

The due process of law Lord Denning

Lord Denning was elevated to master of Rolls in 1961. His writings are basically about evolution of law in England. For us this aspect is important because we have adopted English laws. Law of contempt of court evolved in England by judicial precedents i. e. Judgments of higher courts which are binding and considered as law of land till overruled. Lord Denning broadly wrote about 6 types of contempt. Let's consider them one by one.

Contempt in the face of the Court

The most quoted case is of the Year 1631. A prisoner has thrown a Break bat at the judge which narrowly missed. Immediately indictment was done and his right hand cut off and fixed to the gibbet.

Legal aspects - the punishment awarded was barbaric. Contemnor did not have a chance to challenge the punishment as procedural law to appeal the judgment in contempt proceeding was not in place.

Students of Wales's case

The students of Wales invaded the court. Wales is a region in England where Welsh language is used. Radio programs in that region were however broadcast in English and not in their local language. The students were upset because of this. They started demonstrations to make a protest. They came to London. They got in the well of the Court, shouted slogans and disrupted proceedings before the Court. 11 students had been sentenced to prison each for 3 months. They were all taking education in University.

It was the first case before the Court of appeal in which the court of appeal had to consider the scope of contempt in the face of the court. The court of appeal found conduct of students to enter in the well of the court, flocking in the public gallery, shouting slogans and scattering templates, singing song, breaking up hearing of the court which lead to adjournment of case as a contempt in the face of the court. The court of appeal held that the judge of the High Court has power at common law to commit instantly to prison for criminal contempt. The Court having powers to award immediate sentence can postpone the same by an order to bind over the Contemnor by a bond of good behaviour.

The court of appeal held that the students may protest but they must do it by lawful means. The Court also held that after award of the sentence the students have shown respect to the law by challenging the sentence to court of appeal. The court of appeal decided to have mercy on them. The court of appeal decided to release them on the bond of good behaviour with direction to appear and undergo rest of the sentence if the court finds it necessary.

Balogh vs Saint Albans Crown Court the laughing gas case

Mr Stephen Balogh, son of distinguished economist Lord Balogh, was employed as a casual hand by the solicitors for the defence. He was attending trial in new Court house at Saint Albans which was recently air-conditioned. The trial was dragging on and on. He got extremely bored. He thought of a plan to liven it up. He knew about a gas called nitrous oxide which has an exhilarating effect when inhaled. It is therefore called laughing gas. During the trial he took a half cylinder of it from the hospital car park. He carried it with him in briefcase. His plan was to put the cylinder at the inlet to the ventilating system and to release the gas into the court. It would be released from the outlet which was just in front of the counsel's row. So the gas he thought would enliven their speeches. It would be diverting for the others and will give relief from the tedious trial going on in the court. Before putting his plan into practical he got on the roof of the court house at night. He found the ventilating duct and decided where to put the cylinder next morning. Soon after the Court had taken seat at 11:15 am he took the briefcase with the cylinder in it into Court number 1 that was not the Court where he wanted to bring the change. Court number one was having the door leading up to the roof. He put the briefcase on the seat at the back of the public gallery. Then he left for a little while. He was waiting for a moment when he could slip up to the roof without anyone noticing him but the said moment never came. The officers of the court who have seen him on the roof at night were keeping watch on him. They took the Briefcase carefully and open it. They took out the cylinder. They had taken Mr. Balogh in custody. Mr. Balogh told them frankly just what he had done. He was charged with stealing a bottle of nitrous oxide. He admitted it. They kept him in custody and reported the matter to George Stephenson who was presiding code number 1. At the end of the hearing at 4:15 P.M Mr. Balogh was brought before him. The police officer has given evidence. Mr. Balogh admitted it was all true and he meant it as a joke, a practical joke. But the Judge thought differently. He remanded Mr. Balogh to custody overnight and heard the matter next day. The judge has sentenced him for 6 months for contempt of Court.

The official solicitor is appointed to look after the interest of those who cannot or will not look after themselves such as infants and the persons in need of care and protection. The official solicitor has taken on the case of Mr Balogh to the court of appeal.

Legal aspects - The question arose before Court of appeal whether contempt in the face of the court is limited to the incident which the Judge sees with his very eyes. Suppose that Judge has not seen anything but has a witness to prove it, can the Judge try it summarily? Is the offender entitled to legal representation? Is it he entitled to claim trial by jury?

Court of appeal observed that contempt in the face of the court is the same thing as contempt which the Court can punish on its own motion, whenever

there was a gross interference with the course of Justice, no matter whether the judge saw it with his own eyes or it was reported to him by the officers of the Court. Whenever it was urgent and imperative to act at once the Judge can take cognizance of the Contempt.

The power of summary punishment is a necessary power. It is allowed to be exercised in contempt proceedings to maintain the dignity and authority of the Court. To ensure a fair trial it is to be exercised by the Judge on his own motion only when it is urgent and imperative to act immediately. In the present case the Judge was absolutely right to act on his own motion. The intention of Mr Balogh was to disrupt the proceedings. Mr Balogh was already taken in custody on a charge of stealing before he could disrupt proceeding. Then there was no urgency to try him summarily. The judge would have remanded him in custody and invited Counsel to represent him.

Court of appeal also held that Mr Balogh is undoubtedly guilty of stealing the cylinder of the gas but no proceeding was disrupted by his act, no trial was upset, nothing untoward took place. No gas was released. Mr Balogh had the criminal intent to disrupt the court but that is not enough. He was held guilty of stealing the cylinder but not guilty of committing contempt of court.

The victimization of witnesses

Trade unions case

Attorney General Vs Butterworth

Mr Butterworth and others were on the committee of the branch of a trade union. One of the members has given evidence before the Restrictive practices Court which was disliked by Mr Butterworth and others. They deprived him of office as branch delegate to punish him for it. It was reported to the attorney general because he has a public duty to prosecute for contempt of court. Attorney general applied to Restrictive practices Court. The Court held that it was not contempt. Attorney general appealed. Appellate court held that victimization of a witness is a contempt of court whether done when the preceding still pending. Such a contempt can be punished by the Court itself before which he has given evidence victimization is great interference with Justice. No restriction is drawn whether it is done before or after the trial is over. Everyone who has activated the steps is responsible for the contempt. Apology tendered by Butterworth and others was accepted and they were made liable to pay costs.

The tenant is evicted from his home

Chapman vs honig

A house was let by the landlord to various tenants. The landlord has forcibly evicted a tenant. The tenant sued the landlord for damages for wrongful

eviction. Chapman another tenant had seen what has happened. The tenant wanted him to give evidence in his action against the landlord. Chapman fearing what might befall him if he gives evidence against landlord did not go voluntarily to the court. He however gave evidence in obedience to the subpoena served on him by the Court. The next day of giving evidence the landlord served on Chapman notice to quit his first floor flat. The landlord was victimising Mr Chapman for having given evidence. Contempt proceeding was initiated against the landlord. The Judge held that the landlord has issued notice to punish or victimise Mr Chapman for having given evidence in the court.

In appeal Lord Denning expressed view that no system of law can justly compelling a witness to give evidence and then, on finding he victimised for doing it, refuse to give him redress. It is the duty of the Court to protect the witness by every means at its command. If a landlord intimidates the tenant by threatening him with notice to quit the Court must be able to protect the tenant by holding notice invalid. Other two judges found that holding the notice invalid is a pointless exercise because the landlord can give another notice next day or next week or next month and that notice will be valid.

Refusing to answer questions

Attorney General vs Foster Attorney general vs Mulholland

Newspapers reported that it is the sponsorship of two high ranking officials which jeopardized security of admiralty and allowed a spy to operate. The Parliament initiated an Enquiry. Both journalists refused to disclose the source of information. The Attorney General initiated contempt proceeding against them. The Court sentenced them for 6 months.

Legal aspects - Question was raised before the Court of appeal whether a journalist has any privilege. Defence was raised that the witness is only bound to relevant question.

Lord Denning observed that the journalist was under obligation to inform the source of Information and question seeking information about source was a relevant question. About the privilege Lord Denning observed that the only profession which is given privilege from disclosing information to the court of law is the legal profession. This privilege is of the client and not of the lawyer. If the Judge determines that the journalist must answer then he has to answer and no privilege can prevent him to answer.

Scandalising the court

Justice Wilmot in R vs Almon observed if authority of the judges is to be trampled upon by pamphleteers and news writers, the Court will instantly lose its authority and power of the court will no longer survive. The said

judgement was written in a case where Mr Almon having a shop in Piccadilly published a pamphlet criticizing Lord Mansfield for an amendment stating that the amendment is made officiously, arbitrarily and illegally. Attorney General moved an application to commit Mr Almon for contempt of court. The case was argued and Mr Justice Wilmot written the judgement but Mr Almon apologized. The proceeding was dropped and the judgement was never delivered. This was in 1765.

In 1928 newspaper "The New Statesman" had published an article criticizing the judgement of justice Avory. The newspaper posted an article that Dr. Stopes, who was directed to pay damages by Justice Avory cannot apparently hope for a fair hearing in a Court presided over by Mr Justice Ivory and there are so many Avorys

Proceedings were taken against the editor of new states man for contempt of court. The contemnor was ordered to pay fine.

The case of Quentin Hogg

Quintin Hogg, Lord Chancellor written an article for magazine Punch in 1968. He criticised the court of appeal by mentioning that the judgement in the case of r vs Commissioner of police of the Metropolis has rendered legislation of 1960 unworkable by the unrealistic, contradictory and erroneous decision.

Legal principle involved was right of a person in Parliament or out of it, in the press or over the broadcast to make fair comment on matter of public interest. It was held that Mr Hog has criticized the Court but in so doing he was exercising his right to speech. This act of him was not considered as contempt of the Court.

Disobedience to an order of the court

The case of three Dockers Churchman Vs shop stewards

A new Court was set up after passing of Industrial Relation Act 1971. Setting up of new court was bitterly opposed by the trade unions and their members. So much so that they refused to recognise the new court or to obey it's orders. Dockers in the east end of London picketed a depot. The court issued an order commanding them to stop picketing. The Dockers did not appear before the court and continued picketing. The industrial relation Court issued directions to the Dockers to appear before it and give some explanation, otherwise they will be committed to prison. The Dockers decided not to appear before the court. They also decided not to Appeal. They in fact desired to be arrested and sent to jail to get publicity and support to the agitation.

The official solicitor applied to the court of appeal requesting to stay order of the industrial court. Lord Denning observed that official solicitor have authority to apply on behalf of any person who is committed to prison even if he doesn't move the court on his own behalf. It was also held that the evidence before the industrial court was not sufficient.

As per Lord Denning when the Court acts on its own initiative it has to take all the safeguards which are required by the High Court to be taken. The notice given to the contemnor must describe charges against him with all the particulars before depriving a man of Liberty. The court of appeal set aside the order and averted a situation paralysing the country with general strike.

The ward of the Court

In 1976 a 15 year old girl eloped with a man of 28. He gave her drugs and had sexual intercourse with her. Crime was registered against the man and he was taken in custody. Parents of the girl refuse to take her home. She was placed in a hostel and had a status of ward of the court. On the advice of a social worker the man was allowed to visit girl in the hostel. "The Daily Telegraph" published news with heading jailed lover should visit hostel girl 16. The official solicitor thought that the article disclosed some of the proceedings which have taken place in private. Contempt proceeding was taken against Daily Telegraph. The Judge held that it was contempt. The matter was taken to the court of appeal.

Legal principles involved - Disobedience of the order of the court attracts punishment of either fine or imprisonment. It is a criminal offence. It must be proved beyond reasonable doubt. Along with it, it should also be shown that the person committing contempt has a guilty mind. The facts of the case disclose that the parents told Daily Telegraph that the order of wardship was a temporary order and that it has expired. Believing that there is no wardship order the newspaper published the news. The court of appeal observed that there was no mens rea on the part of the newspaper.

Prejudicing a fair trial

Thalidomide case

AC vs Times Newspaper Limited

Thalidomide drug was prescribed to pregnant women. The women who were on this drug give birth to the deformed children. It was in 1962. Suits were filed at once for damages against manufacturers and distributors of the drug. All parents except 5 of them in litigation agreed to a settlement. An application was moved to the Court to remove those 5 parents as next friends to facilitate settlement with rest of the parents. The Court did not allow the application and there was no settlement even after 10 years. The editor of Sunday Times reported that that it has caused him great anxiety as children born with deformities could not get compensation after 10 years.

The newspaper declared that it will investigate the delay and persuade manufacturers to accept their moral responsibility to the children. Attorney General claimed injunction to restrain the newspaper from publishing draft article contending that publication of such article will prejudice the trial by influencing the Judge, the jurors, or the witnesses.

Legal principles involved – what is the scope of freedom of speech to make fair comment in case of matter of public interest and whether news paper can have a media trial in respect of a trial before the court.

The Court observed that we must not allow trial by newspaper or trial by television. This principle however applies when the litigation is pending and is actively in suit before the court. There must appear to be a real and substantial danger of prejudice. Media has freedom to make fair comment on the issue of interest of the public. The one interest must be balanced against the other.

As per court thalidomide children are the living reminders of the National tragedy. The compensation offered is believed by many to be very small. Nearly 12 years have passed and still no settlement has been reached. On such matters the law can and does authorise the newspapers to make fair comment so long as they get their facts right and keep their comments fair, they are without reproach. They do not offend against the law as to contempt of court unless there is real and substantial prejudice to pending litigation which is actively in suit before the court.

The judgement was reversed by the House of Lords. House of Lords stated new principle that newspapers should not publish comments or articles which prejudged the issue in pending proceedings.

Sunday Times challenged decision of House of Lords to the European Court of human rights. The European Court by majority of 11 to 9 upheld the claim of Sunday Times that it had right to impart information about the thalidomide case.