building process.

A year's subscription (3 issues) costs £12 post free (UK) and £17 (overseas) from the Sales Office, The Chartered Institute of Building, Englemere, Kings Ride, Ascot, Berkshire SL5 8BJ.

Forms of Contract

The 1978 edition of the Form of Contract issued by the Faculty of Architects and Surveyors—formerly that issued by the Institute of Registered Architects—is available and consists of 16 pages and 32 main clauses.

This Form of Contract is suitable for use with BofQ and/or specifications and drawings and simplifies the needs of a contract to its basic requirements. The cost, excluding postage and packing, is £1.75.

The 1981 edition of this form, which up-dates insurance and NSC matters, is now available.

The 1980 edition of the FAS Minor Works Contract form, which will be available shortly, is intended for use where quantities are not involved, and where works are to be carried out on a "lump sum" basis, with no NSC.

All enquiries should be addressed to the Secretary, FAS, 15 St Mary Street, Chippenham, Wilts SN15 3JN—telecon 0249 55397/8.

Building Material Producers Forecast Further Drop in Construction Output

"Total construction output will fall by 9.5% in 1981 after a decline of 6% this year", said Richard Hermon, Director General of the National Council of Building Material Producers (BMP), announcing the latest BMP Forecasts. "Although the BMP Forecasting Panel met before the Chancellor's recent statement, it had anticipated further reductions in public construction programmes and warned that the progress for housebuilding were particularly bleak. It is forecast that only 30,000 homes will be started by councils and other public authorities in 1981.

"Output in all sectors is forecast to fall in 1981. Housing repair and maintenance and improvement, strong for so long, would not escape the general recession since both public authorities and consumers would be forced to cut back on improvement and repairs.

"The BMP Forecasting Panel believe that no improvement in private housebuilding activity would be seen in 1981, despite lower interest rates, because of the squeeze on consumers' incomes. In 1982 however, private housebuilding should recover with 140,000 new homes being started. Recovery in other types of construction work will, it is thought, not come so quickly and output for all construction is forecast to be one per cent lower in 1982 than in 1981".