Editorial

EC Law and Market Trading

One of many things for which Lord Denning will always be remembered is for the prescience and vividness of his metaphor, uttered in 1974 in *Bulmer Ltd v Bollinger SA*, about the Treaty of Rome being like an unstoppable incoming tide that "flows into the estuaries and up the rivers . . ." The tidal flow of Community law has become a tidal wave; UK judges, from magistrates to Law Lords, are now well accustomed to – if not always entirely comfortable with – the need to exercise their judicial functions in the shadow of the European Court of Justice.

One reminder of how far up the estuary the tide has flowed – and how in even the humbler levels of litigation a lawyer nowadays is expected to have to hand a good EC toolkit – is to be found in the recent case, *R v Southwark Crown Court, ex parte Watts (The Times*, 6 November 1991). It concerned the grievance of a Petticoat Lane Stallholder, whose street trading licence had been revoked by Tower Hamlets London Borough Council on the grounds that he had failed to involve himself personally in the running of his stall. Mr Watts sought judicial review on various grounds, claiming, among other things, that the relevant statutory provision invoked by the local authority (section 21 of the London County Council (General Powers) Act 1947) was repugnant to Articles 52, 30 and 34 of the Treaty, relating to freedom of establishment and to the free movement of goods.

The applicant's counsel submitted, *inter alia*, that a construction of section 21 that required a trader to look after his stall in person offended against the right of establishment because the stallholder would thereby be precluded from simultaneously operating a pitch in another Member State. He also argued that the section, thus construed, was discriminatory in that it jeopardised, at least potentially, the simultaneous operation of another stall by the national of a Member State in his own country.

Upholding the refusal of judicial review at first instance, the Court of Appeal rejected this and various other ingenious Euro-legal arguments. Section 21 was not discriminatory and in no way hindered either freedom of establishment or the free movement of goods. The Court refused to refer the questions on the relevant articles to the European Court. A good try, given weighty consideration by their Lordships, even though in this instance it did not carry the day. But the fact that it was tried at all is a sharp reminder of how far down the relatively minor tributaries of the legal process the Euro-tide has penetrated in those seventeen years since Lord Denning's famous pronouncement.

(*For a report of the *Watts* case, see p 316)