

CHAPTER V

SECOND CHARTER OF JUSTICE.

1827-1855.

SIR JOHN THOMAS CLARIDGE.

1827-1829.

1830-1832.

NO RECORDER.

In 1825, by Act 6, Geo. IV, c. 85, s. 21, Singapore and Malacca [.] were annexed to Penang, as one Presidency, and a new Charter dated 27th November, 1826, on the petition of the East India Company, was granted by the Crown, which created the united "Court of Judicature of Prince of Wales' Island, Singapore and Malacca." Before being annexed to Penang, "during the first seven years of its existence, Singapore was a residency administered by a subordinate officer, directly responsible for all his acts to the Supreme Government of India. This officer, with the aid of two assistants and two or three Clerks, discharged the whole Civil duties of the Settlement, *including the administration of Justice*, Police, the Pay Department, Civil and Military⁶⁵" Malacca was, of course, ruled by Dutch Law before being taken over by the East India Company.⁶⁶

The new Charter was, to a great extent, but a repetition of the previous one, having for its main object, the extension of the jurisdiction of the Court over Singapore and Malacca.⁶⁷ The Governor and Councillors continued to be Judges under it, and the Recorders also, to make Penang their head-quarters.⁶⁸

The 2nd Charter only reached Penang in August, 1827. although Sir John Thomas Claridge, the first Recorder under it, had arrived in July, 1826. This would appear to have been "owing to negligence in some office at home, . . . during that period, Sir John Claridge offered his services, and they were generally accepted," as before stated, "as-a sort of assessor to the Lay Judges of the Court."⁶⁹ On the receipt of the Charter, the usual formalities were gone into of proclaiming the Charter, making Rules and Orders of Court, — Court hours being fixed from 10 a.m. to 3 p.m., settling Tables of Fees, and other matters connected with the working of the Court, — some of which tables of fees, although partly amended since the new constitution of the Court, are still in force at the present day. [*i.e.* 1890]

On the 18th October, 1827, Commissions of the Peace were issued for the first time, none having been issued under the first Charter, the Judges of the Court thereunder, having been also Justices of the Peace.⁷⁰ The Commissions related to the three Settlements, and the following are those who were first appointed "to act as Justices of the Peace for the three Settlements," the same being "duly recorded: Messrs. Kenneth Murchison, John Anderson, Thomas Church, William Elphinstone Fullerton, Patrick Ogilvie Carnegie, Charles William Henry Wright, Richard Caunter, Edward Presgrave, John Pattullo, William Thomas Lewis, Samuel George Bonham, Alexander Laurie Johnstone, Christopher Ridoubt Read, John Argyle Maxwell and Hugh Syme." On the 3rd December, 1827, by letter from "John Anderson, Secretary to the Government," the Registrar was informed, that "it was not considered desirable that the names of Messrs. John Anderson and W.E. Fullerton, should be in the new Commission, about to be prepared, as the public duties of those gentlemen would render their regular attendance as justices impracticable, and that the following gentlemen had been directed to attend the Court to take the prescribed oaths as Justices of the Peace of Prince of Wales' Island, Singapore and Malacca, *viz.*, Messrs. A.M. Bond, R.F. Wingrove, R.J. Cuthbertson and William Anderson," thereby implying that in those days, these appointments were not merely nominal, as they became in many instances in future years.

From this date, the records shew similar appointments made from time to time, all being duly recorded. Appointments of Justices of the Peace, are now [1890] regulated by Ordinance 3 of 1878, *s.s.* 55, 56 and 59, their powers being defined under Ordinance 20 of 1870.

The Governor, Mr. Robert Fullerton, and the Councillors, sat with the Recorder, but a few days after the Proclamation of the Charter, which took place on the 9th of August, and on the 2nd of October, a minute is recorded that the Governor had enquired from the Registrar "whether at any time the Governor or any member of Council as Judges, assumed any direct interference over the transaction of the business of the Court, the Recorder being present." Having received a reply that there was nothing on record on the point, the Governor and Councillors discontinued to sit with the Recorder. The latter immediately entered a protest against the course adopted by the Governor in not sitting with him, and "refused to take on himself the conduct of the Court business independently of his colleagues" because *1st*, he was not bound by the Charter to conduct the business of the Court, *2nd*, that the Charter directed the Court to consist of the Governor, Recorder and Resident Counsellors at each Station, and spoke of the Court collectively, *3rd*, that he refused to make a precedent to bind any future Recorder, *4th*, that the Government had made no provision for the payment of his Clerks' salary, *5th*, that there was no Court Establishment formed — or to what extent, if formed, aid would be afforded by the East India Company, and *6th*, that when he saw a "full, efficient and respectable Court Establishment of Clerks, Interpreters, &c., formed," he was willing and prepared, if his colleagues desired it, to take on himself the sole conduct of the business of the Court, "in the full belief that it was for the public benefit that he should do so" and that his other colleagues had other duties to attend to.

The Government took no notice of this minute, and neither the Governor, nor any of the other lay Judges again attended the Court. Correspondence followed on this and other subjects, violent minutes being recorded, and no Court Establishment formed. The Recorder, on the 10th October, 1827, recorded his surprise at the Governor not having attended on that day, as he had promised to do, and adjourned the Court to the following day, "proposing at the same time," a meeting of the Judges respecting the Court Establishment, and recording his refusal to conduct the Court business, unless supported by officers in whom he could place confidence. In answer to this minute, which was duly forwarded to the Governor, the latter explained his absence, and excused himself on the plea that he had "mentioned it only as the day on which it might probably be convenient for him to attend, that the Charter required the presence of only one Judge, and that the Recorder was therefore fully competent to propose any list of Establishment he might see fit." From this day a regular schism broke out between the Recorder and the other Judges. The Records abound with the disputes that took place between the Executive and the Court at that time, — displaying great irascibility of temper, and a *very sad state of affairs*. — and certainly worse than had ever happened before or after the grant of the first Charter of Justice. It will easily be conceived however, as before stated, that in this [essay], and moreover at this period, the matter being no longer of any moment, it is not desirable, especially in this case, that the particulars in connection with these disputes, should be set out, however much they may have happened under a previous Government, — but suffice it to say that those under notice were all referred to the Board of Directors, eventually ending in the re-call of Sir John Claridge from the office of Recorder.⁷¹ The charges against him were six in number, and shortly as follows:

First, his refusal to execute the duties of his office of Recorder in the manner observed by his predecessors, until the Government guaranteed the payment of salaries to the officers of his Court, upon an increased scale.

Second, his refusal to administer the oaths to Mr. Murchison, the Resident Councillor of Singapore, when duly appointed, in order to qualify himself as a Judge of the Court.

Third, his refusal to proceed to Singapore and Malacca for the purpose of holding Sessions for the trial of criminals at those Settlements, unless the Government would pay the circuit expenses.

Fourth, his exertion of authority, in repealing individually a standing Order of Court, which had been passed by a majority of the Judges.

Fifth, his unbecoming conduct towards his colleague, the Resident Councillor of Malacca.⁷²

Sixth, his having made use of his judicial station, to hold up the administration of Government with reference to the judicial establishment, to public odium.⁷³

As will be seen hereafter, the third charge constituted the ground for the recall of John Claridge. In a long minute, dated 19th March, 1828, "that his colleagues may be made acquainted with the reasons which induced him to abide by a resolution exposing him to the imputation of want of public spirit and disregard of the best interests of the inhabitants of this Settlement, and that his successors may know the truth, he resolved to place among the minutes of the Court, the reasons which obliged him to remain at Penang during the approaching Circuit" and after repeating the terms on which office had been conferred on him, declared *inter alia*, the refusal of the local Government to guarantee or pay his Circuit expenses, and also that he would have "sacrificed all pecuniary and personal considerations, and proceeded at once to the other Stations, defraying all expenses from his own pocket," had it not been for "the direct insult offered to the Recorder by the Government, in proposing such a ship as the *Speke* (a sailing ship carrying Sepoys) as a conveyance for him and suite, while the Governor himself was accommodated in the Company's Frigate *Hastings* which was sent to this place for the express purpose of carrying the Governor and Recorder on Circuit." The Governor's refutation of this minute follows shortly after, and as "the Recorder still declined to proceed to Singapore and Malacca," Mr. Fullerton proceeded to the former Settlement, and there on the 22nd May, 1828, with Mr. Kenneth Murchison, Resident Councillor, held the first Court or Session of Oyer and Terminer, since the Proclamation of the Charter, and consequently the first Court of the kind ever assembled in Singapore. At this first Session, 27 Indictments were presented to the Grand-Jury, of which 6 were found for murder, 2 being against the same individual, 1 for manslaughter and the rest for cases of assault and offences against property. In two of the murder cases, the culprits were sentenced to death and executed: the first (and therefore the first since the establishment of the Court), on the 2nd June, 1828. On the occasion of passing sentence of death on the first prisoner the Court informed him that this "being the first time a Court of Oyer and Terminer had been held at Singapore, the Court would willingly have mitigated the sentence had there been any extenuating circumstances, but that they could see none." At this Session, the Governor in his charge to the Grand-Jury, told them that "two persons accused of piracy must now be discharged for want of Admiralty jurisdiction, a defect already noticed, and which it was expected would in due course be amended." From Singapore, Mr. Fullerton proceeded to Malacca, where he opened the Assizes for the first time in that Settlement on the 16th June, 1828, and after disposing of the Criminal business there, returned to Penang.

On the 13th August, 1828, a difference occurred in Court between the Judges, in the matter of an application by Counsel for a writ of *Habeas Corpus* to bring up the body of one Charles Maitland, on the ground of his illegal detention by the Military Authorities. After reading the affidavits in the matter and hearing Counsel, the Recorder decided that "a *Habeas Corpus* ought to issue."⁷⁴ The Governor in a long judgment setting out his reasons, declined to entertain the motion, the other lay Judge, Mr. Ibbetson, concurring with him. "The motion was accordingly refused by a majority," the Recorder remarking that "the Governor and Mr. Ibbetson appeared to have written their opinions before they came in, and that Mr. Ibbetson had probably seen the

Governor's opinion before he came into Court, as his own opinion agreed with it." This note of the Recorder's formed the subject of further discussion. The records shew that Sir John Claridge left for Calcutta on the 13th October, 1828, "for the purpose of laying before the Judges of the Supreme Court, a full and true statement of all that had passed between the Government in Council of this Settlement and himself, and of having an interview with the Governor-General," but shew no results. Sir John Claridge resumed duties on the 22nd December, 1828, on his return from Calcutta.

"Orders having been given for providing a suitable vessel (H.C. ship *Fifeshire*) for the "accommodation of the Honorable the Recorder and the Court Establishment on the approaching circuit, and every necessary preparation being in progress at the other Stations," Sir John Claridge proceeded on circuit, arriving at Singapore on the 28th January, 1829. After despatching both the Civil and Criminal business there, he called at Malacca and from thence returned to Penang. The records from this period, as before, disclose nothing but fresh discussions between the Executive and the Recorder, the latter immediately on his return, asking the concurrence of the Governor as President of the Court, that the recommendation of the Grand-Jury at Singapore "that the professional Judge should visit that Settlement at least four times a year, and that a steam-vessel be placed at his disposal," be forwarded to the Government of Bengal with as little delay as possible, the Governor in reply stating that "he concurred as far as regarded the request of the Grand Jury to submit to Government, a copy of *his*, (the Recorder's) charge," — which charge — the subject of one of the grounds of complaint against him afterwards⁷⁵ — contained animadversions of Sir John Claridge on the fact of his not having been provided with a steam-vessel when he had been given to understand before leaving England that one would be placed at his disposal, — and other allusions generally, in regard to the Court Establishment and expenses. Correspondence of an animated character again followed on this and other matters, all being "ordered to be entered among the minutes of the Court."

Before his recall however, and unaware of same, Sir John Claridge left for Singapore by the H.C. Ship *Kellie Castle*, and arrived at that Settlement on the 4th September, 1829, for the purpose of holding a Session of Oyer and Terminer, and afterwards proceeding to Malacca, for a similar purpose, when the Governor, who had left Penang for Singapore the day after the Recorder, arriving at the latter Settlement on the 5th, at once forwarded to Sir John Claridge "copy of a letter now received from the Right Honorable Sir George Murray, one of His Majesty's Principal Secretaries of State, transmitting an Order of His Majesty in Council, signifying the pleasure of His Majesty (to Sir John Claridge) for his repairing forthwith to England in order that the subject matter of a memorial and petition of the Court of Directors of the East India Company, complaining of the conduct of Sir John Claridge, Recorder of Prince of Wales' Island, &c., may be fully investigated," which letter reached the Governor, shortly before his departure from Penang.

On receipt of this letter, the Recorder informed Mr. Fullerton that since his arrival in Singapore, he had "discovered that the arrears of business both Civil and Criminal were unusually heavy and important," and proposed to continue the execution of his functions till the 1st November provided Government furnished him with a ship to carry him to "North Island" [?] to await the arrival of H.C. Ship *Lady Melville*, and thus enable him to dispose of all cases pending both at Malacca and Singapore. The Governor, by letter dated 5th September and headed "H.C. Yacht *Nereide*, Singapore Roads," replied that his (Sir John Claridge's) recall necessarily involved an immediate suspension of his functions, and he was therefore compelled to decline his acquiescence in the proposition which his letter conveyed. This led to further strong correspondence, the Registrar being eventually requested to place same, both by the Governor and Recorder on the records of the Court.

Sir John Claridge however, did not proceed home forthwith, as directed, but left Singapore on the 9th September for India — for what purpose the records do not shew, — leaving Calcutta on the 4th July, 1830, for England. On his arrival, he was examined upon the different charges brought against him, being represented also by Counsel, the result as before stated, ending in his recall. The following Order in Council shews that some of the charges were totally discarded, no reference being even made to them:

"December 15, 1831.

"The Lords of the Committee⁷⁶ to whom the petition of the Court of Directors of the East India Company, complaining of the conduct of Sir John Thomas Claridge, Recorder of Prince of Wales' Island, and praying his removal from office, was referred by your Majesty, having since his return to England, resumed the consideration thereof, and having also duly considered the representation made by Sir J.T. Claridge himself, and heard counsel⁷⁷ in support of the allegations contained in the respective petitions, have agreed to report to your Majesty their humble opinion — that, although Sir J.T. Claridge cannot be justified in the measures to which he had recourse, either for the purpose of enforcing the allowance by the Governor of those charges and expenses which the said Sir J.T. Claridge thought necessary for the establishment of his Court on a proper footing, or for enforcing payment of the expenses of his circuit, which he, the said Sir J.T. Claridge, had reason to expect to have received, yet their Lordships are inclined to think the local Government not wholly justified in refusing to allow what the former Recorder and Sir J.T. Claridge thought a just and necessary measure of expenditure with respect to the Courts of Justice; and that a delay, much to be regretted, occurred on the part of the East India Company, either to authorize the payment of the circuit expenses, or to bring that question to an early decision. Their Lordships are of opinion, that this case may be attributed principally to such refusal and delay; and that under these circumstances, the conduct of Sir J.T. Claridge proceeded from a mistaken view of the line of his duty, and not from any corrupt or improper motive. Whilst, therefore, the irritation which has taken place between the local Government and the Recorder, prevents the Lords of the Council from recommending to your Majesty to continue Sir J.T. Claridge in the exercise of that office, it appears to their

Lordships that no imputation rests on the capacity or integrity of Sir J.T. Claridge in the exercise of his Judicial functions, so as to preclude your Majesty from employing him in your service in some other judicial situation. And their Lordships are further of opinion that the Right Hon. Viscount Goderich, one of your Majesty's Principal Secretaries of State, should receive your Majesty's pleasure for signifying to Sir J.T. Claridge his removal from his seat as Recorder of Prince of Wales' Island.

"His Majesty, having taken the said report into consideration, was pleased, by and with the advice of his Privy Council, to approve thereof, and to order, as it is hereby ordered, that Viscount Goderich, one of his Majesty's pleasure, touching the removal of Sir John Thomas Claridge from his office of Recorder of Prince of Wales' Island.

"C. GREVILLE." ⁷⁸

Whilst dissensions were going on between the Recorder and the Governor. the latter, Mr. Fullerton, on the 1st February, 1829, recommended to the Board of Directors, the entire abolition of the Court of Judicature, that the administration of Justice be entrusted to certain officials, and that ". . . if the administration of Justice entirely by civil public servants be objected to, there could be no difficulty in attaching five merchants, settlers, as assessors, on the same principle as a Mayor's Court, the Resident as Mayor, the others as Aldermen, and the Governor and Council holding only, as formerly at Madras and Bombay, the Courts of Oyer and Terminer. *Any one of the modes here proposed would be preferable to the present, which is more expensive and worse adapted than any system which could be devised.*"

As a contrast to this, Sir Benjamin Malkin, Recorder, in a letter to Governor Murchison, dated 7th July, 1835, questioned the necessity for a Governor here at all, and remarked that "in the present administration of these Settlements, everything being finally referred to Calcutta, and decided there, it may become a question whether the office of Governor is one of any utility, and whether the Chief local authority at each place might not how beneficially communicate at once with the Bengal Government"

In the paper containing this recommendation of Governor Fullerton, appears the following remarks in the hand-writing of Sir William Norris, Recorder in 1836, in reference to the words above italicised, and so underlined by him: "you say so because you could thus brook the independent spirit of the man who is entrusted with the administration of that system."

After the departure of Sir John Claridge, the Resident Councillors in each Settlement, conducted the business of the Court, until the 30th June, 1830, when in consequence of the Straits Settlements, ceasing to form a separate Presidency, having been made subordinate to the Government of Fort William in Bengal, and the titles of the different officials who were also Judges under the Charter, being changed and consequently different from those expressed in it, the local Government were of opinion — erroneously as will afterwards be seen, — that the

abolition of the presidency and the consequent change of their titles, abolished the Court of Judicature. The Notification announcing the change of Government was the following:

NOTIFICATION.

Whereas the Settlements of Prince of Wales' Island, Singapore and Malacca, having from this day, ceased to form a separate Government, and having become Settlements subordinate to the Presidency of Fort William, according to the orders of the Honorable Court of Directors, and the Supreme Government, to be managed by a Deputy Resident, at each Settlement, subject to the general superintendence and control of Resident or Commissioner, notice is hereby given that all official References and Reports are henceforward to be submitted in the first instance to the Deputy Resident, respectively in charge of each Settlement.

30th June, 1830. (Signed) J. PATTULLO,
Secretary to Govt.

The change of Government was notified to the Court by the following letter:

TO

JAMES LOCK, ESQ.,

Acting Registrar of the Court of Judicature of

Prince of Wales' Island, Singapore and Malacca.

SIR,

I am directed by the Hon'ble the Governor in Council to report to you for the information of the Judges of the Court, that in consequence of the form of administration of the Settlements of Prince of Wales' Island, Singapore and Malacca, having been changed from that of a separate Government to Residencies subordinate to the Presidency of Bengal, the offices of Governor and Resident Councillor of these Settlements respectively, cease this day.

Fort Cornwallis, I am, Sir,
Yours most obedt. servant,
J. PATTULLO,
Secretary to Govt.

By a subsequent Notification dated July 1st, 1830, the following appointments were published:

R. Fullerton, Esq.	to be Commissioner for the affairs of the Settlements of P.W. Island, Singapore and Malacca.
R. Ibbetson, Esq.	Deputy Resident at P.W. Island.
S. Garling, Esq.	Deputy Resident at Malacca.
K. Murchison, Esq.	Deputy Resident at Singapore.

Mr. Kerr, the Registrar, was then absent in England on leave. Mr. Loch was the Registrar's "Senior Sworn Clerk" at Singapore.

The following Minute was thereupon duly entered in the Court Book in Penang:

"The Court on an attentive consideration of the above Letter, is of opinion that the discontinuance of the offices by virtue of which the Judges hold their places, necessarily withdraws the Judges of the Court, and renders the future issue of its process impossible. It is therefore resolved, that the Court do adjourn *sine die*, and it is ordered that the Registrar do place in safe custody, the Records and Muniments of the Court until called for by a regular and competent legal authority: and it is further ordered that the Registrar do transmit copies of these proceedings to Singapore and Malacca.

Court adjourns *sine die*."

On the 7th August, 1830, up to which date, the whole establishment of the Court in the three Settlements had continued in existence, without having any work to perform, Mr. Fullerton, signing himself as "Chief Comissioner for the affairs of P.W. Island, Singapore and Malacca," requested the Registrar "to acquaint him if any, and how many of the servants of the Court could be dispensed with at this Station, Singapore and Malacca, without causing inconvenience hereafter from the difficulty of obtaining persons of the same description equally well calculated to perform the duties, as those at present attached to the department," the result being that only the services of "such interpreters whose dismissal might hereafter be attended with inconvenience" were retained, and the dismissal in the three Settlements on the 31st August, 1830, of such "administrators of oaths, native writers, peons, and convict sweepers" as were not wanted. It would appear that shortly after the close of the Court of Judicature, an illegal Court set itself up in Singapore, and the following letter from the Acting Registrar to his Senior Sworn Clerk at that Settlement, as well as the correspondence that ensued on the sub jest, will speak for themselves:

REGISTRAR'S OFFICE,
PRINCE OF WALES' ISLAND,
19th October, 1830.

TO

A. MARTIN, ESQUIRE,

Senior Clerk to the Registrar of the Court of Judicature,
Singapore.

SIR,

I learn that you have accepted the office of Clerk to a tribunal which has erected itself at Singapore, professing to remedy the inconvenience caused by the suspension of the functions of the Court of Judicature of these Stations. The end in view is such as every one must approve, but nevertheless, this self-constituted Court is illegal, and the appearance of

parties, the attendance of witnesses, and the execution of its decrees can only be insured by acts of illegal violence, the possible consequences of which, it is unnecessary to point out or dwell on. His Majesty's Court of Judicature was established to see the laws respected, and its officers cannot with propriety become Agents in the daily and systematic breach of them. It is necessary therefore that you choose between your new office and that which you hold. . . ."

I am, &c., &c.

JAMES LOCH,

Acting Registrar.

In reply to the foregoing letter, the Clerk, on the 22nd October, informed the Acting Registrar that "Mr. Murchison having asked him if he had any objections to conduct the business of the Court about to be established. . . ., he thought it imperative on him to do so, *receiving a salary from the Government without any employment*, but now seeing his error, he intended to keep clear of all such proceedings, and had given over every document and the fees collected since the opening of the Court to Mr. Bonham, the acting Resident."

The following is an Extract from the acting Registrar's letter, dated 28th October 1830, in reply to the foregoing:

"....."

With regard to your considering it "imperative" on you to become Clerk to any Court which might establish itself at Singapore, on the ground of "receiving a salary from Government monthly without any employment," it is necessary to observe that the Registrar is appointed by the Court and, with those under him, is paid by the Court so far as the fees extend, the East India Company only engaging to make up the difference. But the Company [sic] has voluntarily rendered the Court inactive, and with much inconvenience [sic] to others, has brought this upon itself, that by closing the source of fees, it has lately had to pay the whole expense of the Registrar's establishment instead of paying as formerly, only an unimportant portion of it. The servants of the Court are not to blame for inactivity thus forced on them, nor should those complain of not receiving an equivalent, who, by their own act, have taken the power of rendering an equivalent away. . . ."

The letter ends by taking the Clerk to task for his act, and informing him that Mr. Fullerton was leaving Penang for Singapore on the 30th October. This "self-constituted Court" nearly immediately after this closed.

As stated, Mr. Fullerton left for Singapore on the 30th October, and from thence proceeded to England, being replaced by Mr. Ibbetson as Commissioner for the affairs of the Settlements. In consequence of the opinion entertained by the local Government, that the change in the Government had abrogated the powers of the Court, it may easily be imagined what the consequences were; — the administration of Justice had entirely collapsed and a regular crisis ensued, — great agitation

taking place both in Penang and Singapore, public meetings being held and petitions sent home to both Houses of Parliament. Matters thus went on, prisoners committed for trial being confined for months in Gaol, and a complete stagnation of business arising from want of confidence generally, there being no Court to enforce payment (beyond the ordinary jurisdiction of the Court of Requests, which then did not exceed Dollars 32 in amount), or to prevent departure from the Colony, — all of which doubtless, had induced Mr. Murchison to open a Court as above stated in Singapore, with a view to “remedy the inconvenience,” in ignorance of the illegality of the measure.

Unfortunately many months had elapsed, before it was discovered that “Mr. Fullerton was mistaken in supposing that the alteration in the Government could cause the Charter to become inoperative” (see *Caunter v. East India Co.*, Vol. I of Kyshe’s Reports p. 12), and in a despatch dated 27th July, 1831, (see *Report of Indian Law Commissioners*, 1842, p. 48), the Board of Directors so addressed the Government of India, at the same time informing them that it had been deemed expedient to continue the Charter of 1826 (which Mr. Fullerton had recommended to do away with), and “in order that all doubt may be removed regarding the powers, under that Charter, of the Resident and Deputy Residents, — for the purpose of administering Justice under His Majesty’s Charter,” the Resident at Singapore was to be styled Governor or President of the united Settlements, and the first assistant to the Resident at Singapore and the Deputy Residents at the other Settlements, as Resident-Councillors respectively. This information however, did not reach the Straits Government till the 30th of March 1832, when a Notification to that effect was duly published. Some of the correspondence that passed in reference to the erroneous impressions of the local Government, regarding the abrogation of their powers, and suggestions that were made in consequence thereof, in order to prevent the recurrence of such a state of affairs, as well as “of the mischievous discussions which took place between the late Recorder and the Government,” is to be found embodied in the “*Special Reports of the Indian Law Commissioners* 1842,” hereinafter mentioned. Judicial power having now been restored, the Court reopened for the first time in Penang, under the presidency of the newly appointed Governor (of Prince of Wales’ Island, Singapore and Malacca), Mr. Ibbetson, — who had become, as previously stated, Commissioner, &c., on the departure of Mr. Fullerton, — on the 9th of June, 1832, having closed as before mentioned, on the 30th June, 1830, during the whole of which period, the Court Establishment, although greatly reduced, had continued to exist.

The following entry appears in the Court Records:

“IN THE COURT OF JUDICATURE OF PRINCE OF WALES’ ISLAND,
SINGAPORE AND MALACCA.

Prince of Wales’ Island, Saturday 9th June, 1832.

The Honorable the Governor or President, by virtue of the power vested in him by His Majesty’s Charter of Justice, authorizes the Court to sit and act in the absence of the Recorder, the granting of such authority is hereby noticed and recorded.

Court opens accordingly.

PRESENT:

THE HON'BLE ROBERT IBBETSON, ESQR., *Governor.*

Mr. Kerr is permitted to resume the duties of his office as Registrar and Clerk of the Crown as heretofore.

The usual oath required by the Charter, is administered to and taken by the Hon'ble Kenneth Murchison, Esquire, Resident-Councillor, and the administering and taking thereof is hereby recorded.

The Registrar informs the Court what additional Establishment, which the Government is bound to furnish, and which was temporarily dispensed with, in consequence of the absence of the judges, is now again required.

The Court thereupon directs the Registrar to apply to Government in the usual way.

The Court desires the Registrar to observe the existing Rules of Practice till further Orders."

In connection with the administration of Justice, and with Sir John Claridge's time, it would appear that the Court had from an early period, experienced great difficulty in obtaining suitable Chinese Interpreters. The Government was communicated with on the subject, and Mr. Fullerton, the then Governor, on the 18th June, 1828, applied to the "Select Committee of Supra Cargoes" at Canton, for assistance and advice in the matter, and the following Extracts, will be read with interest even up to this day:

MACAO,

12th August, 1828.

THE HON'BLE ROBERT FULLERTON,

&C &C

HON'BLE SIR,

2. It is with much regret we have to state that while we entertain every wish to comply with the request contained in the communication above referred to, we are unable to recommend any plan which promises hopes of succeeding in the desired object of employing the natives of this country in the situation of Interpreters.

3. Two obstacles present themselves to the accomplishment of this purpose, which are, in our opinion, insuperable.

The first consists in the venal and dishonest character of the Chinese, which it is lamentable to observe, pervades all ranks and classes

of the people, almost without distinction, and which alone must always prove a sufficient obstacle to their employment in the *highly responsible character of Interpreters*.

4. The second objection which offers itself to our notice, arises from the variety of dialects spoken by the inhabitants of the different provinces who compose the Emigrants to the Straits, the greater part of whom are strangers to the dialect of Canton, the natives of which province alone are acquainted in any manner, with the English language, the knowledge possessed however by these persons, is perfectly inadequate to interpret the explanations and evidence upon general subjects, which must occur in a Court of Justice, and consists merely in the acquaintance of a few set phrases and Mercantile terms.

The letter, signed "W.H.C. Plowden, Charles Millett, and W. Davies," then goes on to state that "being desirous of obtaining the most satisfactory information upon the point, which appeared closely connected with the administration of Justice," the gentlemen named had "requested their Chinese Interpreter, Dr. Morrison, whose extensive knowledge of of the Chinese language, was too well known to require further observation, to furnish them with his opinion upon the possibility of providing native interpreters," and concludes by calling attention "to the establishment founded by Dr. Morrison in the Straits of Malacca, for the instruction either of Europeans in the Chinese language, or reciprocally that of Chinese in the literature of Europe, as the most probable source from whence *trustworthy and efficient Interpreters for the Courts of Judicature in the Straits* might be derived," and expressing a hope that "Chinese educated under the tuition afforded by that Institution, would imbiude a share of those principles of integrity which are *essential to persons placed in confidential situations*." ⁷⁹ The following was Dr. Morrison's opinion on the subject:

TO THE PRESIDENT, &C., SELECT COMMITTEE,
&C. &C. &C.

GENTLEMEN,

Being requested to report my "opinion of the practicability of supplying efficient Chinese Interpreters for the Court of Judicature established at Penang and its dependencies," after a careful perusal of the Letters sent on by that Government, I have to reply that agreeing with the sentiments of Mr. Kidd, Principal of the Anglo-Chinese College, on the qualifications requisite to perform the duty of a Chinese Interpreter to the said Court, I am not aware that any such persons can be procured in Canton. The Linguists, as they are commonly called at Canton, do not understand the Fukien Dialect, which Mr. Kidd represents as so generally necessary in the Straits. As to mere knowledge, I suppose some of the senior students of the Anglo-Chinese College are better qualified than any other natives, but in respect of integrity, I fear all natives are much to be doubted in important cases, and require the check of European knowledge.

I remain, &c.,
ROBERT MORRISON.

14th July, 1828.

And history here repats itself, for our own Government till this day, experiences the greatest difficulty in obtaining suitable Interpreters, and a plan much the same as that suggested by the "Select Committee, &c.," and Dr. Morrison, has been adopted in regard to student interpreters. The business of the Court in Singapore at this period, does not appear to have been very great, for in a report to the Registrar in Penang, dated 21st November, 1828, his Senior Sworn Clerk, Mr. A. Martin, — after asking for instructions in regard to an application made by "Mr. Read, on behalf of Messrs. A.L. Johnston & Co., for letters of administration to the Estate of the late Captain Flint, R.N., as creditors of the Estate, and as having been agents of the deceased to the period of his death," and whose Will was said to be forthcoming, — stated "we have not so many cases as *before*" [sic]⁸⁰

The practice heretofore existing of the Sheriff summoning public meetings at the request of the community, is to be found mentioned only in Sir John Claridge's time. Several inhabitants of Penang had written to the Sheriff in November, 1827, in consequence of the fees of Court having been raised, asking him to convene a meeting for the purpose of protesting against the "late greatly increased rate" of such fees, which request, the Sheriff refused to comply with "not considering himself bound to call a meeting of the nature solicited without the order of Government and of the Court." The following is an extract from a presentment presented to the Recorder by the Grand-Jury on the 1st December, 1827, on the subject, and wherein the custom in question will be found mentioned. After laying stress on the refusal of the Sheriff, the Grand-Jury proceeded as follows:

"The Grand Jury presume that custom, if not Law, has made it imperative upon the Sheriff to call, at the request of the community, any public meeting to which there can be no legal objection; but as at the presidencies of India, the Sheriff cannot call or allow of any public meeting without previously obtaining the sanction of the Governor in Council, the Grand-Jury consider that the late Sheriff had no legitimate cause of himself to debar the community from exercising one of the greatest privileges they possess, that of legally expressing in public assembly, any grievance, and do respectfully present to this Court, that such conduct on the part of the late Sheriff was unjustifiable and oppressive."⁸¹

And in regard to the question of fees, the Grand-Jury added that they did "not now present the late increase of fees, anticipating that the public would ere long express their opinion relative thereto." On the 3rd April, 1828, the Grand-Jury reiterated their grievance at the exorbitant rate of fees claimed by the Court. As hereinafter shewn, these fees formed the subject of representation on various occasions, the last in Sir William Norris' time, without however bringing any material change as a result.

Before closing with Sir John Claridge's time it may be interesting to note, that it was during his tenure of office as Recorder, that the present Courts of Requests in the different Settlements, under Proclamation, dated 2nd December, 1828, were established. This proclamation, although abrogated materially, nevertheless forms the basis of those Courts in the different Settlements up to the present day, having been

re-enacted by Act 29 of 1866.⁸² After the establishment of the Court of Requests in Penang, appeals were "so numerous as to average from five to ten every week, owing to the facility with which they were granted; a dissatisfied party had only to express his wish, and pay down his three dollars, which was the fee, and he obtained his appeal in less than half an hour, with which he ran over to the Court of Judicature to get it filed, and a day fixed for hearing. Sir John Claridge, finding that he had to affirm almost every decision of the Commissioner, passed an Order requiring an affidavit of the grounds for appealing, and the transmission of the Commissioner's record of the proceedings before him, for consideration, previous to granting any appeal,"⁸³ which practice obtains virtually up to this day under section 10 of the Appeals Ordinance 12 of 1879.⁸⁴

Sir Benjamin Heath Malkin, "late Fellow of Trinity College, Cambridge, M.A.," was appointed "Recorder of Prince of Wales' Island, in the room of Sir John Thomas Claridge, removed by Order of the King in Council," and he arrived in Penang on the 12th February, 1833. On his arrival, after such a state of affairs, as had happened after the recall of his predecessor, Sir Benjamin Malkin however, as he himself afterwards recorded, did not find such heavy arrears as he had anticipated, the Governor and Resident Councillors in the different Settlements, having, on the reopening of the Court in 1832, disposed of most of the cases, a few important ones only having been reserved by them till the appointment of a Recorder, — a reference to such of Sir Benjamin Malkin's decisions as are reported [in the four volumes of Kyshe's Reports] as still of importance, will give one an idea of their nature and intricacy. Sir Benjamin Malkin not unfrequently commented on the Charter, giving it as his opinion that it had been loosely and inaccurately framed.

"I found no heavy arrear of business awaiting me, as I had expected; a very few causes indeed there were It is true that the Court had been for several months re-opened, but Mr. Ibbetson who had despatched a great deal of Criminal business, had, as far as he could, postponed all Civil business for my arrival" (*Sir B. Malkin to Govt. of India*, 16th Sept.. 1837).

"I have often had occasion to advert to the very loose manner in which Charter constituting the Court of Judicature is framed" and again "The same Charter (*i.e.* of 1807 to Prince of Wales' Island) with very few modifications, *though many might have been beneficially introduced to suit the altered circumstances of the Settlements*, was granted to Prince of Wales' Island, Singapore and Malacca The whole Charter is in many respects so ill-devised an instrument, as applied to the present jurisdiction of the Court, that difficulties must always arise in considering it." (*Sir Benjamin Malkin, Report of Indian Law Commissioners*, 1843, pp. 78, 119, 120).

In 1833, Parliament provided for an enquiry into the jurisdiction, powers and rules of the Courts of Justice in the Territories of India, (3 & 4 Wm. IV., c. 85, ss. 53, 54); the Commissioners under same, and as required by the Statute, being designated *The Indian Law Commissioners*. Their Report, dated as late as the 8th February, 1842, and ordered to be published by the House of Commons on the 30th May, 1843,

contains 226 long pages of printed matter in reference to the Straits alone and embodies endless correspondence and suggestions by Straits and Indian officials, as well as by the Commissioners themselves in reference to this Colony, — impracticable schemes being propounded, nearly all differing in substance, and some having for their immediate object, the dispensation of professional Judges. Lord Auckland, the Governor-General of India, suggested the entire abolition of the Recorder's Court, and the entire re-construction of the Judicial system in lieu of "the present inefficient and costly system," and that there should be "one Magistrate and assistant at each of the three Settlements, exercising both Civil and Criminal jurisdiction; — one Resident for the three Settlements with appellate jurisdiction from the Magistrates' Courts, and holding his Court at each Settlement alternately, and that the Resident should be authorized to reserve such Civil or Criminal cases as he might think proper for trial before one of the Judges of the Supreme Court of Calcutta or Madras, who should once a year, or oftener, make a circuit in the three Settlements." Suffice it however, to say, that none of the suggestions were ever carried out, and that matters remained in *status quo*.

It was during the tenure of office of Sir Benjamin Malkin, that the Legislature of India, having been vested with Legislative powers (3 & 4 Wm. IV., c. 85, s. 43 *et seq.*), passed enactments called the "*Indian Acts*," a great many of which, passed expressly for the Straits Settlements or purposely extended to the Territories under the Government of India generally, are still in force here. It may also be mentioned; that it was greatly due to Sir Benjamin Malkin's exertions, though passed after his time, that Act XX. of 1837, relating to the devolution of property of deceased persons, as chattels real, was enacted.

"These Settlements are mainly indebted to Sir Benjamin Malkin for the recent Act No. XX. of 1837" *Norris R.*, — 30th November, 1837, charge to Penang Grand Jury.

Prior to 1834, all Indian and local enactments were called *Regulations*, and great doubts existed as to the validity of those passed here, for a considerable period.

One of those Regulations is still in force here, although recently amended by the local Government, but that one had however been previously submitted to and approved by the Governor-General of India in Council. (Regulation III., A.D. 1833 — *Registration of Imports and Exports* amended by G.N. 28th December, 1883). According to some of the correspondence on record, which passed between Mr. Dickens and the then Acting Lieutenant-Governor, in reference to the case of *Carni* (*ante* p. 64), on the subject of a Regulation passed by Mr. Phillips, which Mr. Dickens considered *ultra vires*, it would appear that the power of framing Regulations was vested in the *Governor-General of India* by 13 Geo. III. c. 63, s. 36. (1773). The following is an Extract from one of Mr. Dickens' letters to Mr. Phillips on the subject, dated 9th April, 1803, (which letter must have been unknown to the different Recorders who also questioned the validity of those Regulations, including Sir Benjamin Malkin, who treated the subject at some length in one of his letters above alluded to, before his departure from Penang)

— the preceding paragraphs of the letter, it will be seen, refer generally to the question, and to Mr. Dickens' mode of action.

"2. Perhaps it may be necessary, to avoid misconception of the principles, upon which I have acted, as Judge and Magistrate, since my arrival at this Settlement, on the 7th of August, 1801, that I should state the reasons upon which I have acted, and shall continue to act, upon some Revenue and Police Regulations, passed by the Lieutenant-Governor, prior to the 7th of May, 1802; After this period, by the positive directions of the Vice-President in Council, that day communicated to me, by Sir George Leith, every Regulation for the good order, and civil government of this Island, which the Lieutenant-Governor might propose, prior to its being carried into execution, as a law, was to receive the approbation, and confirmation of His Excellency the Most Noble the Governor-General in Council, at Fort William in Bengal."

"3. If it is permitted me, to compare small things with great, then let me say that I framed a line of conduct for myself, as Judge and Magistrate (of an Island which does not possess any civil or criminal laws) in analogy to the principles contained in an Act of Parliament, which takes into its purview, a state of society, not very unlike that which exists now at Prince of Wales' Island."

"4. I allude to the 13th of Geo. 3rd, Chap. 63, s. 36; which gives the Governor-General in Council, at Fort William in Bengal, lawful authority from time to time, to make and issue such Regulations, for the good order, and civil government of the Settlement at Fort William, and places subordinate, or to be subordinate thereto, as shall be deemed just, and reasonable such regulations not being repugnant to the Laws of the realm; And to impose, and levy, reasonable fines and forfeitures, for the breach of such regulations; But nevertheless such Regulations shall not be valid, or of any force and effect, until duly registered, and published in the Supreme Court; And the Governor-General in Council is to transmit copies of the said Regulations, to one of His Majesty's principal Secretaries of State."

"5. Thus, I have acted in analogy to the principles of that Statute, in carrying into execution as Judge and Magistrate, some Revenue and Police Regulations, enacted and published by the Lieutenant-Governor of this Island; prior to the 7th May, 1802, I was left to the exercise of a sound discretion, I had neither laws nor precedents, to assist my judgment, and these Revenue and Police Regulations did not appear to me either unjust or unreasonable, in the existing state of men and things on this Island; and I perceived nothing in the said Revenue and Police Regulations, repugnant to the laws of the realm of England."

At the Closing of the Penang Session of Oyer and Terminer, on the 9th April, 1834, the Grand Jurors in their presentment, complained to the Recorder, as they had previously done to Sir John Claridge,⁸⁵ of the high-rate of fees charged by the Court, and that "in touching upon the subject of the fees of Court, they begged to do so with the greatest respect. They were however of opinion that the expenses of legal proceedings were generally susceptible of reduction, particularly as regards the percentage levied as Court charges on filing petitions and affidavits,

and on the amount of judgment, which in many cases operated to such a degree as to prevent Suitors from coming into Court. In laying this matter before his Lordship, the Grand Jury were aware of the difficulty and delicacy of the subject, and had only been induced to represent it in consequence of these expenses pressing so heavily upon the community," and on this subject, the records again shew that the Grand Jurors on the 29th November, 1837, informed the then Recorder Sir William Norris, that "they had received numerous complaints in respect of the high rate of Court fees, and begged respectfully to present them for revision, considering their present rate as a prohibition of Justice to the poor, and a most unreasonable charge." The scale of fees passed, as before stated, in the time of Sir John Claridge, continues in existence with very slight modifications, to the present time.

Sir Benjamin Malkin, before leaving the Straits in 1825, addressed several letters to the local Government containing suggestions "which he conceived likely to prove useful to the legislative authorities in the preparation of new regulations, and in framing a new Charter of Justice of the Settlements." Some of these, of no importance at this date, are to be found in the Court records as well as embodied in the Report of the Indian Law Commissioners, before alluded to.⁸⁶ Sir Benjamin Malkin greatly deprecated the idea of abolishing the professional judgship, and among other instances, instanced cases of Insurance and International Law, as peculiarly requiring the presence of a professional Judge. He left for India in June, 1835.

Sir Edward Gambier, appointed to succeed Sir Benjamin Malkin, arrived in Penang on the 26th June, 1835, but did not however, remain here long, being appointed in September, 1836, to a Puisne Judgeship in Madras. The only matter requiring notice in the latter's time is, in regard to pleadings, — he entirely discountenanced the system of pleadings which had been inaugurated by Sir Ralph Rice, and which had been already greatly modified by Sir Benjamin Malkin.⁸⁷

At the August Session of Assizes, 1836, the Grand Jurors laid great stress on the fact of the Calendar being increased by "many petty cases which had, up to a late period, been decided by the Magistrates in Quarter Sessions, some Criminals thereby receiving a greater measure of punishment, inasmuch as they were frequently incarcerated for several months previous to their trial for an offence to which such imprisonment alone — was more than disproportionate, the principle being lost sight of that 'the more immediately after a crime a punishment is inflicted the more just and useful it will be' " and after commenting upon several other local matters, concluded their presentment by "offering to the Honorable the Recorder their congratulations on his advancement to the Madras Bench, but at the same time, the Grand-Jury could not but express their regret, that no sooner had a Recorder resided long enough in these Settlements to enable him to become acquainted with the manners and customs of the various population, than he was removed to another part of India — a system which they considered to be highly prejudicial to the interests of the community."⁸⁸

Sir Edward Gambier, was succeeded by Sir William Norris, who had previously been Chief Justice of Ceylon. He assumed duties on the

29th September, 1836. The Court was granted Admiralty Jurisdiction shortly after his arrival (6 & 7 Wm. IV., c. 53) — *Letters Patent* for carrying out the Act, dated 25th February, 1837, being duly proclaimed in open Court on the 23rd October of that year, the Registrar of the Court being also appointed Registrar on its Admiralty Jurisdiction, and the Sheriff as Marshal, the Sheriff however, on his appointment every year, appointing his Deputy as Deputy Marshal of the Vice-Admiralty Court as well.

The Records do not shew how and what fees were claimed under the Act, for Sir William Jeffcott, a subsequent Recorder, on the 30th January, 1855, wrote to the then Governor, Colonel Butterworth, regarding the absence of any authorized table of fees for the Admiralty Court, the Governor informing him in reply on the 27th February, 1855, that he had forwarded his letter to India, "pointing out this very anomalous state of affairs." On the 10th of August, 1855, the then Governor E.A. Blundell, received a reply from the Secretary to the Government of India, informing him "that the Honorable the President in Council, did not see why Admiralty fees, past or future, should go to the officers of the Court, when all others fees go to Government. On the other hand the officers, His Honor in Council conceived, should be fairly remunerated for Admiralty work, unless it was a part of the understanding when they were appointed, that they were to do all the work of the Court on their present salaries. Unless this were the case, His Honor in Council, was of opinion, that the average of fees should be struck, and extra salaries allowed to the officers accordingly," and the Governor was further requested "to submit for sanction in the usual form the amount which he would propose that each officer should receive as additional salary." From a letter of the Registrar on record, dated 17th June, 1856, to the "Resident Councillor of Prince of Wales' Island," it would appear that "all Admiralty fees as were received by the Registrar at this Station, were not kept separate and withheld from the Treasury as was the case at Singapore but were mixed up and sent into the Treasury from month to month, as they were collected, with the fees received on all the other sides of the Court in which fees are allowed to be taken." The records shew nothing further on this point, but as will be seen hereafter, on the Proclamation of the 3rd Charter in March, 1856, till April, 1861, all fees of office were kept by the Registrars,⁸⁹ and Admiralty fees are received until the present day by the Judges, Registrars and Marshalls.

Admiralty Jurisdiction was thus given to the Court after the lapse of very many years and after repeated representations both by the authorities and the Grand Jury, papers from Mr. Dickens bearing date 8th November, 1803, being also on record on the subject, the result having been that previous to the grant of Jurisdiction, the authorities had been powerless to act, the records shewing, number of prisoners charged with piracy, *released* for want of authority to deal with them, and in other cases, some few being sent to Calcutta for trial in the very early days, without these however, shewing any result whatever.⁹⁰

In their presentment to the Recorder on the 29th March, 1837, the Grand Jury "concurred with the Recorder in considering that minor offences should be disposed of summarily before Quarter Sessions. Not only was there much inconvenience felt by the public generally, and the

Grand and Petit Juries, by having their time so long occupied in the examination of trivial offences, but also his Lordship's time unnecessarily trespassed on and his attention taken from more important duties . . . , that the Jurisdiction of the Court of Requests might be beneficially extended to a larger amount with power of appeal to the Supreme Court, and generally that the ends of Justice and the dignity of the Law would best be maintained by having *only important causes, whether Civil or Criminal, tried by the Recorder*, while a salutary controul should constantly be exercised over the inferior Courts." The Grand Jurors then proceeded to deprecate the "change which they had been given to understand was in contemplation, of withholding the Charter of the Court, and substituting in its place a Company's Charter, being deeply impressed with the necessity and propriety of having an English Court of Judicature presided over by a professional Judge, to guard the interests, and protect the liberties of so large a population and extensive a trade." This apprehension of the Grand-Jurors, doubtless arose in consequence of some of the recommendations contained in the Report of the Indian Law Commissioners, as mentioned in the time of Sir Benjamin Malkin.

At the June and December Assizes, 1845, the records shew that the Grand Jurors again moved in the question of the Jury, and "the fact that all the Province Wellesley planters had been exempted from the Panell Roll, a practice open to several objections. The immunity thus granted to so large a portion of our small community, made it necessary that the names of each individual member of the different mercantile firms should be placed upon the Panel Roll . . . the Jurors were put to very great inconvenience, and prosecutors and witnesses as well as accused parties themselves suffered very great hardship, by having petty cases brought up before the Court instead of their being disposed of by the Magistrates in Quarter Sessions. This was a matter that had been repeatedly represented by former Grand Juries, and the Grand Jury respectfully solicited the Court would be pleased to bring to the notice of the proper authority, the urgent necessity of a reform in this point." The Jury question is one not without difficulty in Penang, even to this day. [*i.e.* 1890]

The records of 1838, shew some amusing correspondence between the Court and some of the inhabitants of Penang, one letter dated 25th May, 1838, being addressed to an Agent of the Court, Mr. Carnegie, by the Registrar, at the request of the Recorder, calling upon him as one of the managing Committee of a local newspaper, the *Pinang Gazette*, in consequence of two anonymous letters that had appeared therein "reflecting upon the judicial character and proceedings of the Recorder," to apologize *within 6 hours* to the latter for the publication of the calumnies," or to suffer his name to be erased from the Rolls of the Court, under the powers vested in the Recorder under the Charter, "without assigning any reason whatever." Mr. Carnegie immediately apologised disclaiming any knowledge or participation in the publication of the letters and his intention of giving up all interest in the paper. Another letter, dated 25th June, 1838, is from two Merchants of Penang who, having heard that Sir William Norris, whilst delivering judgment in a case wherein they had been called as witnesses, had said that they had evinced in their evidence "that want of candour characteristic of British Merchants," inform the Registrar that they could not "permit

such opinions to be expressed without refutation," and proceed to take the Recorder to task, — the latter personally answering their letter on the 6th July, 1838, and informing them "that their proceedings implied a lamentable want of consideration on their part," and warning them of the consequences they had run, for he could not believe that "the letter was written with a deliberate intention to insult the Court of Judicature, and to brave the consequences to which in that case they would have rendered themselves liable."

In 1840, Sir William Norris extended to Malacca, some of the Rules and Orders of Court in force both in Penang and Singapore. It was also in that year, that he inaugurated the present system of swearing native witnesses under Act 5 of 1840 (see *In re Native Witnesses*, Penang Assizes. Criminal Rulings, Vol. II. of Kyshe's Reports p. 15), they having previously been sworn in a "manner and form most binding upon their consciences," *i.e.*, according to their several religions and customs (see Charter as well as case tried by Mr. Dickens in 1805, *Ramalinga Putty v. Mootee Samee*. [*ante* p. 72].

On the 23rd June, 1845, Sir William Norris granted an extraordinary application, and the only one of its nature to be met with in the records in Penang: "The Grand Inquest having returned a true Bill in the cause of the *Queen v. Joseph Donnadieu* for manslaughter, whereunto the said Joseph Donnadieu said he would plead Not Guilty, he the said Joseph Donnadieu further said he was an alien, and was born in Marseilles in parts of France, under the allegiance of the King of the French, and he prayed the writ of Our Lady the Queen to cause to come here certain aliens who together with certain Jurors now "on the Panel would form a Jury of half aliens and half natives to try the issue of the said plea according to the form of the Statute in such case made and provided, and it was granted to him to be tried by a Jury, *de mediatate lingue*." The prisoner was tried by the Jury allowed him, and acquitted on the 25th June, 1845. The Charters nowhere authorized such a Jury, and now, by Section 31 of Ordinance 6 of 1873, it is strictly prohibited. By the laws of the Colony, aliens are not excluded from the Jury.⁹¹

Some of the records during this Recorder's long tenure of office, disclose more forcibly the feeling that had existed before his time in regard to the relations between the Government and the Bench. Sir William Norris, following in the wake of his predecessors, frequently laid stress on the defective system of the constitution of the Court, in its connection with the Executive, whereby their relative functions continually clashed, and recommended "the complete separation of the Judicial and Executive branches." He expressed himself in very strong terms on the subject, a few months after his arrival in a charge to the Grand-Jury, on the 30th November, 1837, telling them that "their sentiments with regard to the incongruous union of Judicial with Executive functions were entirely his own. This had from the commencement been the greatest difficulty with which the Court of Judicature had had to contend, the most formidable obstacle to its unity, celerity and efficiency of operation He had never concealed his settled conviction (*and it was the conviction of all his predecessors*) that the constitution of this Court was essentially defective, and that it never could work so well as it should do, until freed from all connection with the Executive autho-

rities. The same anomalous system had been successively abandoned at all the Presidencies and in Ceylon, much to the advantage of the respective Governments, the Judges and people, and it was high time, that it should be abandoned here also” and nearly five years after on the same subject, in a letter dated 12th September, 1842, to the local Government, who had requested his opinion on the Report of the Indian Law Commissioners, he thus wrote:

“The greatest improvement on the present system, and that which would be at once the most efficient and the most acceptable to all classes would be a complete separation of the Judicial and Executive branches At Singapore, or wherever the fixed residence of the professional Judge may be, experience sufficiently proves that the Lay Judge will scarcely ever be likely to thwart or interfere with the general business of the Court. The unhappy disputes between Mr. Fullerton and Sir John Claridge furnish, it is true, an instance to the contrary; but the proposed withdrawal of the Governor’s Judicial functions for the future, is a sufficient guarantee, with the casting vote, which still be reserved to the professional Judge, against the recurrence of similar difficulties.”⁹²

In connection with this matter, it may here be stated, that questions not unfrequently arose as to the respective powers of the professional and lay Judges, and of the right of the former to sit on appeal on the decisions of the latter, — a marked instance of this occurring in the case of the *Iron Queen*, on the Admiralty side of the Court, which had been heard and determined in Singapore, on the 17th September, 1846, in the absence of the Recorder, by Mr. Thomas Church, the Resident-Councillor at that Settlement, and who was one of the Lay Judges of the Court. The Resident Councillor had passed a decree for the possession of the vessel to be given to the owner’s agent, and condemned the Captain of the vessel in costs, which costs not having been paid, the Captain was arrested and lodged in Jail, under the process of the Court. On the arrival of Sir William Norris on circuit, on the 26th November, 1846, the Captain presented him with a petition complaining against that portion of the Resident-Councillor’s order as condemned him in costs, and pointed out that his resistance of the claim by the Agent, was due to the doubts of the *bona fides* of the power of Attorney under which the Agent claimed to act, as he (the captain) had received no instructions from the owners to give up the ship or leave his post. Sir William Norris, being satisfied with the correctness of this statement, and considering the order of the Resident-Councillor as to costs, unjust, granted a Rule calling on the owners to shew cause why the order of the Resident Councillor regarding the costs should not be reviewed and set aside. The Resident-Councillor, thereupon, filed a protest to the granting of the Rule, and stated that he would be “greatly wanting in regard for his own public character, and the position he held as a Judge of the Court, did he countenance or concur in the novel, and unprecedented proceeding of the Recorder, . . . he had held that the Master could have entertained no just doubt as to the genuineness of the power of Attorney, and undertook the judicial business of deciding the case, not from choice, but as matter of duty. That the point was dependent entirely on matters of fact, — and from his age, experience and situation, he was as capable of deciding, as his colleague, the Recorder, on a question of fact such as

this, — particularly — as he happened to have heard the case, and had had the witness before him. That under the Charter, the Court, — composed of the three Judges, one professional and two lay, — alone could review his decision, but there was no warrant for the interposition of one of the Judges in the acts of another in cases similar to the present.” Sir William Norris, notwithstanding the protest of Mr. Church, had the Rule argued before him on the 1st December; and on the 19th January following, 1847, delivered judgments, making the Rule absolute, and reversing the order of the Resident-Councillor as to costs, holding that he, as professional Judge, had power under the Charter, to set his lay brethren right when they had erred, considering that “the Lay Judges were, by the Charter nominated as such solely *virtute officii* as the Chief Executive Authorities of the Settlements, whose offices required knowledge, experience, and abilities of various kinds, diplomatic, military or commercial, but neither necessarily nor probably, implied the possession of any judicial qualifications or experience whatsoever.” On the 2nd February, 1847, the Resident-Councillor placed a minute on the files of the Court, protesting against the remarks of the Recorder, and fearing “lest silence would be construed into an acquiescence in the doctrines advanced by the Recorder, as to the relative position of the Judges, under his Majesty’s *Letters Patent*, of 27th November, 1826,” and after touching on the expediency of making the Recorder an Appellate Judge, recorded his opinion that the Recorder possessed no such power, and as one of the Judges of the Court, ordered his minutes to be filed in Court attached to the order of the Recorder, as a protest thereto. The Recorder, having subsequently objected to this minute remaining on the files of the Court, it was withdrawn by the Resident-Councillor.

The case in question is not reported [in Kyshe’s Reports] as bearing no longer on any point whatsoever; the constitution of the Court having materially changed. It was published in a pamphlet form, shortly after the issue of the case in 1847. In connection with the view taken by Mr. Church in this matter, it may here be said, that he had a few years before, expressed himself in a somewhat similar manner. In his remarks, dated 24th September, 1842, on the Report of the Indian Law Commissioners, — who had recommended “a Court in each Settlement, presided over by the Chief local authority, with a Recorder going on Circuit with power to call up any cases which he considered to be proper subjects for adjudication by himself,” — Mr. Church observed that should this be persevered in, “a greater calamity could scarcely befall [sic] the Straits Settlements: the incontrovertible consequence would be to encourage extensive litigation, prove dilatory, and of necessity be attended with considerable expense to parties, evils which scarcely exist under the present system. If every case, however simple, which is heard and decided by the superior lay judge is open to appeal to the professional judge, and that learned person is allowed to exercise the special powers accorded to him, there will be no end of litigation it will tend to bring the executive officers holding judicial appointments into contempt I have no hesitation in saying, that I conceive a lay judge, who, from a long residence in the country, intimate knowledge of the language and manners of all classes of natives, will be found generally more competent to judge correctly in matters of fact than a professional judge who has spent the best years of his life among Europeans and prone to believe everything because it is sworn to” And the following was

his opinion of the native character “.... My own experience enables me to say the Chinese and others are in a state of moral degradation almost beyond conception. I witness daily, nay hourly, instances of natives uttering the most deliberate falsehoods on the most trifling occasions; and what will they not fabricate when their personal interest is concerned. . . .” [*Report of Indian Law Commissioners* p. 214.]

Notwithstanding the differences that existed between the Recorder and the Executive, the records shew that he, from the time of his arrival, — in the example of several of his predecessors, — acted as Law Adviser to the local Government, who, from the time of the discontinuation from office of Mr. W. Caunter, as their Law Agent, in 1830, — and the relinquishment [sic] of that office also by Mr. Balhetchet shortly after his appointment on the 25th February, 1834, in succession to Mr. Caunter, had no legal representative, a system against which some of the Recorders, not only demurred against, but pronounced as unjust both to themselves and the parties who appeared before them, as placing them in a most anomalous position. A reference to the case of *East India Co. v. Scott* [Vol. I of Kyshe's Reports, p. 51], and *Edwards v. East India Co.* (Magistrates' Appeals, Vol. III, Kyshe's Reports p. 6), will forcibly show the mind of the Recorder on the subject. This system apparently lasted till within a few years before the transfer of the Colony from India, in 1867, the records shewing that Mr. Thomas Braddell, (afterwards Attorney-General in 1867), was appointed “Crown Counsel in Singapore” in January, 1864, and Mr. Daniel Logan, (Solicitor-General in 1867), as “Crown Prosecutor” in April, 1865. Prior to this, in the more important actions either instituted by or against them, the Company retained Special Agents, and in most of the cases, they were not represented at all. The inconvenience must have been felt by the authorities themselves, for by a letter dated 3rd June, 1843, the Governor, Mr. E.A. Blundell, appointed, — doubtless in a way as a remedy for the evil, — several officials to represent them “in all actions in Her Majesty's Court, wherein the interests of the East India Company or their Government may be concerned, . . . and as the Resident-Councillor may consider most convenient and proper on the occasion,” these officials being “Mr. W.T. Lewis, Assistant-Resident, Lieutenant Ferrier, Superintendent of Province Wellesley, Mr. G.F. Gottlieb, Harbour-Master, and Mr. N.M. McIntyre, Assistant in the Land Department,” the latter however in land matters only, — a similar letter, dated 28th January, 1848, authorized “Mr. H. Nelson, Assistant-Resident of Prince of Wales' Island,” to act in a similar capacity, and even in regard to the majority of these, it may here be said, that their names do not appear at all in the Court Records.

A scarcity of copies of local Regulations or enactments, concerning which the Recorders were called upon to pronounce, seems also to have been felt during Sir William Norris' time (*cf* below), indeed as felt, although to a lesser degree by our own Government, in regard to the local Ordinance. A short time before his departure, Sir William Norris, in a letter dated 24th October, 1846, addressed the Governor-General of India, regarding the promulgation of Act III. of 1847, vesting the appointment of Constables and Peace Officers, in the Executive, a right which, by the Charter, had been vested in and hitherto exercised by the Court, — although it will be remembered, that the refusal of Sir Edmond

Stanley, to have anything to do with these appointments, had been the cause of early dissension between him and the local authorities. Sir William Norris doubted of the legality of the contemplated measure, considering it at conflict with the Charter, and complained of the want of courtesy shewn him in his not having been consulted, before the framing of the Act. The following extract from his letter, apart from this circumstance, will prove interesting as bearing on a point mentioned in connection with his time:

“ . . . I deem it also the more incumbent upon me to bring the circumstance, with all due respect, to the notice of the Supreme Government, because, having already tendered to Her Majesty, the resignation of my Office, I feel that my successor might justly complain, were I to pass over in silence, a mode of proceeding which however unimportant to myself personally on the eve of my retirement, can scarcely, I submit, be regarded as consistent with the courtesy hitherto generally accorded by the Local Authorities to the Office which I have had the honor to hold for the last ten years; during which period, I may add, these Authorities have freely sought what has been as freely afforded, my professional advice on all needful occasions of which surely, the measure in question, directly affecting as it does the Court of which I am the responsible head, was one.” “The scarcity of . . . , *all* the Government Regulations, and the difficulty of obtaining a complete copy, (I have none myself, that of the Court is imperfect, and I was obliged to borrow one for the occasion) has long formed a subject of a just complaint The very limited number of copies would be a hardship even were they models of perspicuity and precision, but the hardship is increased by the acknowledged difficulties and obscurities with which they abound.” *Sir Wm. Norris*. (See *Edwards v. East India Co.*, Magistrates’ Appeals, Vol. III. of Kyshe’s Reports p. 6).

In answer to his representations, the Indian Government by letter, dated 19th December, 1846, expressed regret at Sir William Norris not having been consulted, and attributed the fact to oversight, but at the same time informed him that his objections had, prior to the receipt of his letter been maturely considered, and that they were clearly of opinion that the proposed measure was not at conflict with the Charter, giving out their reasons. The effect of this measure, as will be seen further on, again formed the subject of discussion between two of the later Recorders, on the promulgation of the third Charter in 1855.

Sir William Norris, was the only Recorder who remained in office continuously for a long number of years, nearly all his predecessors, with the exception of Sir Edmond Stanley and Sir Ralph Rice, who were here eight and seven years respectively, being transferred to some other Indian presidency after a comparatively short tenure of office. Papers are to be found, — apart from the presentment of the Grand-Jury to Sir E.J. Gambier on the subject, in August 1836, — where mention is made of that fact, and Sir Benjamin Malkin, who had himself been transferred to India, subsequently advocated the abolition of the system of transla-

tion, giving it as his opinion, that there "was no good reason for its continuance, for the Straits furnished very little apprenticeship for the continent of India,"⁹³ an opinion in which Sir William Norris "entirely concurred."⁹⁴

Sir William Norris left Penang on the 9th June, 1847 (*cf.* below for notes on his career) and was succeeded by Sir Christopher Rawlinson, "Recorder of Portsmouth," on the 4th of August of the same year. During the interval between the departure of Sir William Norris, and the arrival of Sir Christopher Rawlinson, Mr. Salmond, the Resident-Councillor of Malacca, who had just resumed duties after leave of absence, was appointed by the Governor, Colonel Butterworth, under the powers vested in him by the Charter, as a Lay Judge of the Court at that Settlement, to sit in the absence of the Recorder. Mr. Salmond, on the 10th June, 1847, accordingly proceeded to the Court-House to take the oaths of office, but being ill at the time, remained in his carriage. Mr. Lewis, the "Accountant-General" of the Court in Penang, and who had been acting for Mr. Salmond, thereupon requested the Senior Sworn Clerk in charge, Mr. B. Rodyk, to have the Court opened, and Mr. Salmond afterwards sworn as a Judge of the Court in his carriage. This, the Clerk objected to, but being pressed by Mr. Lewis, he opened the Court in the usual form, and then, in company with Mr. Lewis, "proceeded downstairs to the Government Treasury at the Stadt House, and administered to to the said J.W. Salmond, Esquire, the usual oaths *in his palanquin carriage*, opposite the said Treasury door, after having previously and respectfully stated his objections against the legality and formality of the oaths so administered." Mr. Rodyk immediately afterwards reported the matter to the Registrar in Penang, who (the Recordership being vacant), communicated with the Governor, pointing out that the oaths were nugatory. Colonel Butterworth in a letter dated 22nd June, 1847, signified to Mr. Salmond his disapprobation of the course adopted by him, remarking that such irregularity could not be permitted, and that "he thought it imperative that he should be sworn in as Judge of Her Majesty's Court of Judicature *in open Court*," and required him "to proceed to Singapore by the earliest opportunity, and there be sworn in." This was accordingly done by Mr. Salmond, and the papers in connection with the matter afterwards forwarded by the Governor to the Registrar to be filed in the Court Records.

"Sir William Norris was admitted to the bar by the Hon. Society of the Middle Temple in 1827, and two years afterwards proceeded to India, where he practised with considered success. In 1835, he was appointed Chief-Justice of Ceylon, having previously acted as a puisne Judge there, and in 1836, he received the appointment of Recorder of Prince of Wales' Island, &c., retired on pension in 1847 — died at Ashurst Lodge, Sunningdale, 7th September, 1859." [It has not been possible to trace the source of this information which appears in quotation marks in Kyshe's *Original* but it probably came from the *Colonial Office List*, 1885.]

As stated above, the power of authorizing the Resident-Councillors in each Settlement, to sit in the absence of the Recorder, was vested in the Governor by the Charter, each authority granted being duly forwarded to the Registrar in Penang and registered. This system was inaugurated in Sir Benjamin Malkin's time. It would appear that doubts had been at one time raised, as to the legality of holding a Court at any one of the Settlements without the presence of the Recorder, but they were overruled by Sir Benjamin Malkin as shewn by the following extract from one of his letters to the Government of India, dated 16th September, 1837:—

“I found the Court in operation at all the Settlements and felt that it was not exceeding its power, except indeed that the necessary preliminary of a regular authority by the Governor so to act, had been omitted. This however was supplied for the future; and as far as ratification could supply the want of previous authority, for the past also, and no one ever raised the question whether that ratification would be advisable. The only difficulty that I have heard suggested on this subject was, that it seemed contrary to the notion of a single Court that it should be holding concurrent sittings in different places at the same time, and that on this ground an Act of Parliament had been required in England to enable the Quarter Sessions to hear Appeals and Criminal Cases at the same time in different rooms. The argument is not without force . . . , but I thought the provisions of the 13th page of the Charter too decidedly contemplated the occurrence of such proceedings to make me hesitate about upholding them, even if I might have felt that there was doubt enough to prevent me from recommending such a course, if hitherto unpractised. To procure its abandonment on any ground of illegality, would have been to declare void all the proceedings had under it; and this of course I could not do, without being satisfied that they were so, which was not my opinion.”

Sir Christopher Rawlinson assumed duties in August, 1847. It is in his time, that *Punghulus* or “Native head-men,” are first mentioned in the records. These native head-men, appointed under a purely Malay custom, necessarily nowhere appear in any of the Indian enactments connected with these Settlements, nor has the term been met with under any denomination whatever in any of the early local Regulations, unless they can, in some degree, be associated with the Native Captains of the early days.⁹⁵ In Malacca, “a question having been raised whether *Punghulus* ought to be considered as Constables, it was determined to refer the case to the professional Judge, as they had been sometimes sworn in at the Quarter Sessions, and it would be dangerous to the life of a Peace Officer in which capacity he acts, should it not be recognized.” The papers were sent to the Registrar from Malacca on the 10th July, 1847, together with a “copy of the oath written in the Malayan character taken by the *Punghulus* occasionally, in open Court of Quarter Session,”⁹⁶ but the question does not appear to have been brought before the Recorder. By Ordinance 1 of 1872, s. 1, the Governor may invest any *Punghulu* with

the powers of a Police Officer or Constable, every *Punghulu* so invested, being subject to the several provisions of the Ordinance relating to the duties of Peace Officers.

In Sir Christopher Rawlinson's time, jurisdiction was conferred on the Court, by 12 Vict., c. 21, for the relief of Insolvent Debtors, the Recorder being the sole "Commissioner" or judge of the Insolvent Court. Rules, Orders and Tables of fees, in connection therewith, were duly passed on the 6th November, 1848, and confirmed by an Order of Her Majesty in Council, dated 29th June, 1849; the jurisdiction thus conferred, constituted a *quasi* distinct branch of the Court of Judicature, the seal bearing the device of the Royal Arms, and the inscription: "Court for the Relief of Insolvent Debtors."

In their presentment to the Recorder, at a Session of Oyer and Terminer held in July, 1849, the Grand-Jury recommended "that witnesses attending the Court of Judicature during the Criminal Sessions should be paid for the time they were absent from their work," but nothing came of the recommendation. Compensation to witnesses was first fixed by the Order in Council, dated 2nd May, 1872, since amended by Order dated 24th November, 1881.

It was also during this Recorder's tenure of office, that the Straits Settlements ceased to be subordinate to the Presidency of Fort William in Bengal, and were placed in direct correspondence with the Government of India.⁹⁷

Sir Christopher Rawlinson frequently laid stress on the defective system of prison discipline, and stated that although the High-Sheriff was nominally the person charged with the control and superintendence of the Gaols, yet, owing to his being annually appointed and other circumstances, he had very little to say in the matter and was next to useless — he recommended that the High-Sheriff ship be abolished and the appointment of an Inspector of Prisons, — reforms carried out several years after, as will hereinafter be seen.⁹⁸ Before leaving the Straits, he also advocated the system of trial by Jury in matters of fact, and remarked "that one of the great defects he had found in the Court was, that in civil matters involving the fortunes and happiness of individuals, he had not had the power of calling to his aid some five or six gentlemen as Jurymen, to assist him in deciding on facts."

Sir Christopher Rawlinson was succeeded by Sir William Jeffcott, who arrived in Penang, on the 2nd February, 1850, but apart from several important cases decided during his time, the passing of several Rules and Orders of Court, including that of the 21st January, 1852, before alluded to, regarding the admission of Advocates and Solicitors of the Court, and a letter dated 24th November, 1851, from Governor Butterworth, who was about to go on leave, informing the Recorder that "he could not resign the Government into other hands, without bearing testimony to the kind courtesy which marked his Honor's intercourse with

the authorities, during the period he had held the high and honorable office of Recorder. . . .,” the records disclose nothing deserving special mention beyond presentments of the Grand-Jury in July, 1854 and June, 1855, complaining as in the time of Sir William Norris, that “the frequent occurrence of the Sessions rendered the duty a severe tax on the time of those whose attendance was required as Jurymen, and more particularly on those residing in the Province, some of them at a distance of twenty five miles.”

Sir William Jeffcott died in office on the 22nd October, 1855, being the second Recorder, since the time of Sir Francis Bayley, whose death had occurred in Penang. At the time of his death, Sir William Jeffcott had been appointed first Recorder of Singapore, under the new Charter of the Court,⁹⁹ as hereinafter mentioned.

“Sir William Jeffcott was born in Ireland in 1800 — was of the Irish Bar and went the Munster circuit. In 1842, he emigrated to Australia; before leaving Ireland, he was presented by the Bar and Solicitors, with handsome pieces of plate in testimony of their high sense of his merits — While in Australia, he officiated as a Judge of the Supreme Court at Port Phillip — he returned to Ireland and resumed practice at the bar, and held a legal appointment under the Attorney-General of Ireland. In 1840 appointed Recorder of Prince of Wales’ Island, &c.,” [It has not been possible to trace the source of this information which appears in quotation marks in Kyshe’s Original but it probably came from the *Colonial Office List*, 1885.]