

CIVIL CLAIMS BEFORE 26 APRIL 1999

CHOICE OF COURT

In some matters the jurisdiction of the High Court is exclusive. However, in others the jurisdiction of the High Court and county court is concurrent, in the sense that an action may be commenced in either. Historically, the jurisdiction of the county court in matters in respect of which the Queen's Bench Division had jurisdiction was limited by the financial value of the claim. Prior to 1991:

- In contract or tort actions, the value of the claim had to be no greater than £5,000.
- In equity and property matters the figure was £30,000.
- If the amount of the claim exceeded the jurisdiction of the county court then the matter had to be dealt with by the High Court, subject to statutory powers of transfer between the two courts.

It was hardly surprising, therefore, that the Review Body on Civil Justice (1988) found that much of the work tried at High Court level was not of sufficient importance, complexity and substance to justify the time and expense involved in High Court proceedings. The Review recommended changes to the jurisdiction of the county court, and improved mechanisms for transfer between the two jurisdictions.

As a result of the *Report of the Review Body on Civil Justice*, the Courts and Legal Services Act 1990 (CLSA 1990) altered the whole basis of distribution of work between High Court and county court. Section 1 of the CLSA 1990 empowered the Lord Chancellor to make provision for the allocation of business between the two courts. In 1991 the Lord Chancellor made the High Court and County Court Jurisdiction Order (SI 1991/724), which adjusted fundamentally the distribution of work between the two courts.

By virtue of this order, there was no longer any limit to the jurisdiction of the county court in contract or tort. The general principle was that a plaintiff was free to choose whichever court was preferred, although in deciding where in fact to commence an action a plaintiff would usually have regard to the court by which such an action would ultimately be tried. This freedom of choice was subject to one important qualification: any action of a value less than £50,000 and which involved a claim for damages for personal injuries, had to be commenced in the county court.

Article 7 of the order created a presumption that cases of a value of less than £25,00 had to be tried in the county court, and those of a value of £50,000 or more in the High Court. The position was otherwise if application of the criteria in Article 7(5), which dealt primarily with the transfer of cases between the two jurisdictions, showed that a different court of trial was in fact appropriate.

The criteria in Article 7(5) also applied in deciding in which court cases falling between these two financial figures should be tried. The factors identified were as follows:

- (i) the financial substance of the action, including that of any counterclaim;
- (ii) whether the action was otherwise important, for example by raising issues of general public importance, or where the case would amount to a test case;

- (iii) the complexity of the facts, legal issues, remedies or procedures involved. Complex cases are more suitable for High Court trial;
- (iv) whether transfer of the case would lead to more speedy trial, although this alone could not be a determining factor.

In addition certain types of cases were particularly suitable for High Court trial (*Report of the Review Body on Civil Justice*). These included claims of professional negligence, fatal accident claims, allegations of fraud or undue influence, defamation cases, claims based on allegations of malicious prosecution or false imprisonment, and claims against the police. In such cases it was likely that High Court trial would ultimately be ordered, and that could be decisive in determining where such actions would be commenced (see Practice Direction [1991] 3 All ER 349).

Within this framework the solicitor would choose the appropriate jurisdiction. That choice could be influenced by tactical reasons. For example, High Court proceedings may create an impression of seriousness and importance and may be regarded by some as more intimidating. The solicitor may have preferred the proceedings of the High Court to those of the county court, or, conversely, may have preferred the geographical proximity of the county court. However, where a choice of High Court jurisdiction was wrongly made, the plaintiff could be penalised by suffering a reduction in the costs that could be awarded.

PROCEDURE IN THE HIGH COURT

Procedure in the Queen's Bench Division (QBD) was governed by the Rules of the Supreme Court. The rules themselves together with guides to their interpretation were to be found in the Supreme Court Practice (the "White Book").

An action in the Queen's Bench Division was in most cases commenced by writ of summons, generally referred to as a writ. A writ of summons (1) notified the defendant of the issue of the writ, (2) informed him that he must either satisfy the claim set out on the back of the writ or return to the Court Office the accompanying acknowledgement of service stating therein whether he intended to contest the proceedings, and (3) informed him that if he failed to satisfy the claim or return the acknowledgement within the time stated or without stating therein an intention to contest the proceedings, judgment could be entered against him.

The writ had to state the names of all the intended parties to the action, whether plaintiffs or defendants, and the division of the High Court in which the plaintiff was suing. In addition the writ had to be indorsed either with a statement of claim or with a concise statement of the nature of the claim made or the relief or remedy required in the action.

To issue his writ the plaintiff took or sent three copies of the prescribed form to the Central Office or a district registry where one copy (signed by the solicitor issuing it) was stamped with the court fee and filed, and the other two were sealed and returned to the plaintiff. The action had now been commenced.

Once issued the writ was valid for four months. While in force the writ had to be served on the defendant. Personal service or service by post involved the plaintiff or his agent tendering the defendant a sealed copy of the writ accompanied by the appropriate form of acknowledgement of service. Service on the defendant's solicitor was an alternative to personal service.

The defendant had to acknowledge service within 14 days of service to avoid being in default. This was done by delivering or posting to the Central Office or district registry the prescribed form of acknowledgement, duly completed. In the form the defendant stated whether he intended to contest the proceedings.

If the defendant failed to give “notice of intention to defend” within the time limited the plaintiff was entitled to enter judgment in default. If the default judgment was irregularly or fraudulently obtained or was for an amount larger than was due the defendant had a right to have it set aside.

PROCEDURE IN THE COUNTY COURTS

Procedure in the county courts was regulated by the County Court Rules. These rules were to be found in the *County Court Practice* (the “Green Book”).

England and Wales is divided into districts each having one or more county courts. The plaintiff usually commenced proceedings (1) in the court for the district in which the defendant resided or carried on business; or (2) in the court for the district where the cause of action arose; (3) in the case of a default action, in any county court. If the plaintiff commenced proceedings in any other county court the judge of that court could transfer the proceedings to a court which did have jurisdiction, order them to be struck out, or allow them to continue in his court.

The plaintiff or his solicitor commenced an action by filing in the court office a request for a summons setting out the names, addresses and descriptions of all parties and the nature and amount of the claim. He also had to file particulars of claim and the sum claimed with a copy for each defendant. The registrar prepared and issued a summons to which were annexed the particulars of claim.

The summons and particulars were then served on every defendant at least 21 clear days before the return day (a specified date for the parties to appear before a master or judge in chambers). The defendant was also served with forms of admission, defence and counterclaim. A county court summons could be served by the plaintiff or his agent but was usually served by the county court bailiff. The summons could be served by an officer of the court sending it by first-class post to the defendant or, if the plaintiff so requested, by the plaintiff delivering the summons to the defendant personally.

A defendant who was served with a summons had open to him the following courses of action:

- (1) In any action for debt or damages he could within 14 days of service pay into court the whole amount of the claim.
- (2) Where the defendant admitted the whole or any part of the claim but desired time to pay he could, within 14 days, file the form of admission and state how he proposed to pay the admitted sum, for example by fixed instalments.
- (3) If the defendant denied liability or wished to plead a set-off or counterclaim he had to, within 14 days, file the forms of defence and counterclaim if appropriate.
- (4) If the defendant took none of the above courses, the plaintiff could obtain judgment for the amount of the claim.

Notes adapted from Ronald Walker & Richard Ward, *Walker & Walker's English Legal System*, seventh edition 1994, chapters 13, 14 and 20.