

### CHAPTER III

1805-1808

In 1805, the Government of India determined upon forming Penang into a separate Presidency, and in September of that year, the first Governor, Mr. Phillip Dundas, and Council arrived. The first Council was held on the 20th of that month. The following is an extract from the despatch of the Court of Directors establishing the new Government, under heading,

#### ADMINISTRATION OF JUSTICE

Section 68. The administration of justice being a very important part of the arrangement required for the better government of Prince of Wales' Island, we have presented an humble petition to his Majesty that he will be graciously pleased to grant a *Charter for the administration of justice* in Prince of Wales' Island, by erecting the Governor and Council with the assistance of a Recorder, into a Supreme Court of Judicature.

69. When we consider that at the time we took possession of Prince of Wales' Island, it was uninhabited, our right to prescribe the system of laws which we may deem most eligible for the government thereof, cannot be controverted, since none of its inhabitants who have repaired to the island, can claim any prescriptive right, founded on ancient usage, to the establishment of any particular system of laws or form of judicial proceedings. The establishing, as far as may be possible, of one regular system of laws for the various descriptions of inhabitants, *with a proper attention to their respective customs and manners*,<sup>38</sup> seems to be the most politic mode that can be adopted under the present circumstances of the island, you will therefore, transmit to us, from time to time, such regulations and laws as you may think proper to issue for the internal government of the island.

On the 22nd October, 1805, Mr. Dickens addressed a "Memoir with respect to the enactment of laws, Civil and Criminal, and the establishment of Civil and Criminal Courts of Justice," and at the same time transmitted drafts of four regulations to the Governor in Council. At the end of his memoir, Mr. Dickens says: "As a Charter of Justice, granted by the King for Prince of Wales' Island, is expected to arrive before the close of this year, Mr. Dickens is aware, that the four regulations accompanying this memoir may be useless. Mr. Dickens however respectfully submits them, and the facts stated in this memoir, as a proof that for five years and upwards, his endeavours have been constantly exerted to fulfil the duties of his station as Judge and Magistrate of Prince of Wales' Island."

In their first despatch to the Court of Directors, dated 12th November, 1805, the Governor and Council of the Presidency, made the following allusion to the administration of justice, which, it will be seen, sets out the state of the law at the latter end of 1805.

## ADMINISTRATION OF JUSTICE.

Section 87. We look with impatience for the arrival of His Majesty's charter for the administration of justice at this Presidency. The Charter is so indispensably necessary, that without it, we venture to predict that the prosperity of this Settlement cannot be permanent. It will be deserted by all orderly, and will become an asylum for the flagitious and the enemies of government and law.

88. If unfortunately the granting of this charter should by any circumstances be delayed, we shall deem it our duty to exert the authority vested in us for restraining the turbulent and punishing the disobedient of the European part of our inhabitants, in any case where the exertion of primary authority may appear to us requisite.

89. The only power we found on the island, bearing the appearance of a regular administration of justice was lodged in the office of the Judge and Magistrate, who, in conformity to certain regulations established under the authority of the Government General, by whom he was appointed, decides or rather gives his opinion on all suits where the parties, or at least the defendants, are not Europeans — this opinion became a sentence on being confirmed by the Lieutenant-Governor, who also had the power of reversing and altering the same if he thought proper.

90. Petty thefts, assaults, and in general all crimes, not amounting to felony, are tried in the same manner, and the convicted punished under the sentence.

91. To prevent the total cessation of everything in the form of an administration of justice, we have for the present authorized the Judge and Magistrate, Mr. Dickens, to continue in office with the same allowance he has heretofore received, amounting to Rupees 2,000 per mensem, under the regulations and instructions he has heretofore acted upon, submitting his opinion to us for our confirmation or otherwise.

92. In all cases of accusation amounting to felony, the accused are tried under the above regulations, by a Court consisting of the Governor, the Judge and Magistrate, and a third person summoned by them, who report their opinion to the Government General. The accused, if found guilty, are committed to close confinement. We can only be induced to bring cases of this nature to trial, in the hope that the party accused may be found innocent, and consequently liberated, as it appears that the Government General in no one instance since the institution of this Court, if such it can be called, have passed an order for execution on the sentences referred to them, or even taken any notice thereof, from which circumstance there now remain in goal, twenty-one convicted murderers likely never to be punished.<sup>39</sup>

93. The above relates only to such cases where natives are the parties, while the more turbulent European remains on the island free from all restraint, with power of committing every act of injustice and irregularity towards his neighbour, and the most peaceable native, having set at defiance all authority as not legally established on the island.

On the 27th December, 1805, the Governor and Council passed a "Regulation creating and establishing an Ordinary," and from that date, Mr. Dickens acted in that capacity, the books and records of the Court, bearing his signature as such up to the opening of the Court of Judicature in 1808.

Native laws and usages seem also to have been given full effect up to this period. The following case, tried a few days before the establishment of the new Government, gives such an instance, nor is any apology offered for citing it, as it is only given as an illustration of similar privileges, which are up to the present day granted by the Supreme Court to natives, when they apply for same in Civil cases, *viz.*, of being allowed to go to some sacred spot or place to take an oath in justification of their claim or conduct.

#### COURT OF ADAULET.

*12th September, 1805.*

*Ramalinga Putty v. Mootee Samee.*

Claims 54 dollars as his share in a lime-kiln and for partnership accounts.

The defendant after having been *sworn on water and vegetables*, denies the claim.

The plaintiff appears to me either stupid or knavish, and I find it impossible to make myself understood by him, or he from some secret purpose declines answering the questions proposed to him for the purpose of elucidating his case. The plaintiff at last proposed to go to the *kramat*<sup>40</sup> and there to swear to the truth of the balance really due to plaintiff, and the defendant consenting to this, I think the *Chooliah* interpreter should go with them, and there compromise the matter between plaintiff and defendant.

Approved.

R.T. FARQUHAR,  
*Lieut.-Governor.*

JOHN DICKENS,

*Judge & Magistrate.*

The following is one of the instance alluded to above, and of recent date. The case is taken *ver. et lit.* from the learned Judge's book in Penang.

*(Before Mr. Justice Ford.)*

April 13, 1883.

*Lim Guan Teet v. Yew Boh Neo & anor.*

Action on a Promissory Note.

Execution denied.

*Thomas*, for Plaintiff.

Defendant in person.

By consent of both parties, if plaintiff goes to swear according to Chinese custom by cutting off head of a cock, and burning joss sticks before the temple in Pitt Street, he shall have verdict, if plaintiff refuses to do so, there will be verdict for defendants.

The Interpreter of the Court directed to accompany the parties.

Arrangement tumbles through, priest of temple declining to allow.

Verdict by consent for 150 dollars. April 18th.

On the 21st December, 1806, Mr. Dickens writes an amusing letter to "Thomas Raffles, Esquire, Acting Secretary to Government," for the information of the Government and Council, complaining of the treatment he had received early that morning from a European, a Mr. Douglas, who had accosted him whilst out driving, and "required an explanation and satisfaction of him" in regard to a case tried by him the day previous, and in which he, Douglas, had appeared as defendant. After relating certain facts in regard to Douglas, Mr. Dickens concludes his letter by expressing regret at the want of authority over British subjects. The following is an extract from the letter in question:

GEORGE TOWN,

21st December 1806,

9 o'clock A.M.

TO

THOMAS RAFFLES, ESQUIRE,

*Acting Secretary to Government.*

SIR,

It is with real concern that I am again obliged to request that you will represent to the Hon'ble the Governor and Council, that this morning Mr. Douglas, an inhabitant of this island, was guilty of a wanton outrage on me, in my public character, as *Judge* and *Magistrate*, for the

*judicial* conduct which, in obedience to the orders of the Honourable Board, it has fallen to be my duty to observe towards him in the various suits lately preferred by and against him in the Court of Justice over which I preside.

[2nd. .... ]

3rd. Mr. Douglas heretofore took the liberty of addressing a letter to me in my official capacity, on the cover of which I wrote that all official applications should be made in person, or by attorney constituted in writing, and affixed to this writing the seal of the Court. Notwithstanding this notice, the day before yesterday, Mr. Douglas directed a letter to me, omitting on the direction my official character, which letter enclosed an extract of a letter from Mr. Acting Secretary Raffles to him, conveying a reprimand, and called on me to state, why such a reprimand had been given him by the Honourable the Governor and Council. I did not reply to this letter, but yesterday in open Court, where Mr. Douglas appeared as a defendant to a suit instituted against him, I addressed myself to him, and observed, that the proceedings on which the Honourable Board *had exercised their judgment* were those signed by himself, all which he had heard, read. And that I knew not by what right he presumed to call on me to explain why the Honourable Board reprimanded him, and that I was surprised he should take the liberty of writing to me a letter on such a subject, after I had stated to him that I did not receive any letter on official business, and that it was extremely improper in him to address a letter directed to me as a private individual on a public judicial subject.

4th. I also stated to Mr. Douglas, that he must be aware that he had sworn before me, that he believed Varshay died without a Will, and that his affidavit *was on record*, when it afterwards appeared that at the time he, Douglas, made the affidavit, he had a Will of Varshay's in his possession, and which he afterwards produced, on which Will, there was endorsed in the English language and character, two endorsements — one in pencil "Varsey's Will," the other in ink "Supposed Will of Varsey Mahomed."<sup>41</sup>

5th. Mr. Douglas thought proper to declare in open Court, that he did not come there to be reprimanded by me. Upon which I observed to him, that if he wished it, I would make a minute on the proceedings of these circumstances, and submit my conduct therein to the judgment of the Hon'ble the Governor and Council, as he was not subject to my *ordinary* jurisdiction. Mr. Douglas, not appearing to wish that I should enter such a minute, it did not appear on the proceedings of yesterday's Court.

6th. A little before 7 o'clock a.m., of this day, near to the new Convict lines, I met Mr. Douglas, on horse-back, being myself in a carriage. Mr. Douglas addressed himself to me, requiring an explanation and satisfaction for my conduct to him in Court. I told him I was surprised at his daring to interrogate me in that manner, and that I would not permit him, or any man, to except that I would explain to

him my official conduct as Judge, upon which he threatened me, saying "he would have ample satisfaction," and swearing "he would have my blood." Human nature is frail, and I confess that I was wrong in my reply. I told him, "he was a scoundrel," and that he had now an opportunity, "and that if he had the spirit to do it — why did he not now take his revenge?" His answer was, "he had no pistols, but if he had he would."

7th. Having narrated these facts, and apologized for the momentary irritation occasioned by the wanton attack made on me by such a person, I can only repeat, that this event furnishes another instance of the injurious effects resulting from the Honourable the Governor and Council, compelling me to examine into complaints against British subjects, whose respect and obedience to my judicial opinion I not only cannot command, but who think themselves authorized to resent as a private personal injury, the judicial duties I perform in obedience to the injunctions of the Honourable the Governor and Council.<sup>42</sup>

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

There is nothing on record, to shew that Mr. Dickens received an answer to his letter, doubtless because the authorities themselves were powerless to act.

Under the new Government of 1805, the Governor discontinued the system of personally corresponding with or counter-signing or remarking upon the decisions of the Judge and Magistrate, and the correspondence and cases all bear the signature of Thomas Raffles, either as "Assistant," or "Acting Secretary," with the annotation "Approved," or "by order of the Governor and Council." From this period the Court papers also bear the impression of a seal, with the words "The Seal of the Judge of the Court of "Prince of Wales' Island." The records, from a very early period, also shew that Mr. Dickens, apart from local codes or regulations, was also consulted by the authorities on matters of local importance.

Among other duties performed by the Judge and Magistrate, he had, by a Proclamation of the Lieutenant-Governor, dated 21st September, 1801, and another of the Governor, dated 15th March, 1806, to take acknowledgments of all conveyances and mortgages of lands, these being subsequently registered in a "Register of Transfers," kept in accordance with the proclamations. Some of these Registers are still to be found among the records of the Court. Mr. Dickens' career, closed with the opening of the Court of Judicature, which, it will be remembered, was first mooted by the Government of India in their despatch to the Board

of Directors, dated 2nd September 1800.<sup>43</sup> The following is taken from Mr. Dickens' last Court Book:

31st May, 1808.

The Court met pursuant to its last adjournment, and the Judge and Magistrate having received information from the Governor and Council, that Sir Edmond Stanley, Knight, Recorder of Prince of Wales' Island, had arrived at that place, bringing with him his Majesty's Letters Patent, establishing a Court of Judicature for Prince of Wales' Island, and that the said Court would this day be opened and proclaimed, and that on such opening, this Court would be abolished, this Court therefore, is now declared to have ceased and determined for ever.

JOHN DICKENS,

*Judge & Magistrate.*

Mr. Dickens shortly after this left for India, and with him ended the most lawless period of the Settlement of Penang, and greatly through his untiring energy and exertion must be attributed the hastening of the grant of the first Charter.