THE INHERENT JURISDICTION OF THE COURT : ITS USES AND ABUSES

by

DEAN WAYNE DALY

A dissertation submitted in partial fulfilment of the requirements for the Diploma in Law of the MARA Institute of Technology

SHAH ALAM

1987

SCHOOL OF ADMINISTRATION AND LAW
MARA INSTITUTE OF TECHNOLOGY
SHAH ALAM
SELANGOR

To my parents and Laura

with love

PREFACE

Every court of competent jurisdiction is bestowed with a power which we describe as the "inherent power" of the court. It is the object of this paper to dissect the 'brain' of the court. We need to know how the power evolved and how it develops until the present day. There is also the need to scrutinise the exercise of this power. We will see whether the court itself had made proper use of the inherent power that it possesses. If it had been abused we have to analyse how it happened.

It has been the function of the court to adjudicate matters in dispute and ultimately lay down judgement which is in its opinion to be correct and justified. By adjudicating parties in dispute the court will be administering justice. However, before justice could be achieved the court itself needs to be protected from any possible impeachment of its integrity in the eyes of both the legal professions and laymen alike. This will be discussed in wider perspective in this paper.

It is my wish to elucidate this topic in my paper that it may enlighten both law students and legal practitioners alike as to how the court administer justice with its inherent jurisdiction. It is with great hope that I would be able achieve that.

The research on this topic is much carried out at the

Tun Abdul Razak Library, MARA Institute of Technology, Shah Alam. I have also obtained some materials from the School of Administration and Law Library. My main sources of materials are Law texts, law reports and statutes. From there I have been able to extract the gist of the topic of the "inherent jurisdiction of the court" and finally form a better perspective regarding this area.

The progress of the work owes a great deal to the encouragement and guidance of my Supervisor and Civil Procedure tutor, Miss Shirani Amarasingham. I am grateful for her patience, advice, and insight which helped me to clarify and sharpen my ideas. My appreciation also goes to Miss Northaniah for typing this work. I also wish to thank my family for their support and encouragement in my studies and particularly in producing this work.

Finally, but by no means least, I am very grateful to Laura who has given me the inspiration and helped me in my problems in the course of my work.

Shah Alam, October 1987

DEAN WAYNE DALY
ITM I/C : 84795997
DIPLOMA IN LAW
(PART VI)

CONTENTS

LIST OF CASES

LIST OF STATUTES

Administration of Justice Act 1960 (ENGLISH)

Courts of Judicature Act, 1964 (MALAYSIAN)

Supreme Court of Judicature (Consolidation) Act 1925 (ENGLISH)

Supreme Court of Judicature Act 1981 (ENGLISH)

Rules of the High Court 1980 (MALAYSIAN)

CHAPTER I

INTRODUCTION

The inherent jurisdiction of the court is a phenomenal creature and it has proved itself in case authorities not ineffective. It has been present in the many spheres of the administration of justice in every court of competent jurisdiction. The jurisdiction is inexhaustive and may be invoked in various circumstances and applied in different manners. It is a power which the court must have to carry out the role required by law. It is a power for the court to do what is necessary to effectively assert its authority. This special jurisdiction has been around for centuries[1]. However, there are endless question as to the nature, the extent and the manner in which this 'creature' is manipulated.

(i) Nature of Inherent Jurisdiction

The court's jurisdiction may be divided into two. Firstly, there is the "inherent jurisdiction". Secondly, there is the "general jurisdiction". The former is only an aspect of it. The general jurisdiction of a superior court is unrestricted and unlimited in all matters of

---

[1] R V Almon (1765) Wilmot's Opinion 243

substantive civil and criminal law, except when that has been taken away by statutory enactment[2]. Its jurisdiction thus include the exercise of an inherent jurisdiction.

Another feature to be noted on this subject is that, the "inherent jurisdiction of the court" is not used in contradistinction with the statutory jurisdiction. Both jurisdiction may exist side by side. The court may exercise such power even in respect of matters which are regulated by statute or by rule of court. There is no doubt a difference between both these jurisdiction. The statutory jurisdiction of the court found its source in the statute itself whereas the inherent jurisdiction of the court is derived from its very nature as a court of law.

This area is rather wide. For the purpose of our discussion it is best to summarise the true nature of the inherent jurisdiction of the court as follow:-

1. Its distinct and basic feature is the exercise of power by means of summary process[3].

2. It may be exercised in any given case notwithstanding

---

2 See Halsbury Laws of England, 3rd (Ed.) Vol. 9, Title: "Courts" at pp. 822, 944, 945, and as to the territorial limits of High Court, See Ibid at 831.

3 See Chapter 2, Summary Process.

that there are Rules of Court governing the circumstances of such cases[4]. The powers conferred by the Rules of Court supplement it and not in substitution to it. There are generally cummulative and not mutually exclusive[5].

3. The inherent jurisdiction being a part of the machinery of justice may be invoked not only in relation to the litigant parties in pending proceedings, but also in relation to anyone, being a party or otherwise, and in respect of matters which are not raised as issues in the litigation between the parties[6].

4. It is part of procedural law (both civil and criminal), and not of substantive law. It will be invoked in the course of the legal proceedings[7].

5. Its concept is distinct from that of the exercise of judicial discretion. These two concepts resemble each other, particularly in their operation and they often appear to overlap, and are therefore sometimes confused the one with the other[8].

---

4 RHC 1980 Order 92 rule 4

5 See Chapter 2, Statutory Provision

6 See Chapter 3

7 See Chapter 4

8 See Chapter 6

(ii) Brief Historical Background

It would be useful for us to momentarily glance at the history in search for clues as to the nature and extent of this abstract kind of jurisdiction. It is undoubted that cases seem to manifest how the Superior Courts of common law have come to exercise such power called the "inherent jurisdiction". It is an undeniable fact that it evolved with the first and earliest institution of a tribunal for the administration of justice. Such power has developed along two paths. It was and still is exercised in committing and offender for contempt of court and abuse of its process. That was the first path. The other path was by way of regulating the practice of the court and preventing the abuse of its process.

Of these two directions taken by the court, the inherent power is exercised in committal cases. Contempt cases are very much observed by the court. The Superior Courts have assumed this power from the very beginning to attach and summarily punish the offender. The offender may subsequently be released on payment of a fine[9]. There are numerous authorities which have recognised the power of such courts

---

9 See Holdsworth, History of English Law, Vol. 3 pp. 391 - 394.

and accepted the findings of precedents that the power is always inherent in them. Sir William Blackstone said, "we find it actually exercised as early as the annals of our law extend"[10]. The practice of summarily proceedings against and punishing offenders who committed all manner of contempt was decided partly from statute but mainly from the practice of Star Chamber. It was adopted by the Common Law judges since 1941 when the Star Chamber was abolished[11].

As regard to the regulation of practice and the prevention of the above of court process, the Superior Courts assumed the power from the earliest time by having an action stayed summarily on the grounds of being vexatious and frivolous. As Lord Blackburn puts in the case of Metropolitan V Pooley[12].

> " ... At Common Law, originally the judgement of the court was always obtained either by a demurrer or any other proceeding which upon the second gave a judgement, or an issue was taken of fact and a verdict was found, and then a judgement was given upon the record. But from early times (I rather

---

10 4 Blackstone Commentaries 286.

11 Holdsworth, op. cit.

12 (1885) 10 App. Cas. 210 at pp 220 -221.

think, though I have not invoked at it enough to say, from the earliest times) the court had inherently in its power the light to see that its process was not abused by a proceedings without reasonable grounds, so as to be vexatious and harassing - the court had a right to protect itself against such an abuse, but that was not done upon demurrer, or upon the record, or upon the verdict of a jury or evidence taken in that way, but it was done by the court informing its conscience upon affidants, and by a summary order to stay the action which was brought under such circumstances as to be an abuse of the process of the court; and in a proper case they did stay the action ... "

The above pronouncement made by Lord Blackburn was also meant to distinguish a judgement by way of demurrer with that power of the court to grant summary order.

In an action in the High Court, a demurrer was a pleading by which one of the parties in effect alleged that the facts stated by the opposite party in the preceding pleading did not sustain the contention based on them, that is, did not show a good cause of action or ground of defence, set-off counterclaim, reply and so on. In other words, a demurrer afforded a rapid and inexpensive mode of determining a point of law in question between the parties.

His Lordship gave a view recognising the existence of the inherent jurisdiction to strike out any vexatious and harassing suits by summary process. This process will be discussed in greater detail in Chapter II.

The history of this phenomenal jurisdiction may be brief, but the authorities highlighted have enabled us to comprehend the gist of the nature of the inherent jurisdiction of the court.

In conclusion, it can be said that the courts have been observing this jurisdiction for a long time along two main paths. There are several ways for the court to invoke this jurisdiction but the most common are in contempt cases and in the regulation of court process.

CHAPTER II

THE COURTS' POWER

Basically, the court requires the inherent jurisdiction to protect itself from any abuse of its process. Its reputation as a source of justice must not be impeached.

As seen in Chapter I, the jurisdiction to exercise their powers to punish for contempt and to prevent abuse of process by summary proceedings was derived, not from any statute or rule of law, but from the very nature of a court of law. Vested with such power the court can maintain its authority and to prevent any obstruction in its process. It is one of the characteristics which distinguishes a court from the other institutions of government. It is an implied power; intrinsic in a Superior court which is the very life blood of the court. This is creature of the court which enables it to fulfill itself as a court of law. Lord Morris in Connelly v DPP[13] puts it as:

> "There can be no doubt that a court which is endowed with a particular jurisdiction has power which are

---

13 (1964) A.C. at p. 1301

necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuse of its process and to defeat any attempt thwarting of its process."

(i) Summary Process

From the above we could distinguish that the main methods by which the inherent jurisdiction of the court may be exercised namely by coercion and the regulation of its process.

The coercive nature of the court would be prominent when it comes to contempt cases whereby the court has the power to punish the offender summarily. The same goes for an abuse process, to stay or dismiss the action on to give judgement or impose terms as it deems fit.

On the courts' power to regulate its process, we shall see how new process have been evolved; practice directions have been introduced to reduce flaw in its process.

The distinguishing factor of the inherent jurisdiction of the court with the general jurisdiction is that, the former enables a summary process. Whatever coercive

powers the court may exercise under its inherent jurisdiction it may exercise it summarily. It means the exercise of powers of the court to punish or terminate proceedings without a trial. A trial would require hearing of witnesses, that is, evidence have to be adduced orally in an open court. In other words, they are opposite modes of procedure. It is an ordinary jurisdiction of the court to proceed to a trial. The court under inherent jurisdiction on the other hand proceeds by way of summary process.

However, the court may find itself not ready to exercise it, particularly of the exercise of it would put an end to the action. It would mean that the court may not even consider the triable issues. It must be 'exercised with scrupulous care'.[14] Neither should the plaintiff be 'driven from the judgement seat'. It means that the plaintiff may have a good case but due to procedural defects the case may be struck out. Fletcher - Moulten L.J. spoke of the summary jurisdiction of the court to dismiss an action put it as :[15]

> " To my mind it is evident that on judicial system would never permit a plaintiff to

---

14 Per Lord Russell of Kilowen, C.J. in Rex v Gray (1900) 2 Q. B. 41

15 Dyson v Attorney General (1911) I K.B. 419.

be 'driven from the judgement seat' in this way without any court having considered his right to be heard, except in case where the cause of action was obviously bad and almost incontentably bad",

The court then has to exercise its coercive powers by summary process to punish for contempt or to stay on terminate proceedings without trial with greatest care.

(ii) Statutory Provision

As mentioned earlier the source of the statutory jurisdiction of the court is the statute itself. The limits within which such jurisdiction is to be exercised have been defined. We have an example of such provision in the Rules of The High Court 1980 (Malaysia)[16]:

" For the removal of doubts it is hereby declared that nothing in these rules shall deemed to limit or affect the inherent powers of the court to make any order as may necessary to prevent injustice or to prevent an abuse of the process of the court."

Hence, the court may not oust the inherent jurisdiction

---

16 Order 92 r. 4

of the court even if the rules govern the circumstances of such case. However, they may be complementary to each other in wanting cases as the court thinks necessary.

CHAPTER III

THE COURT AND CONTEMPT CASES : AN OVERVIEW

One of the coercive powers the court may exercise under its inherent jurisdiction is to make a committal order. The order is by Summary process or brevi manu as it is called. There is no need for the normal ordinary trial. The court may punish any party who offended the court; be they the parties to the litigation or otherwise. Lord Denning M.R. in Morris V Crown Office[17] reffered to the case of Rex V Almon[18] and said:-

> " In sentencing these young people in this way the judge was exercising a jurisdiction which goes back for centuries. It was well described over 200 years ago by Wilmot J..... The phrase 'contempt in the face of the court' has a quaint old fashion ring about it; but be importance of it is this: of all places where law and order must be maintained, it is here in these courts ".

This quotation shows why the court commits an offender for contempt. The court is a place of justice. If it is

---

17 (1970) 2 Q.B. 114

18 (1765) Wilmot's Opinion 243

unable to maintain order in court itself it would not be able earn the public's confidence. It would ever be subject to ridicule.

In order to constitute a contempt of court , there must be involved some "act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority" or something "calculated to obstruct or interfere with the due course of justice or lawful process of the courts".[19] In other words, as long as the conduct constitute a gross interference of administration of justice the court may commits him for contempt.

In one classical English case, which was decided in 1631, an incident took place at Salisbury on the Western Circuit. A prisoner threw a brickbat at the Judge of Assize. It was originally reported in Norman French but has been translated in English as below:[20]

> " Richardson, Chief Justice of C.B. at the assizes of Salisbury in the summer of 1631 was assaulted by a prisoner condemned for felony, who after his condemnation threw

---

19 Perera V The King (1951) A.C. 482 P.C.

20 (1631) 3 Dyer at p. 188b.

> a brickbat at the said Judge which narrowly missed; and for this an indictment was immediately drawn by Nog against the prisoner, and his right hand cut off and fixed to the gibbet, upon which he was immediately hanged in the presence of the court.".

This case being an ancient one should not be overlooked as far as the court is concerned. The court will always look at it as a 'contempt in the face of the court', which means a contempt which the Judge sees with his own eyes: so that he needs no witnesses to give evidence. He can deal with it himself at once. The court undoubtedly has the jurisdiction to punish summarily any contempt before it. However, it has been consistently emphasized that, unless it be sufficiently urgent or imperative, this jurisdiction which is both salutary and dangerous should not be exercised by the court.

The court is resorting to the summary process under the inherent jurisdiction could seriously and severely curtail the right of the party to have his case on the merits heard by a court of law in the usual way, that is by way of trial. It is due to these reasons that the court will exercise its coercive powers summarily to punish for contempt with greatest care and circumspection and also in the clearest cases.

In other words, the court would have to act where the case is clear and beyond reasonable doubt or argument. The

following test was aptly put by Lord Denning M.R. in Re Bramblevale[21]:

> " A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt".

In Rex v Gray[22] Lord Russell of Killowen C.J. spoke of the summary jurisdiction of the court to punish for contempt. His Lordship stated it as:-

> " It is a jurisdiction to be exercised with scrupulous care, to be exercised only when the case is clear and beyond reasonable doubt because, if it is not a case beyond reasonable doubt, the courts will and ought to leave the Attorney - General to proceed by criminal information."

It is undoubted that the inherent jurisdiction of the court is special jurisdiction especially in passing orders for committal. The question which arises here is, when was it actually recognised, rather when the court realised this jurisdiction.

---

21 (1970) 1 Ch. 128 C.A.

22 (1900) 2 Q.B. 41.