

CHAPTER II

1800-1805

After the death of Major McDonald, the Government of India changed the form of the local Government, as before alluded to, and Sir George Leith, Bt., arrived here on the 19th April, 1800, as Lieutenant-Governor.

The following is an extract from his instructions, dated 15th March 1800, under heading.

“The Administration of Civil and Criminal Justice.

Sec. 15. The Right Honorable the Governor-General in Council, having reconsidered the circumstances which have hitherto prevented the establishment of regular Courts of Justice at Prince of Wales’ Island, entertains no doubt of its being equally the right and the duty of the British Government in India to provide for the administration of Justice to the native inhabitants of that Island.

16. The laws of the different people and tribes of which the inhabitants consists, tempered by such parts of the *British law*, as are of *universal application*, being founded on the principles of *natural justice*, shall constitute the rules of decision in the Courts.

17. You will accordingly proceed to frame Regulations for the administration of Justice to the native inhabitants, founded on the above principles.

18. The regulations should define the constitution and powers of the Courts, the cases in which an appeal is to be allowed to you in the first instance and in the last resort to the Governor-General in Council, and they should also specify the fees, which circumstances may admit of your establishing, in the amount of the money, or the value of the property for which suits may be instituted, with a view of defraying the expenses of the Court, including the salary to be allowed to the Judge and Magistrate before whom causes are to be tried in the first instance.

19. As the Code of regulations for the administration of Justice in Bengal may be of material assistance to you, in framing regulations for the administration of Justice at Prince of Wales’ Island, a copy of that Code is now sent to you.

20. With regard to Europeans, residing in the island, they should be required to render themselves amenable to the same Courts as the natives in civil cases, and also in those criminal cases, in which the party injured can be compensated by damages.

21. You will furnish a draft of the covenants which you would recommend that Europeans should be required to execute, with a view to the application of the above principles.

22. Until the regulations which you are now required to prepare shall have been confirmed by the Governor-General in Council, you are to consider the regulations at present in force, as the rules for your guidance with regard to the administration of Justice.

23. Europeans guilty of murder or other crimes of enormity, should, for the present, be sent under custody to Fort William.”¹⁹

Sir George Leith was also informed that “Mr. Caunter, the first Assistant,” was “to be the first Assistant under his (Sir George Leith’s) Secretary.” In a letter dated 10th May, 1800, addressed to the Chief Secretary to the Government of India, Sir George Leith announces his arrival in the Island and his assumption of duties, and in reference to the administration of Justice, he says: “I am now using all my endeavours to forward to His Lordship in Council, a plan for the administration of Civil and Criminal Justice,” and on the 14th of August, 1800, the Governor-General in Council informed Sir George Leith that Mr. Dickens, an English Barrister, had been appointed Judge and Magistrate of Penang. The reason for this appointment is given in the following extract from a despatch to the Board of Directors, dated 2nd September, 1800

“Sec. 26. The Governor-General in Council, in his letter of the 1st March last, acquainted your Honorable Court that he had appointed Sir George Leith to be Lieutenant-Governor of Prince of Wales’ Island.

27. His Lordship’s instructions to Sir George Leith are recorded in our proceedings of the 20th March last.

28. The increasing importance of the Settlement of Prince of Wales’ Island, its distance from the seat of the Supreme Authority in India, and the factious and disorderly conduct of some of the European inhabitants of the Island, rendered it indispensably necessary that its local administration should be established in a respectable footing.

29. His Lordship in Council therefore judged it necessary to substitute the special designation of Lieutenant-Governor for that of Superintendent and to annex to the office the extended powers detailed in the above-mentioned instructions.

36. With a view also of providing more effectually for the administration of Justice on the Island, the Governor-General in Council has appointed Mr. Dickens to be Judge and Magistrate of the Island. This gentleman has practised for several years, as a Barrister in the Supreme Court of Judicature at Fort William, with considerable reputation, and he is fully qualified for the discharge of the judicial duties of the Island, which are now become laborious and important.

37. The Governor-General in Council has not yet determined on the allowance to be granted to Mr. Dickens, His Lordship purposes to take a future opportunity of addressing your Honorable Court on this point as well as on the subject of *the constitution of the Court of Judicature, which he proposes to establish at Prince of Wales’ Island.*”

The first and only appeal case by a private individual, before the proclamation of the Charter, and which was apparently allowed under section 18 of the foregoing instructions, is to be met with at this time in the records. The appeal arose out of a land-case where one *Salleh* and *Oosman Neena* were plaintiffs and one *Loung Pakier Gandar*, defendant. The case was originally heard before Mr. Caunter on the 2nd September, 18th and 21st October, 1800, judgment being given in favour of the plaintiffs, and confirmed by the Lieutenant-Governor, who "could not help remarking upon the very improper means which appeared to have been used to deter *Rajah Palawan* from delivering his evidence in Court, and also upon the information which the defendant declared he received, that no European was allowed to give evidence in causes where natives only were concerned, by which means the cause was not only delayed some days, but an attempt made to impress on the minds of the native inhabitants that the same degree of justice would not be administered to them as to every other inhabitant, a doctrine as unfounded as injurious to the British Government." The defendant having obtained leave by petition to the Lieutenant-Governor, on the 10th November, 1800, appealed against the decision to the Governor-General of India in Council. The following note on the case, made nearly three years after, shews the result:

"This Decree confirmed by His Excellency the Governor-General in Council, as notified in Mr. Secretary Philpot's letter to the Lieutenant-Governor, dated the 31st March, 1803.

W.E. PHILLIPS,

23rd May, 1803.

Secretary to the Lieut-Governor."

Mr. Dickens did not assume duties till some time after his appointment. In April, 1801, Sir George Leith was appraised by a letter from the Secretary to the Government of India of Mr. Dickens' departure, and that he, Mr. Dickens, had been instructed "to continue to act upon the principles of the existing laws and regulations of the Settlement until further orders."

Sir George Leith in May, 1801, complains to the Government of the attitude assumed by the Europeans, and recommends the banishment of one of them from the Island, he adds: "I am compelled to make this reference, and should I be honored with the approbation of His Excellency in Council in this instance, I hope it will put a stop to that litigious and turbulent conduct which has and still continues to influence the actions of many members of this Settlement."

Mr. Dickens arrived on the 7th of August, 1801. He took the bench for the first time on the 27th of that month, up to which period both Mr. Caunter and Mr. Manington, appear to have acted as "Magistrate" and "Assistant" respectively.²⁰ Not long however, after his arrival, Mr. Dickens found out the anomaly of his position. In a letter dated 1st October, 1801, he addresses the Lieutenant-Governor as follows:

"Since my arrival at this Settlement, I have inspected the public records, and find the laws and regulations for the administration of Justice contained in a letter dated the 1st August, 1794, from the Governor-General in Council, addressed to Mr. Light, the then Superintendent of the Island I confess that I cannot readily conceive it to have been the intention of His Excellency the Most Noble the Governor-General in Council, to appoint me Judge and Magistrate of this Settlement, and at the same time to withhold from me judicial and magisterial authority, and I am also fully aware of my inability to render the Government or the public much service, under the existing regulations, which I lament were not made known to me prior to my departure from Calcutta. But I will cheerfully exert myself in performing my share of the public business, so as to lessen the public inconvenience as much as the personal labours of an individual can effect it, and when it is considered that the current business of the Court of Adaulet is managed through the medium of Portuguese, Chinese, Malay and Siamese interpretation, that the proceedings of every case, criminal and civil, are reduced into writing, that there is not a single officer attached to the Court, but the Provost or Gaoler,²¹ that the Judge and Magistrate has neither Register, Clerk nor assistant of any kind, and that the business civil and criminal is considerable, independent of the Police, it will be apparent that little of it can be well performed, that much of it must be delayed, and that until the aforesaid regulations are entirely abolished, justice cannot be effectually administered to the inhabitants of this populous island. To establish a regular Court of Justice for this Settlement, is a work that may easily be effected, and I hope will not any longer be delayed."

Mr. Dickens then complains of the want of authority over British subjects, "having been under the necessity of declining all interference in complaints against them of either a civil or criminal nature, as the power given to the Lieutenant-Governor (of demanding of British subjects to account with their creditors, and in certain cases of summoning them, &c., &c.) was not such a power as could be delegated to him." He also lays great stress on the inadequacy of the Police, and proceeds to make suggestions as regards these. The only reply Mr. Dickens got to his letter was, that it had been forwarded to India. Mr. Dickens however did not rest satisfied, and in a letter dated 25th October, 1801, he again urged the necessity of laws being immediately enacted, and asked that he "or some other person should be empowered as ordinary, to take possession of the real and personal property of persons dying intestate in the Island, or where they left, executors and those were absent from the Settlement, great frauds being said to prevail, and the creditors of persons dying intestate, finding it impossible to obtain payment of their debts, from the assets of the deceased." Correspondence regarding the state of the law continued with indomitable energy on the part of Mr. Dickens, until the departure of Sir George Leith for India on leave of absence on the 2nd December, 1802. Prior to the departure of the Lieutenant-Governor however, in a letter dated 20th November, 1802, Mr. Dickens requested him "to represent to the Governor-General in Council, the many inconveniences sustained by the inhabitants of Prince of Wales' Island from the want of all civil laws,

and especially from the want of laws regulating the descent and alienation of land, and directing the administration and distribution of the effects of persons dying intestate in the Island, and leaving property there situate. . . .” As above stated, Sir George Leith left for India on the 2nd of December, 1802, being replaced during his absence by Mr. W.E. Phillips, the Secretary to the Government. After Sir George Leith’s departure, Mr. Dickens seems to have administered justice as he had found himself compelled to do heretofore, that is to say “according to his instructions” and on the principles of English law, where he considered them universal and applicable.

During Mr. Phillips’ short administration, the records disclose altercations between him and Mr. Dickens on the subject of the dismissal of a case (*The Government v. Carni*, 5th April, 1803) brought, before him on a certain Regulation, dated 18th December, 1802,²² passed by Mr. Phillips, and which Mr. Dickens had previously refused to adopt, considering the measure “unjust, unreasonable and repugnant to the laws of the realm of England,” apart from considering also that the Acting Lieutenant-Governor had no authority to pass such a Regulation,²³ but which case however, Mr. Dickens only dismissed on the sole ground that the evidence did not support the charge, without going into the subject of the Regulation at all. On the case being sent to the Acting Lieutenant-Governor, the latter sent for Mr. Manington his “second-assistant,” who had already been examined by Mr. Dickens as a witness in the case, and after further examining him, reversed the Judge’s decision, and sentenced the prisoner to four months’ hard labour. This matter will be found referred to further on, by Mr. Dickens, in a letter addressed by him to the Government of India, on the 21st June, 1803.²⁴

On the 12th of May, 1803, Sir George Leith returned to Penang. From this moment a regular *guerre de plume* broke out between the Judge and Magistrate, and the Lieutenant-Governor. Angry correspondence passed between them, Mr. Dickens complaining of the interference of the Lieutenant-Governor with the independent discharge of his duties, — the Lieutenant-Governor only assenting to such decisions as met with his own views and reversing all those with which he disagreed, and substituting his own. The following will illustrate one of those cases, tried on the 21st May, 1803:

John Brown, Provost, “on behalf of the Government,” charged one *Hough*, a Chinaman, with stealing certain carpenter’s tools, “the personal goods and property of whom, the said John Brown has been informed, were late the personal goods and property of one *Loung Hang*, deceased, and which said goods were fraudulently taken and carried away from the late dwelling-house of the said *Loung Hang*, deceased, on the 19th instant, against the peace, &c.” To the charge, the prisoner pleaded not guilty, and in his defence, denied he had stolen the tools and asserted that the deceased was his relative. Mr. Dickens delivered the following judgment:

“Under the circumstances in which this Island is placed of not having any laws transmitting the property of a person dying here (leaving property) to any certain description of persons, either kindred by consanguinity, affinity or otherwise, it is impossible for the Judge to say who is the owner of the carpenter’s tools, the subject of the present prosecution. And it is an axiom of general law in the civilized parts of the world, that no theft can be committed unless there be some property in the thing taken and owner thereof. These carpenters’ tools may indeed be called the property of a person unknown, and a prosecution may be carried on for taking them, without the intervention of the owner, as in the case of wreck, wharf or stray, being taken away by others, before they have been seized by those who have a right therto. But by the laws of England such taking would not be felony, and would only be punished by fine. It is difficult in this case to determine in whose custody these carpenters’ tools were after *Loung Hang’s* death, so as to create a special property therein, and a dead man can have no property, and there is no law of succession continuing the property in chattels after *Loung Hang’s* dereliction of them by his death, to convict the prisoner of the charge of stealing these tools.

It appears to the Judge, property therein must be proved in somebody, but no evidence being given to this effect, the Judge must, if English law furnishes the rule, presume it in the prisoner from the plea of not guilty, and he is accordingly acquitted of this charge.

JOHN DICKENS,
Judge and Magistrate.”

This decision was, as usual, forwarded by the Judge and Magistrate to the Lieutenant-Governor who, disagreeing with it, substituted the following:

“It appears to me, that the prisoner, having first denied any knowledge of the carpenters’ tools, and then bringing three saws and delivering them to the prosecutor, is a clear proof that he did know where the tools had been deposited, and that he was conscious in his own mind he had not any right to them, otherwise it is not likely that he would have delivered them without asserting his claim to them at that time or at all events when first upon his defence. I do therefore think he is guilty of stealing the said carpenters’ tools, and do accordingly adjudge him to be imprisoned two months in gaol, and put upon the works for that period.

The tools to be delivered to the prosecutor.

GEO. LEITH,
Lieutenant-Governor.”

Greatly irritated at this decision of the Lieutenant-Governor, Mr. Dickens, on the receipt of the papers, immediately wrote him the following letter:

COURT OF ADAULET,
George Town,
May the 22nd, 1803.

“To

SIR GEORGE LEITH, BART.

Lieutenant-Governor of Prince of Wales' Island.

SIR,

I have received the proceedings in the case of the *Government v. Hough*, which I yesterday transmitted to you, and on perusing the same, I find that you have convicted the said Hough of larceny, who had been by me acquitted in a regular course of trial of that offence.

By the regulation of the 31st of August, 1794, the Superintendent for the time being can arrest the execution of the sentence of the Magistrate, and can order a new trial, but no judicial power is given to the Superintendent, to convict a person acquitted by the Magistrate by virtue of the said regulation, and I know not of any greater.

The sentence you have given, appears to me unwarranted by any power to you given, with which I am acquainted and totally inconsistent with any principle of civil and criminal justice: I therefore hold it my sacred duty to represent to you, in the strictest manner, the sense I entertain of this act, leaving you to order the execution of your own sentence, in any manner you are pleased to direct for I cannot in any manner be instrumental to the punishment of a man whom I have found innocent.

After your perusal of this letter, in the event of your being pleased to order the execution of your own sentence, I have enclosed an attested copy of the proceedings in this case, which I request you will transmit with due vigilance, with a copy of this letter, to be laid before his Excellency the Most Noble the Governor-General in Council, by the *Vigilant* now under despatch; since in my opinion justice will be deeply wounded by your act. But let me again further beg leave to state, that the owner of the goods apparently dying without a Will, and without any heir or representative, and there being no Ordinary on the Island, to whom the goods could be said *pro tempore*, to belong, and the goods not being found in the possession of any one, — the prisoner was tried for stealing the goods of a person unknown, and guiding myself by those general principles, of the criminal law of England, which are not local but universal, and founded on reasons everywhere applicable, I have decided this case according to what Lord Chief Baron Gilbert did in a case before him. He said: “An indictment might be good for stealing the goods of a person unknown, *but a property must be proved*

in somebody at the trial, otherwise it shall be presumed that the property was in the prisoner by his pleading not guilty to the indictment, for a man shall not be found guilty of felony, and hanged upon presumption."

My situation as Judge and Magistrate of this Settlement, having given me frequent opportunities to observe the manifold inconveniences arising from the want of an Ordinary at this place, on the 20th November, 1802, understanding you were going to Fort William, I addressed you on the service, and requested you would represent these inconveniences to His Excellency, amongst others which I then pointed out.

As since your return, you have not done me the honor of making any communication on this or any other of the many subjects respecting the administration of Justice which in my opinion greatly call for regulation, I am under a necessity of acquainting you, for the information of His Excellency the Most Noble the Governor-General in Council, that as I have done, so I shall continue to decide in criminal cases, upon the general principles of English Criminal Law, and the law of evidence received in English Courts of Law, and if it is intended that I should decide by any other law, or if it is His Excellency's pleasure that your decisions should be according to Martial Law or *Secundem Arbit*, and severally those given by me, according to the general principles of the law of England, I hope to be honored with His Excellency's directions therein that I may not hereafter decide any case contrary to your judgment or without being previously instructed therein.

I have, &c. &c.

JOHN DICKENS,

Judge and Magistrate.

In answer to the above, Mr. Dickens got the following curt reply:

FORT CORNWALLIS,

The 22nd May, 1803.

To

JOHN DICKENS, ESQ.,

Judge and Magistrate,

&c., &c.

SIR,

I am directed by the Lieutenant-Governor to acknowledge his receipt of your letter to him of this date.

I am, Sir,

Your obedient servant

W.E. PHILLIPS,

Secretary to the Lieutenant-Governor.

The following is also another illustration of the cases on record, where Mr. Dickens complained of interference by the Lieutenant-Governor with the discharge of his duties. The case, apart from this circumstance, and its interesting nature, is also inserted as illustrative of some of the early decisions given in the Colony.

Court of Adaulet.

2nd June, 1803.

Palangee v. Tye Ang

and

In the goods of Ethergee, deceased.

Palangee, by his bill of complaint, claimed the sum of 605 Spanish dollars from the defendant in virtue of a nuncupative Will of the deceased, and alleged he was the cousin of the said *Ethergee*, and had been specially requested by the testator to receive the aforesaid sum from the defendant *Tye Ang*, and appropriate the same to his (*Palangee's*) use. The defendant admitted his indebtedness to the deceased, but denied all knowledge of the plaintiff, and expressed his willingness to pay the money to the Lieutenant-Governor, on his getting a receipt therefor, and on his being indemnified against any future claims.

Mr. Dickens delivered the following judgment:

The complainant *Palangee* by his bill of complaint, alleging himself to be the representative of one *Ethergee* (who died on this island) claims and sets up a right to demand and receive from the defendant *Tye Ang*, the sum of six hundred and five dollars as due to the estate of *Ethergee*.

The defendant admits that he is indebted to the amount stated, to the estate of *Ethergee*, but denies that the complainant is the legal representative of *Ethergee*, and avers that the said complainant is not by any law in force at Prince of Wales' Island, authorized to receive the assets of *Ethergee*, and that the said complainant cannot by his receipt discharge the defendant from the said debt, if claimed hereafter by a legal representative of *Ethergee*.

The facts proved in the cause, are the death of *Ethergee* at Prince of Wales' Island, and that he made a nuncupative Will an hour before his death, which happened about a month and fifteen days ago, and in his own house [.....] by which Will he gave his property to his brother at Bombay, — and that the deceased left a daughter at Surat is stated in the complainant's bill of complaint. The allegation in the Bill, that the complainant is the cousin of *Ethergee* is not substantiated by any evidence, but *Coorjee* deposes that the deceased desired the complainant to collect his debts and effects. Upon these facts, the Judge and Magistrate is called upon to give a judicial opinion (under the Regulation of the 1st August, 1794, by which the Judge and Magistrate is directed to hear and try actions of debt, and all suits of a civil nature — and also

under the instructions given to the Judge and Magistrate to act upon the principles of the existing laws and regulations of this island) — Whether the complainant can compel the defendant to pay the debt owing by him, to the deceased's legal representatives, to the complainant in this cause: The Judge and Magistrate thus situated, finds it necessary, to premise some material observations, before he delivers his judicial opinion in this cause, that the reason of that judicial opinion may not be misunderstood.

1st. After the strictest enquiry for the existing laws and regulations of this island upon the principles of which the Judge and Magistrate has been as aforesaid, directed to frame his judgment, the Judge and Magistrate has ascertained, that Prince of Wales' Island prior to its cession to the British Government was under the dominion of a Chief who governed it in an arbitrary manner, and not by any fixed laws, and it does not appear to the Judge and Magistrate that since the said cession, any code of civil municipal law has been enacted by due and competent authority as the law of this island for the government of the Judge and Magistrate in pronouncing a judicial opinion in this cause. And it is certain that the Judge cannot find one single civil or municipal law so enacted, and the municipal laws of any other country, merely as such, cannot have any legal force at Prince of Wales' Island.

2nd. The only law then that appears to be in force at Prince of Wales' Island, is "The Law of Nature" — for Municipal law, or Civil law, by which the society at Prince of Wales' Island may be governed, however much wanted, has hitherto escaped the research, and has not been produced by the industry which the Judge and Magistrate has been enabled to apply for its attainment. And the Judge and Magistrate trusts that that industry, however unsuccessful, has not been unobserved by the Supreme power which rules this island.

3rd. But the law of nature is silent, and gives no precepts respecting Wills, and testaments, or rights of succession, or of inheritance. It affords no light upon these subjects, or respecting the forms and precautions necessary to be observed in granting probates of Wills and Letters of Administration to intestates effects. These things are mere creatures of civil or municipal law — when any of these things therefore, become the subject of judicial controversy before the Court of Adaulet for this island, where is the Judge and Magistrate to look for information? He has no resource, but in his own unassisted reason — *Sed melius est judicare secundum leges et literas quam ex propria scientia et sententia.*

4th. It is true that Wills and testaments, rights of succession and inheritance in most of the civilized countries of the world are regulated by the Civil and Municipal Law of each country — but then nothing varies more than the rights of inheritance or succession, and the forms and precautions observed in granting probates of Wills and letters of administration to intestates' effects under different national, and even under different provincial establishments. It is hence apparent also that it is the power of the Civil, Municipal law, and that alone which

regulates the succession to property; and the different ceremonies requisite to make a testament valid, and for granting probate thereof, as well as for granting letters of administration to the effects of persons dying intestate, depend in civilized countries upon the Civil, Municipal, law alone, and not upon the unassisted reason of the Judge.

5th. As all claim to the property of a deceased person therefore, must be futile, if it is not founded on the positive Municipal or Civil law of the place, where the property is placed, the "*lex rei sitoe*," for the law of nature is silent thereon and as Prince of Wales' Island is absolutely without any positive Municipal or Civil law, and as the positive Municipal or Civil law of any other country cannot as such have the force of law at Prince of Wales' Island, and if it could, as the positive Municipal or Civil laws of different countries greatly vary — What in this case is the duty of the Judge and Magistrate — Where is he to find a Rule of decision? Where a principle of selection?

6th. It appears to the Judge and Magistrate, that thus situated, it is his primary duty to prevent injustice, cautiously to administer the sacred office committed to his charge, and to seek in the absence of positive Municipal Law, and precise instruction, some fair principle, wherever he may find it, which may serve the justice of the case, and if the Judge and Magistrate errs, it will be remembered "*Humanum est errare*," the duties he has to perform are likely to embarrass a much wiser person than he can pretend to be, and he has the consolation, that his errors are not without remedy, they can be rectified by the best informed and the highest authority in India.

7th. To prevent tumults, and the good order of this island, from being disturbed, which must happen if cases of this nature were not decided by judicial authority, since a variety of persons would contend about the possession of property left derelict by the death of its owner, the Judge and Magistrate (without the assistance of any Civil or Municipal law) has thought himself called upon to give a judicial opinion in this case, although perhaps, it may, by higher authority, be thought a case not within the Judge and Magistrate's jurisdiction.

8th. The Judge and Magistrate, who was taken from the English bar, where he had the honor of being, by His Excellency the Most Noble the Governor-General, placed in this office, very naturally looks to the general principles of the law of England, and whenever (by fair analogy, and considering the difference of circumstances of men and things at Prince of Wales' Island, compared to those in England) the principles of either the Common or Statute law of England can be made subservient to the decision of cases brought before him, the Judge and Magistrate in the absence of positive Municipal, or Civil law means to avail himself of that help which his knowledge of the laws of England may furnish in deciding such cases.

9th. The Statute of Frauds and perjuries, that is to say, the 29th Charles 2, Chapter 3, sections 19 and 20, furnishes a rule, of which the principle seems applicable to the decision of this case. That Statute enacts: "That no nuncupative Will shall be good, where the estate

bequeathed exceeds the value of £ sterling 30, if it is not proved by the oaths of three witnesses at the least — that were present at the making hereof — nor unless it be proved that the Testator at the time of pronouncing the same did bid the persons present, or some of them, — bear witness, that such was his Will, or to that effect — nor shall it be proved till process hath first issued to call in the widow or next-of-kin to contest it if they think proper.”

It is the opinion therefore of the Judge and Magistrate, (as the complainant has not proved himself akin to Ethergee, who has left a daughter at Surat, and a brother at Bombay, nor offered any reasons why he should be entrusted with the administration of the estate even if he had proved himself akin to the deceased, without giving good security that he will not embezzle the effects, as is practised in the Courts where testamentary causes are decided in the other parts of the British Dominions, and as he has not in his bill offered to give that security, and as the Nuncupative Will is not proved by the oaths of three witnesses who were present at the making thereof) that the complainant's bill of complaint should be dismissed, and the defendant released from further attendance on this Court.

JOHN DICKENS,

Judge and Magistrate.

This decision was reversed by the Lieutenant-Governor, who remarked as follows:

BY THE LIEUTENANT-GOVERNOR,

June 3rd, 1803.

The defendant Tye Ang having admitted that he is truly indebted to the estate of the deceased Ethergee, in the sum of Spanish Dollars six hundred and five (605), and further that he is willing to pay the above-mentioned sum into the hands of the Lieutenant-Governor of this island, on his having a receipt granted for the same, and on his being indemnified by the said Lieutenant-Governor against any claim that may hereafter be made on the part and behalf of any of the heirs or representatives of the said Ethergee, or of any other person or persons who may be legally entitled to demand the same in a due course of Law: Therefore in order to prevent any loss or detriment to the kin or heirs or representatives of the aforesaid Ethergee, deceased, the Lieutenant-Governor is willing, in the meanwhile, and until some person lawfully authorized shall appear hereupon to receive from the defendant Tye Ang on the part and behalf of the said kin or heirs or representatives, the said sum of Spanish Dollars six hundred and five (605) into the Hon'ble Company's Treasury at this Island, and to grant the defendant a receipt as required for the same; and the defendant is therefore ordered and directed to pay the above-mentioned sum into the Hon'ble Company's Treasury on or before the 15th day of this present June 1803, when copy of this decree, signed by the Lieutenant-Governor, shall be deli-

vered to the defendant Tye Ang as a certificate thereof, to serve as a receipt for the same, and an indemnity against all claims thereafter to be made upon or against the said Tye Ang, or his heirs or representatives for paying the said sum of six hundred and five Spanish Dollars as hereby required.

GEORGE LEITH,

Lieutenant-Governor.

This decree of the Lieutenant-Governor, was carried out in opposition to the decision of Mr. Dickens, and the estate administered by him. It may not be considered tedious to cite one further case as illustrative of the nature of sentences passed at this period for criminal offences; the more so, as jurisdiction in cases of perjury, seems to have been exercised very summarily, — the prisoner being brought up immediately on the conclusion of the case wherein perjury was said to have been committed, and sentenced:

4th June, 1803.

The prisoner (*Hoong Pah*) was charged with having falsely sworn on the above day, in a case wherein one *Mababa* was the plaintiff, and one *Chee Choo*, the defendant, that he had seen the plaintiff 'put her mark to a certain paper-writing,' in "the presence of *Tiquo*, Captain of the Chinese, whereas in truth and in fact, *Tiqwo*, the Captain of the Chinese, was not present, &c., &c."

.....

SENTENCE:

Hoong Pah is convicted of the offence of wilful and corrupt perjury, and is sentenced to be set in the Pillory opposite to the Captain China's house in George Town, on Monday next, at 5 o'clock p.m., and to remain in the said Pillory for one hour, and to have a paper put upon his head, written in the Chinese language and character, 'for swearing falsely before the Judge,' and after he is taken from the Pillory, the said Hoong Pah is to be publicly whipped, and to receive fifty lashes in the usual manner, and on the 7th day of September next, the said Hoong Pah is to receive another fifty lashes in the usual manner, and on the 8th day of December next, the said Hoong Pah is to receive another fifty lashes in the usual manner, till which last-mentioned day, the said Hoong Pah is to be imprisoned and put to labour on the public works, and after that day he is to be discharged, and the said Hoong Pah is hereby for ever rendered incapable of being admitted as a witness, in any case before the said Judge and Magistrate.

JOHN DICKENS,

Judge and Magistrate.

Unlike other decisions and sentences, no annotation of the Lieutenant-Governor appears in this case, beyond the following note by the Provost:

"On account of the bad state of health of the prisoner, the Lieut.-General has been pleased to respite the execution of the sentence till further orders."

June, the 6th 1803.

J. BROWN,

Provost.

At this period, a serious discussion took place between the Judge and the Lieutenant-Governor. The case wherein this arose was that of one *Cauder v. Ibrahim*, and wherein, a native Captain had exceeded his jurisdiction, according to the Lieutenant-Governor's "Instructions," dated 1st May 1800, by dealing with a demand exceeding 10 dollars, which case came judicially before Mr. Dickens, who animadverted strongly upon it, as well as on the powers granted to native Captains in such cases. As these "Native Captains" administered justice for such a number of years after the foundation of the Colony, and as a matter of fact, formed part of an institution recognised and controlled by the then Government, it will not be thought out of place to give here a copy of the more recent Rules (redrafted on those of 1794) under which they were guided, the more so, as the question of investing Native Chiefs and Village head-men, with certain powers over their own sect, was but recently under the consideration of the Government. The following therefore cannot but prove interesting, and is taken from the Court Records:—

*Instructions for Native Captains*²⁵

- Art. 1st. You are hereby appointed Captain of all People under the denomination of in Pulo Pinang.
- 2nd. You are to keep good order among your People, to see that they behave quietly and peaceably in their Habitations, as you will be answerable for the same, and you will be protected and supported by Government in the duty of your office.
- 3rd. You are to hold a Court at your own house twice a week on the days preceding the Cutcherry days.
- 4th. You are to try all petty causes, between people of your own tribe, such as people querrelling, fighting, or abusing each other, and all religious or family disputes, you are to determine agreeably to the Laws of your own Religion.
- 5th. In all cases of debt under ten Dollars, your decision shall be final.
- 6th. In all cases of debt, if the demand is for more than ten Dollars, and either of the parties not satisfied with your decision, they may appeal to the magistrate, after acquainting you with their intention so to do, and you are to inform the Magistrate thereof, who will give them a hearing the second Court day following.

- 7th. In all causes of appeal, the complainant is to deposit in the Magistrate's Court, (or give security) one Court day previous to that on which the cause is to be tried, five per cent. on the demand, if under five hundred dollars, if above five hundred dollars as far as one thousand dollars, four per cent., and all above one thousand dollars, three per cent.
- 8th. The money so collected to be kept in the Magistrate's office towards defraying the expenses of paying the officers belonging to the same.
- 9th. On a cause being decided, the person who is cast is to pay the amount of the deposit.
- 10th. You are to have two men to sit with you in your Court, and all disputes are to be decided by the majority of voices.
- 11th. In order to prevent all causes of jealousy or discontent among your People, the men for this office, are to be chosen as directed in the following articles.
- 12th. On the first day of every month, you are to give in the names of twelve creditable House-keepers to the Magistrate, and they are to be summoned; their names to be written on twelve pieces of paper and put in a box, and the names of the first eight that are drawn out, those men are to sit with you in your Court. One month, two of them sitting every week, and in case any one is sick and cannot attend, one of the four whose names were not drawn, is to attend in his place.
- 13th. The names of the eight men so chosen, to be published by beat of Gong, and none of them to be exchanged but by consent of the Magistrate, who, in case of emergency, will appoint one of the four whose names were not drawn to act.
- 14th. In case of any person appointed as above directed, refusing to attend without shewing sufficient reason, he will be fined, the first time five dollars, the second time ten dollars and and forfeit the protection of the Court for six months, the third time he will be confined in the common Jail for one month.
- 15th. If the parties in dispute are of two different tribes, you are to appoint two men of each tribe in dispute, and they may choose another person for an Umpire, a majority of these five to determine, in all disputes under ten dollars. If above ten dollars and the parties are not satisfied with the decision, they may appeal to the Magistrate, as directed in the seventh Article.
- 16th. In case one of the parties complains to his Captain, that he thinks himself injured by the decision of the five People as above directed; the Captains of the two parties are to make the same known to the Magistrate, who will order two men out of the eight of each caste that are in dispute to sit with the Captain of the third caste, and the decision of the majority of these five to be final.

- 17th. You are to keep Register of all Marriages, Births, and Deaths among the people of your tribe, — for which purpose you are allowed a writer, and you are to bring such Registers, and shew them to the Lieutenant-Governor every three months, on the first day of the month.
- 18th. Upon the arrival of any people of your tribe in the island, you are to make the necessary enquiries about them and inform the Governor thereof, and if any stranger comes to lodge in any man's house, if it be only for a night, the landlord of the house is to give in to his Captain or those acting under him, in writing the name and occupation of such person, as he (the landlord) must be made answerable for the behaviour of such person.
- 19th. You are to attend the Magistrate's Court on Court days, and to bring with you a Lebbie²⁶ who is qualified to administer oaths to such people as may have occasion to swear in Court, and in case of any disturbances, discontents or combinations among your people, you are to make the same known to the Governor, and you are to see the prices of Rice, Paddy, &c., settled, and to examine the weights and measures among the people of your tribe.²⁷

(Signed) GEO. LEITH,
Lieutenant-Governor.

Written by Order of the Lieutenant-Governor, Thursday, 1st May, 1800.

(Signed) W.E. PHILLIPS,
Secy. to the Lieut.-Governor.

Angry correspondence [. . .] ensued, that Lieutenant-Governor informing Mr. Dickens that his remarks were improper and unbecoming, [see below] that he was prepared to take upon himself the administration of Justice, and of his intention to submit the papers in the matters [i.e. *Cauder v. Ibrahim*] to the Governor-General in Council.

".... I beg leave to say, that my letter to you was not written with any design whatever to convey disrespect to you, on the contrary, it was written with an intention of observing all the respect due to the high station you fill, but at the same time to uphold the respect due to the high station with which I also have been honored. And with the utmost sincerety do I return you my thanks for the communication there made of your intention of laying that letter before His Excellency the Most Noble the Governor-General in Council I am pleased to find that as "Assistant to the Lieutenant-Governor" (Mr. Dickens' predecessor,) that gentleman executed the duties of that office in obeying the Lieutenant-Governor's orders, but I cannot admit that it is the duty of the Judge and Magistrate implicitly to obey the orders of the Lieutenant-Governor where they appear to him to contravene the existing laws and regulations of this Island. . . ." (*Extract from Mr. Dicken's letter of nth June, 1803, to Sir Geo. Leith, Bt., in reference to above.*)

Mr. Dickens thereupon, obtained permission from the Lieutenant-Governor, and addressed the Government of India. No apology is here offered for inserting Mr. Dickens' letter in full, as it sets out entirely the state of the law, and the condition of the Settlement of Penang, from its earliest days. Some of the cases that had formed the subject of controversy between Mr. Dickens and the local Government, and which have been hereinbefore noticed, as well as the case that gave rise to the letter, (*Cauder v. Ibrahim*) will be found set out in the following:

PRINCE OF WALES' ISLAND,
COURT OF ADAULET,
GEORGE TOWN, 21st June, 1803.

To

JOHN LUMSDEN, ESQ.,
Chief Secretary to Government,
Fort William.

SIR,

1. It is with the express permission of the Lieutenant-Governor of this Island, that I now have the honor of addressing this letter to you, and for the purpose of its contents being submitted to the consideration of his Excellency the Most Noble the Governor-General in Council.

2. The Lieutenant-Governor who has assured me that he will transmit this my representation will probably remark thereon, but if the Lieutenant-Governor should deny the facts as stated by me, I must beg of you to lay before his Excellency in Council my request that I may be allowed to substantiate by evidence any facts stated by me in this letter which may be contested by the Lieutenant-Governor.

3. I find it necessary to premise that his Excellency in Council, on the 23rd June, 1800, appointed me Judge and Magistrate of this island, honouring me at the same time by recording that I had practised with considerable reputation at the bar, and that I was fully qualified for the discharge of the judicial duties of this island now become laborious and important — that at his Excellency's desire, personally communicated to me, I prepared some observations which, on the 1st October 1800, I humbly submitted for the consideration of His Excellency in Council with a view to the enacting of certain regulations for the administration of Civil and Criminal Jurisprudence, and for the establishment of Courts of Civil and Criminal jurisdiction and of an efficient Police at Prince of Wales' Island — that on the 22nd January 1801, I humbly submitted for the consideration of his Excellency in Council some additional observations on the same subject²⁸ — that on the 30th April 1801, I was directed to proceed to this Settlement by the first favourable opportunity, and on my arrival here, to enter upon the discharge of the duties of the office to which I had been appointed, and to continue to act upon the principles of the existing laws and regula-

tions of this island until further orders — that on the 27th²⁹ August 1801, I arrived at this Settlement — that neither upon my first arrival, or at any time since, did the Lieutenant-Governor by word of mouth or in writing, communicate to me or converse with me about the duties of the office of Judge and Magistrate, except that I was soon after my arrival, told by the Lieutenant-Governor's Secretary, that the whole of the Police establishment was under the immediate orders of the Lieutenant-Governor himself, and that neither that establishment, nor the native Captains were under the orders of the Magistrate.

4. The Gentleman who officiated as Magistrate at the time of my arrival, was the first Assistant of the Lieutenant-Governor, and it was his duty as an assistant to the Lieutenant-Governor to carry the Lieutenant-Governor's orders into effect, but I was not appointed an assistant to the Lieutenant-Governor, and no doubt because the wisdom of His Excellency in Council foresaw that the best security for the impartial administration of justice in an island where the government is often virtually interested in the decisions of the Judge, was the independency of the Judge. In my letter therefore to the Lieutenant-Governor hereinafter mentioned, I expressed my surprise that magisterial authority was withheld from the Magistrate, but as regulations for the island were daily expected from his Excellency in Council, at that time I acquiesced without representing the circumstances of the Police establishment (from the time of my arrival) being separated from the authority of the Magistrate, and of the native Captains being *then* made independent of the Magistrate. It is now however my duty to state expressly for the information of his Excellency in Council that from the time of my arrival here in August 1801 to this date, — although I was appointed Magistrate of the island by the authority of his Excellency in Council, I have not been allowed to perform the functions of a Magistrate by the immediate interference of the Lieutenant-Governor and his Secretary, and that the name of Magistrate has alone appertained to me.

5. The Lieutenant-Governor did not furnish me with any copies of any existing laws or regulations. The Gentleman who acted as Magistrate, on my arrival gave me no material information of any kind relating to the duties of my office, and the only papers which can in any respect be supposed to be the existing laws and regulations of the island are the following documents — "A letter of the Governor-General in Council, dated 1st August 1794, addressed to Mr. Light, some proclamations, advertisements, and regulations respecting the Police, the convicts, the bazaar, the management of cattle, the articles under which the revenue is formed, and the registering of mortgages with perhaps some less important articles that I do not now recollect." These are written in a book which was delivered to me by the former Magistrate at the time of my arrival, and these are the papers which can be supposed the existing laws and regulations of the island, which, from the time of my arrival until this day (except the Lieutenant-Governor's instructions to the native Captains) have been by any one communicated to me either directly or indirectly, and I have not been able upon my own researches to discover any other existing laws or regulations of this island.

6. His Excellency in Council has been heretofore informed, that Prince of Wales' Island prior to its cession in 1785 was under the dominion of a chief who governed arbitrarily and not by fixed laws. It is now my painful duty to state that it has so continued to be governed without fixed laws, for upon the hour of my arrival on this island, there were not any civil or criminal laws then in existence, and there are not now any municipal, civil or criminal laws in force on this island. The law of nature is the only law declaring crimes and respecting property, which to my knowledge, at this day exists at Prince of Wales' Island — and as Judge, it is the only law which I can apply to criminal or civil suits brought in judgment before me — but as the law of nature gives me no precepts respecting the right of disposing of property by wills and testaments, the rights of succession, and inheritance, and the forms and precautions necessary to be observed in granting probates of wills and letters of administration to intestates effects or respecting many other things which are the subject of positive law, I have often been much embarrassed in the execution of my duty as Judge in the Court of justice in which I preside, and many cases there are in which I am utterly unable to exercise jurisdiction.

7. The cultivation of this island, the increase of its commerce, and of its population, has made it necessary that fixed laws of property as well as laws declaring what acts are crimes, should be promulgated by due authority. The inhabitants before my arrival had, I am told, their causes more quickly decided, and summary hearings no doubt, have their advantages, but my judgments until confirmed are not valid. Formal and plenary proceedings are therefore now necessary, not only to protect the liberty and property of the people, but also to protect the character of the Judge, who must shew on the face of his judicial proceedings the whole subject-matter of his decisions. This creates to me incalculable labor and some delays, and it has been one of the causes of my addressing his Excellency in Council, and the Lieutenant-Governor of this island, with a view to the enacting of a Code of Criminal and Civil Municipal Law.

8. Thus, on the 3rd August, 1801, I addressed a letter to the Lieutenant-Governor, a copy of which letter I had heretofore the honor of transmitting to his Excellency in Council, and I now beg leave to refer thereto for further particulars. Thus, on the 25th October, 1801, I represented to his Excellency in Council that to prevent disturbance and tumult, a positive law was immediately requisite, declaring the rights of succession and inheritance; the law of wills, and the mode of granting probates of wills and letters of administration to the effects of persons dying intestate. And that it was necessary that the Magistrate or some other person should be empowered as Ordinary to take possession of the real and personal property of persons dying intestate on the Island, or where they left executors who were absent, and to hold the same *in usum jus habentis*, till a proper person appeared to administer the estate, not only because great frauds in this respect were said to prevail, but because the creditors of the deceased could not obtain payment of their just debts, no one appearing to administer, and no one being authorized to act in the premises. And thus again, I ventured to address his Excellency in Council on the 1st and 23rd January — on the 6th and 18th February, and on the 1st March, 1802, and I now beg

leave for further particulars to refer to the said letters, and their several and respective enclosures, which are I believe, Sir, on record in the Office of the Chief Secretary to the Government at Fort William.

9. On the 6th May, 1802, I had the honor of receiving a letter, dated 28th January, 1802, signed C.R. Crommelin, Secretary to the General Public Department, informing me by the directions of the Vice-President in Council, that all my letters should be addressed to the Lieutenant-Governor, on whom it would depend, if he should deem it proper, to transmit them to Government with such observations as he might judge it to be necessary to submit, respecting them.

10. On the 7th May, 1802, the Lieutenant-Governor requested my attendance at the Government House, and there communicated to me the contents of a letter addressed to the Lieutenant-Governor by the directions of the Hon'ble the then Vice-President in Council, and dated the³⁰ [.] February 1802, and signed C.R. Crommelin, Secretary, by which letter the Lieutenant-Governor was desired with the least possible delay, *and with the assistance of the Judge and Magistrate*, to prepare and transmit for the approval and confirmation of his Excellency in Council (and without waiting for the completion of the whole code thereby required) Drafts of such laws and regulations, as most urgently required legal provision; even on this occasion, the Lieutenant-Governor did not honor me with any communication of his sentiments, but preserved such a solemn silence on the subject referred to [as] *our mutual labors*, by the letter of Mr. Secretary Crommelin, that I confess I was at that time greatly surprised. Yet as Mr. Secretary Crommelin's letter to me had informed me, that no communication was to be made to his Excellency in Council, but what the Lieutenant-Governor deemed proper, I contended myself with drawing "A Regulation for the punishment of certain crimes and misdemeanors therein mentioned, and which should or might be committed at any time after the due promulgation of that regulation by any person or persons therein particularly mentioned, and described at Prince of Wales' Island, the islands and territory thereto subordinate, and the high seas within the limits and jurisdiction thereof." And another "Regulation for the establishment of an efficient Police at Prince of Wales' Island, the islands and territory thereto subordinate." And as the Lieutenant-Governor did not make any voluntary communication of his sentiments on the subject mentioned in Mr. Crommelin's letter, the Judge and Magistrate, did not think it either respectful to the Lieutenant-Governor, or fit for the Judge and Magistrate to intrude upon the Lieutenant-Governor (when the Judge and Magistrate was at the Government House) his unrequired sentiments on the subject; but on the 1st June, 1802, I addressed a letter to the Lieutenant-Governor conveying at large my sentiments on the Civil Code required by Mr. Crommelin's letter, and transmitting at the same time the drafts of the two aforesaid regulations, and requesting that the Lieutenant-Governor would transmit a copy of my letter of the 1st June, 1802, and the drafts of the aforesaid two regulations if he deemed it proper so to do to his Excellency in Council. In my letter of the 1st June, 1802, having detailed at large my ideas on the subject, I then also requested that the Lieutenant-Governor would furnish me with his specific instructions for the Civil Code, or that he would generally refer the subject for the decision of his Excellency in Council, as to the prin-

ciples upon which it was to be framed. To that letter of the 1st June, 1802, the Lieutenant-Governor did not deem it proper to return me any answer. No, not even an acknowledgment of its receipt, and to this hour, I am ignorant whether he has or has not transmitted it or the aforesaid regulations to his Excellency in Council, the Lieutenant-Governor having ever since that time preserved an *altum silentium* on this subject.

11. When the Lieutenant-Governor was about to return to Fort William, that is on the 20th November, 1802, again I addressed to him a public letter representing at large the inconveniences resulting to the society here settled from the want of fixed Civil laws, and praying that the Lieutenant-Governor would be pleased to lay these inconveniences before his Excellency in Council, I am at this day ignorant whether the Lieutenant-Governor has complied with the wishes of the people and my request, on this subject also he has preserved an *altum silentium*.

12. I now come to the time when Mr. Phillips, Secretary to the Lieutenant-Governor, took charge of this Government. The Lieutenant-Governor left this island on the 2nd December, 1802; — and the late acting Lieutenant-Governor on the 18th December, 1802, of his own authority, promulgated a regulation³¹ which, on the 2nd April, 1803, he required of me as Judge and Magistrate of this island to receive in the Court of Adaulet, and to act therein in a criminal case wherein a man of the name of Carni was charged with theft. Previous to the promulgation of this regulation, that is to say, on the 14th December, 1802, I was consulted by the late acting Lieutenant-Governor on the subject of passing such a regulation, and I then gave my opinion that the late acting Lieutenant-Governor had not any legal power to promulgate any such regulation as law, previous to its being approved and confirmed by His Excellency in Council; and on the 3rd April, 1803, I had occasion to repeat that opinion in a public letter that day written by me to the late acting Lieutenant-Governor. On the 5th April, 1803 the said Carni was tried before me as Judge in the Criminal Court, and acquitted of the said charge alleged against him, because no evidence whatever was produced against him, which, upon the general principles of evidence received in the Courts of England, and on the Continent of Europe could justify a verdict of guilty. The late acting Lieutenant-Governor, after Carni had been tried and acquitted before me as aforesaid, sent for Mr. Manington, his second assistant, and examined him at the Government House in the absence of Carni, and then, upon the second assistant's deposition, found Carni guilty of offending against the said regulation of the 18th December, 1802, and sentenced Carni to 4 months' imprisonment and hard labor on the public works, and the late acting Lieutenant-Governor actually carried that sentence into execution. As the late acting Lieutenant-Governor heretofore, has informed me that he would transmit the proceedings in the case of Carni and the correspondence between us on that subject to his Excellency in Council, it is only necessary for me now to remark that I refused to receive the late acting Lieutenant-Governor's regulation of the 18th December, 1802, as a law in the Criminal Court of Justice in which I sat as Judge, — first — because it had not been approved and confirmed by his Excellency in Council, and secondly, because it appeared to me unjust, unreasonable, and repugnant to the laws of the realm of England.

13. On the 21st April 1803, the late acting Lieutenant-Governor addressed to me a public letter stating that in order to prevent delay in the prosecution of revenue causes (at present unavoidable as it was there said) in the Adaulet from the multiplicity of business brought before that Court, the late acting Lieutenant-Governor had thought it expedient to insert a clause in the regulations for the farms of the approaching official year signifying that all such causes would in future be heard by the first Civil Assistant, or such other officer of Government as the Lieutenant-Governor might nominate for that purpose, whose proceedings would be submitted to the Lieutenant-Governor for his sanction or disapproval, and on that occasion I thought it my duty to state in reply,³² that the clause referred to, appeared to me likely to affect the dignity and efficiency of the Office of Judge and Magistrate, and the purity of the administration of justice in this island, — and I now desire to state for the information of his Excellency in Council, that there were no causes at that time in arrear in the Court of Adaulet, that I had never complained to the late acting Lieutenant-Governor of want of leisure to hear revenue causes; and that from circumstances I am induced to think the reason assigned, that is to prevent delay, was merely ostensible. I beg leave also to submit to his Excellency in Council, my opinion on the spirit of this clause, which seems contrary to the principle on which approved writers state, all revenue laws should be framed, — which is, that justice should be the primary, and revenue only the secondary object of such laws. To effect this, the Judge should be as independent as possible, of both the parties to a revenue cause, — but in a question between a farmer of the revenue and a subject of the Government, the farmer of the revenue always represents, that if he is not supported in his prosecution of abuses, he will be unable to pay his rent, and, although the farmer of the revenue is the nominal complainant, it generally happens in point of fact, that the interest of the Government is involved in the cause. I cannot therefore think that justice was likely to be better administered in revenue causes, by an assistant to the Lieutenant-Governor (whom I do not mean in any manner to disparage) than by a Judge who would act independently of the orders of the Lieutenant-Governor.

14. I now come to the period when the Lieutenant-Governor returned to this island, on the 12th May, 1803, and I had flattered myself that he would have returned with a code of laws and regulations. When I was disappointed in this hope, I still ventured to think that from his known access to his Excellency the Most Noble the Marquis Wellesley, I should at least have received some communication from the Lieutenant-Governor, making it easier for me to proceed in the laborious task of deciding in the Court of Adaulet, such causes as are the subject of positive law, and not of the law of nature, but again I was disappointed. I testified the greatest respect to the Lieutenant-Governor on his return to this island on the 12th May last, but it was impossible for me not to observe the marked coolness with which, upon my first visit of ceremony, I was received by the Lieutenant-Governor. I lamented the cause, for I supposed the late acting Lieutenant-Governor previous to the Lieutenant-Governor's disembarkation, had communicated our correspondence in the case of Carni, and to this communication, I imputed my cold reception by the Lieutenant-Governor, but whatever my private feelings were, I did not suffer any other consideration than that of

public duty to influence my public conduct as Judge. Soon afterwards, on the 21st May, the case of Hough occurred. Hough was accused of theft, and tried before me, and acquitted for the same reasons as Carni was acquitted, — the charge not being proved. And the Lieutenant-Governor did in Hough's case, what the late acting Lieutenant-Governor had done in the case of Carni. I therefore thought it my duty to request the Lieutenant-Governor to lay before his Excellency in Council, a copy of the proceedings in Hough's case. But as the Lieutenant-Governor did not deem it proper to communicate to me, whether or not he would, according to my request, transmit the proceedings to his Excellency in Council, I am ignorant of his intentions therein. I further beg leave to state for the information of his Excellency in Council, that, on the 2nd June, 1803, the case of *Palangee v. Tye Ang*,³³ came before me in the Court of Adaulet, and the plaintiff's bill was dismissed, but the Lieutenant-Governor afterwards, directed the defendant to pay a sum of money into the Treasury, and actually administered to the effects of one Ethergee, deceased, named in the plaintiff's bill, without any communication with the Judge on the subject, the Secretary of the Lieutenant-Governor giving his directions immediately to the Provost.

15. On the 7th June, 1803, the cause of *Cauder v. Ibrahim*³⁴ came on before me, in the Court of Adaulet, and the proceedings in this cause, with the correspondence between the Lieutenant-Governor and the Judge and Magistrate, (as I understand,) by the Lieutenant-Governor will be herewith transmitted. In this case, it will appear, that a question incidentally arose on a paper promulgated on the 1st May, 1800, by the Lieutenant-Governor, which paper was entitled "Instructions to the Native Captains," — and it will appear that the Lieutenant-Governor thought proper after a period in the cause, to depart from the accustomed mode of delivering judicial opinions, and directed his Secretary to write to me a letter, in which I am addressed rather as if I was an assistant to the Lieutenant-Governor, and subject to his orders, than as Judge and Magistrate of this island, and in which I am questioned as if I had committed some fault by omitting some act, which I ought to have done, and which seems to have been some act supposed necessary to give effect to the Lieutenant-Governor's instructions to the native Captains, — but on this head I beg leave to refer to the letters themselves, which will shew the facts. By Mr. Secretary Phillips' letter, dated the 14th June 1803, the Lieutenant-Governor has charged the Judge and Magistrate, in discussing this incidental question (originally raised in the cause of *Cauder v. Ibrahim*, and revived in the correspondence) with making improper, and unbecoming observations, and, by Mr. Secretary Phillips' letter, dated the 17th June, the Lieutenant-Governor has charged the Judge and Magistrate with writing to the Lieutenant-Governor with an evident design of conveying disrespect to him, and the Lieutenant-Governor has therein declared his intention of submitting the proceedings in the case of *Cauder v. Ibrahim*, and the correspondence on the incidental question which thereon arose, to his Excellency in Council. It is therefore, that I now request, that you will assure his Excellency in Council, that I am absolutely incapable, of such weak, unmanly, and unbecoming conduct as that imputed to me, that is to say of intentionally writing in my official character of Judge, anything unbecoming, improper, and disrespectful to the Lieutenant-Governor; that I feel assured his Excellency in Council will consider

my language, though manly and firm, yet to be decent and respectful, and such as became the Judge and Magistrate to write on that occasion. Permit me to add that I felt myself bound by every sense of duty and gratitude to his Excellency in Council (who had done me the high honor of appointing me to the office of Judge and Magistrate, and of recording to my credit the reason of this appointment) to resist every indignity offered to the office of Judge and Magistrate. And I beg you to assure his Excellency in Council, if I have erroneously viewed this subject by being placed too near it, that I have only to answer for the imperfection of my language, for my intention certainly never was to write anything disrespectful to the Lieutenant-Governor; and I trust the conduct I have observed since my appointment to the office of Judge and Magistrate will repel this accusation. On this head, I appeal to the Lieutenant-Governor himself, and I am not afraid the Lieutenant-Governor can object to me, misconduct of any kind, — if he can, I do not on this occasion, implore his forbearance, but I greatly lament, that the necessary effect of the treatment I have received, may be to bring my jurisdiction into contempt, and to throw suspicion on my character.

16. I beg of you to assure his Excellency in Council, that nothing less than an occasion in which the welfare of this society, and my own character are involved, would have led me to take up so much of his time, as must be consumed in hearing the contents of this letter, — but on the letter itself, this apology must rest, if its contents have not the importance which I have annexed to them, I confess I am without any other apology.

I have, &c.,
JOHN DICKENS,
Judge & Magistrate.

Nothing in the records can be found to shew what steps were taken in consequence of Mr. Dickens' letter to the Government of India, but no doubt, it hastened the new arrangements which were made in 1805, for the Government of the Island. The records however, contain endless correspondence between Mr. Dickens, the Lieutenant-Governor and the Government of India, in connection with the state of the law, in regard to which, Mr. Dickens seems to have been determined to bring about an improvement. He prepared and submitted regulations, which were forwarded to the authorities in India, and by the letter returned to Penang for further information or otherwise — time thus went on without any change being effected, and some of the draft regulations are still to be found amongst the records of the Court in Penang.

The following, written by Sir George Leith in 1804, shortly after his relinquishment of duties in Penang, apart from shewing the state of the law during his tenure of office, especially in its application to Europeans, goes in support of what has already appeared herein, and moreover, most forcibly shews, what to this day is a fact, how little imprisonment acts as a deterrent to Asiatics generally:

“The total want of an efficient Code of Civil and Criminal Laws, has long been severely felt at this Settlement. In the great variety of people who compose its population, it must be supposed, that numbers

will readily embrace the opportunity here unfortunately presented to them, of practising the most nefarious acts, when they are sensible, no power exists to coerce or restrain them. This observation applies particularly to all those who are not included under the general, but indefinite expression of natives, as no European can be imprisoned for debt, nor even sued for it; while on the other hand, he has the power of recovering any money which may be due to him from any native: that is, every man who is not considered as an European; and the consequences naturally to be expected from such a state of things, have been but too often experienced. No difficulty has ever occurred in settling, even by the present defective Regulations, every dispute of a civil nature, wherein natives only were concerned, or where they were only defendants; but then, there is no redress for them against the many usurious and shameful practices which some Europeans are but too ready to employ; nor can one European recover against another, in the Court established here, even upon the clearest and most undisputed plea.

The want of a Criminal Code has been also a serious evil to the community at large; many persons are now, and have been for a long time confined in Jail, charged with Capital Crimes, without the means of bringing them to trial.³⁵ Most of these above alluded to, are confined for murder, and a very large majority of them, upon their own confession; and the rest have been confined upon such strong presumptive evidence, as rendered it impossible to liberate them; and enormities have been committed but too often, which are too shocking to mention; and there is too much reason to fear that these will frequently be renewed, unless due means are provided for the punishment of such crimes in the manner they deserve; and that as soon after their commission as a due attention to Justice will admit.

Imprisonment for any length of time, however dreadful the idea is to an European, is by no means considered by the natives of Asia in general, in the same light, and least of all perhaps by a Malay, who, while he is fed, and permitted to sleep undisturbed, cares very little for the loss of his liberty. Most of the murderers are Malays.

The Lieutenant-Governor was ordered in his Instructions, to frame a Code of Laws for the future government of the Island: He accordingly transmitted a draft of some Regulations, for the better administration of justice in Civil causes, and in Criminal ones, where compensation could be made by damages. The subject of Criminal Law relating to Capital Offences, was not entered upon. The great and important political events, and the variety of pressing business which constantly occupy the attention of the Supreme Government, have hitherto prevented these Regulations from being promulgated. The Code was drawn up with every possible degree of care and attention, and with the most anxious solicitude, to offer a remedy for the many evils which now exist. Defective as the proposed Regulations undoubtedly were, it was nevertheless hoped they might do some good, and serve till a more perfect Code could be framed.

In making Regulations for the interior Government of Prince of Wales' Island, the most particular attention should be paid to its situation; to the People who compose its population; their Habits, Manners,

Customs and Prejudices, should be consulted;³⁶ everything which relates to their Religious ceremonies; domestic disputes, and recovery of debts among each other to a certain amount, ought to be left to themselves, but under fixed and well defined Rules and Regulations, which should be made as public as possible, to prevent a deviation from them. The great division of the natives, as at present, should each have a Captain, who becomes more immediately responsible for their conduct; the beneficial effects of such an Establishment are too well-known to require to be particularly enumerated”³⁷

Sir George Leith was succeeded by Mr. Robert Farquhar as Lieutenant-Governor on the 1st of January, 1804. Sir George Leith signed the Court Books for the last time on the 31st December, 1803. Mr. W.E. Phillips continued as Secretary to the Government. In a letter to the Governor-General, dated 16th April, 1804, Mr. Farquhar alluded to the want of reform in the administration of justice, he said:—

“Section 9. With respect to the internal economy of the Government, I feel it my duty to submit to your Excellency’s attention, the great and increasing difficulties that this island labors under, from its remaining without any regular Courts of Jurisdiction. The state of the Police is so lax and inefficient that neither persons nor property are secure, and crimes and misdemeanors are daily committed with impunity, from the want of adequate powers on the spot to punish delinquents according to their deserts. As Your Excellency however is fully informed of the evil consequences resulting to this Settlement from the want of a code of regulations to enforce the observance of laws, and a respect for the peace of society, and as several plans have already been submitted to Your Excellency’s consideration, I shall not again intrude further than to respectfully solicit the early transmission of Your Excellency’s orders on this subject.”

And on the 27th September, 1804, Mr. Farquhar received a letter from Lord Wellesley, to the effect that ‘a code of regulations for the administration of civil and criminal justice, and for the establishment of an efficient Police at Prince of Wales’ Island, had been under the consideration of the Governor-General in Council for some time, and that the Governor-General in Council proposed at an early period to pass them into laws for the general government of the Settlement.’ Codes were framed, but nothing however came of them all being re-submitted for the ultimate decision of the Governor-General.