

THE REMEDY OF INJUNCTION

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PREFACE

The remedy of Injunction is one aspect of the law which is alive. In the sense that it is part of law which keeps on growing like roots from a big tree. Thus building a better grip and affirms the need of law and equity.

This paper is written in a an attempt to capture the development of injunction as providing one of the popular equitable remedy sought for in suits and proceeding of the court.

Tracing down its history from early powers of the court and jurisdiction, the first stage of development in the classification of injunction as result to overcome the inadequacy of other remedies available at law. Finally the new types of injunction which recently developed during the past decade. Namely, the Maneva Injunction, Anton Peller Injunction and the 'Erinford Properties' Injunction.

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LIST OF CASES

- 1 Zainal Abidin bin Haji Abdul Rahman v Century Hotel Sdn Bhd.
/19827 MLJ 40
- 2 Lee Lee Cheng v Seaw Peng Kwang
/19607 MLJ 123
- 3 Ponniah v Chinniah
/19617 MLJ 66
- 4 Procter v Bayley
(1889) 42 ch. 390
- 5 Newman v Pender
(1884) ch. 43
- 6 Attorney General v Sheffield Gas Consumers Co
(1852) 3 De G M & G 304
- 7 Pride of Derby and Derbyshire Angling Ass Ltd v British Celanese Ltd
/19537 ch. 149
- 8 London City Agency Ltd v Lee
/19707 ch. 597
- 9 North v Great Northern Railway Co
/18607 2 Giff. 64
- 10 Lister v Stubbs
/18907 45 ch. D. 1
- 11 Allen v Jambo Holdings Ltd
/19807 1 WLR 1252

(a) INTRODUCTION

The purpose of this paper is to discuss the law of injunction in relations to it as a remedy in litigation. As the Court of Law is to exercise 'just' and equality, there has been a need for remedy in a personal direction to the defendant. This personal direction requires him to abstain from setting up rights which are unconscionable at law or from performance of other acts.

Injunction in origin is purely an equitable remedy. In England, initially it could be granted only by a Court of Equity. However, since 1875, all divisions of the High Court have had jurisdiction to grant injunction.

Recently, cases arising in the local scene illustrates more on the application for injunction by litigants. Furthermore, in almost every type of litigation; be it civil or criminal proceedings injunction often comes up for consideration.

However, without the power of issuing injunction, the court of law will simply not be able to discharge their function in an effective manner. This was well put in that

"..... without the power to prevent as well to undo wrongs, to restrain as well as to compel action, to preserve as well as to reinstate the status of persons and things, court would possess but little power and command, but little respect as dispensers of justice and arbiter between man and man."¹

The power to grant or refuse an application for injunction is vital to determine the future prospect of an entire course of litigation.

(b) STATUTORY POWERS

Our Malaysian courts are created by statutes and thus obtain their powers from statutes. The question of jurisdiction of the courts thereof are expressly determined by the statutes.

The question of this kind has been resolved by referring to statutes like the Court of Judicature Act 1964² and the Specific Relief Act 1950³.

In section 25 of the Court of Judicature Act 1964 provides the powers of the High Court in granting an injunction. It connotes a wide interpretation of powers of the Court. The High Court shall have all powers in its jurisdiction backdated before Independence and to include all powers vested in it by any written law in force within its jurisdiction. While section 25(2) confers additional powers to the Court so long as it is not contrary and in accordance with any written law relating to it.

Section 50 and section 51 of the Specific Relief Act 1950 lays down clearly that the powers in granting an injunction either temporary or perpetual in nature are upon the discretion of the Court.