

CHAPTER II

THE LOCAL COURT SYSTEM

A. Origin

The foundation of Penang in 1786 by the British brought about the creation of a simple court system. In 1807, the first Charter provided the establishment of a Court of Judicature. This Court had all the jurisdictions of the English Courts of Law; particularly in Chancery and Ecclesiastical matters in so far 'as the local circumstances permitted.'¹

Gradually, a hierarchy of the District Courts and Courts of Appeal was set up. Later, three systems of courts emerged, which include the Straits Settlement Courts, the Federated Malay States Courts and the Singapore Courts.

In 1948, the Courts Ordinance² was enacted to amend and consolidate the laws relating to the Constitution and powers of the Civil and Criminal Courts. Consequently, a unified and elaborate Court system was formed.

B. Development

To date, the Courts Ordinance, 1948 has undergone tremendous changes and various amendments have been made to ensure that the provisions of the Courts Ordinance 1948 are kept up with the changing

¹ Yeap Cheah Neo v Ong Cheng Neo (1875) L.R. 6 P.C. 381.

² No.43 of 1948.

social conditions.

Since 1948, the local social conditions have altered greatly. In the years, the Malaysian society have become more and more sophisticated. While on the one hand the people demand more rights to protect their interests, on the other hand more crimes and breaches of peace have been committed. At the same time, the government seeks to stimulate rapid economic development by way of introducing Development plans and schemes. Inevitably, the social make-up of the society tends to intensify the rate of commercial conflicts and private disputes which are likely to increase the volume of litigation.

At this juncture, many civil claims have arisen which exceed the jurisdiction of the Subordinate Courts and jam the smooth administration of the High Courts. The increase in litigation activities necessitates the need to relieve the High Courts of the increased workload. As a consequence the Courts Ordinance 1948 has been revised and replaced by the Subordinate Courts Act 1948.

TABLE AJurisdictional Changes Of The Subordinate Courts (1948-1972)

Major Changes	Second-Class Magistrate	First-Class Magistrate	Sessions Court President	Special Sessions Court President
1948, The Courts ^A Ordinance	\$250.00	\$250.01 - \$500.00	\$500.01 - \$1000.00	-
1953, The Amend- ^B ment	\$250.00	\$250.01 - \$1000.00	\$1000.01 - \$2000.00	-
1969, The Amend- ^C ment	\$250.00	\$250.01 - \$2000.00	\$2000.00 - \$5000.00	\$5000.01 - \$10,000
1972, The Subordi- nate Courts Act, 1948 ^D	\$250.00	\$250.01 - \$2000.00	\$2000.01 - \$5000.00	\$5000.01 - \$10,000.00

Source: Drawn from the various Acts and Amendments mentioned below.

Notes: A. The Courts Ordinance No. 43 of 1948

B. The Courts (Amendment) Ordinance, 1953.

C. The Emergency (Essential Powers) Ordinance, No.14 of 1969;
This Ordinance was later repealed.

D. The Revised Act came into force on 1st November 1972.

From 1948 to 1972, jurisdictional changes occurred chiefly in the Subordinate Courts. The First-class Magistrate's jurisdiction has been increased four-fold in respect of the maximum monetary value of the

subject matter in dispute. In 1948 the maximum monetary value of the subject-matter in dispute was five hundred dollars; since 1972 the Subordinate Courts Act, 1948, the maximum monetary value was raised to two thousand dollars. In this connection, the jurisdictions of the Sessions Court President has increased five-fold, from one thousand dollars to five thousand dollars. On the other hand, the Second-Class Magistrate's jurisdiction remains the same throughout the period. This may be due to the fact that for a long time in the past this post has been reserved for administrative officers. The writer feels that the jurisdiction of a Second-Class Magistrate should be elevated; after all these legal officers also carry out similar legal functions as the First-Class Magistrates. On the other hand, legally qualified officers other than administrative officers should be appointed to such a post in the future so as to ensure that better judgement would be given and thus reducing the number of appeals to the High Courts.