

The Judiciary and Police

During the period 1805-1819, which saw the end of improvisation and the beginning of a new era of a properly constituted framework of laws in the Presidency, various recurring themes are apparent. The most important development in the administration of Justice was the arrival of the long awaited Charter of Justice in 1808. After the establishment of the Presidency, and before the arrival of the Charter, a series of intermediary measures were carried out under the auspices of John Dickens, who continued to be the dominating figure in the Judicial arena until 1808. Besides the improvement of the machinery for carrying out Justice, and the more efficient organization of the Police force, there was a general reluctance of the European inhabitants to recognise judicial authority, and from time to time an attitude of suspicion and even hostility existed between the government and the Recorder. As in the Civil Department, there was a certain amount of Asian participation in the lower rungs of the Judicial establishment, particularly the Police force, but compared with the pre-1805 period, the Capitans of each of the Asian communities had fewer powers. Nevertheless, provisions

Settlement cannot be permanent. It will be deserted by all orderly persons and will become an asylum for the flagitious and the enemies of government and law." They argued that if the Charter was delayed, they would be obliged by duty to exert their authority for restraining the turbulent and punishing the disobedient among the European inhabitants.<sup>2</sup> By way of illustration the despatch then described the state of the administration of Justice as it existed. It was in the hands of a Judge and Magistrate who was appointed by the Governor-General, and gave his opinion on all suits where the parties, or at least the defendants, were not European. This opinion became a sentence on being confirmed by the Lieutenant-Governor, who could reverse or alter it if he wished. Petty thefts, assaults and all crimes not amounting to felony were tried<sup>3</sup> and punished in the same manner by the Judge and Magistrate.

In order to continue the administration of Justice until the provisions of the Charter came into operation, John Dickens was authorized to continue as Judge and Magistrate under the former regulations and instructions,<sup>4</sup> and with the same monthly salary of 2,000 rupees. It was

2. Penang to London 12 November 1805, para. 87-8, JIA, VI, 92; Kyshe (1885), xxxiii.
3. Penang to London 12 November 1805, para. 89-90, JIA, VI, 92; Kyshe (1885), xxxiii-xxxiv.
4. Penang to London 12 November 1805, para. 91, JIA, VI, 92; Kyshe (1885), xxxiv; Penang Consultations 24 September 1805, SSR (IOL) XI, 21.

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customary in cases amounting to felony, for the accused to be tried by a Court consisting of the Governor, the Judge and Magistrate, and a third person chosen by them, who would report their opinion to the Governor-General. The accused, if found guilty, was put under close confinement. This applied only to the native population, and "the more turbulent European population remain<sup>ed</sup> on the island free from all restraint, with the 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."<sup>5</sup>

Matters were improved somewhat in December 1805 when the Council passed a regulation "creating and establishing an Ordinary",<sup>6</sup> which enabled Dickens to exercise increased power and jurisdiction until the arrival of the Charter of Justice and the Recorder.<sup>7</sup> The increased independence of the Judiciary was shown by the Governor's discontinuation of the system of personally countersigning or remarking upon the decisions of the Judge and Magistrate.<sup>8</sup>

In October 1805 Dickens submitted to Council a memoir concerning the "enactment of laws, civil and criminal, the

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5. Penang to London 12 November 1805, para. 92-3, JIA, VI, 92-3; Kyshe (1885), xxxiv.

6. Ordinary (from Oxford Dictionary) - "having immediate or ex officio and not deputed jurisdiction".

7. R.S.J. Braddell, The Law of the Straits Settlements (Singapore 1918), 71; Kyshe (1885), xxxiv-xxxv; Penang Consultations 20 February 1806, (Remarks on Farquhar's Report No. 11), SSR (IOL) XII, 145.

8. Kyshe (1885), xxxvii.

establishment of civil and criminal Courts of Justice at Prince of Wales Island", with a draft of four proposed regulations. On his advise these regulations establishing the Judge and Magistrate's Court were approved. The jurisdiction of the Court and rules for its operation were defined, and provisions were made for the appointment of a Justice of the Peace, a Provost and a Registrar.<sup>9</sup> A Court of Appeal<sup>10</sup> was also established, and rules governing its procedure were adopted, under which the Judge and Magistrate was to preside as before.<sup>10</sup> In November a Court of Requests was created "for the recovery of all debts and demands not exceeding 50 Spanish Dollars". Cases were to be heard by a Commissioner, and it was decided that the office should be held simultaneously by the Police Magistrate. In all cases over \$50, an appeal could be made<sup>11</sup> to the Judge and Magistrate. Paul Kellner, a German, was appointed Police Magistrate and Commissioner of the Court of Requests, a post that was subject to annual appointment and to removal at the pleasure of government. This provision was fortunate, because a year later he was

9. Ibid., xxxiii; Penang Consultations 22 October 1805 (Appendix No. 1), SSR (IOL) XI, Regulation 1, 1-7, 23-42.

10. Penang Consultations 22 October 1805 (Appendix No. 1), SSR (IOL), XI, Regulation 2, 62-82.

11. Penang Consultations 22 November 1805, SSR (IOL), XII, 476-7; Tan Soo Chye (1950), 104.

dismissed because of corruption,<sup>12</sup> and Thomas McQuoid,  
 already mentioned earlier, was appointed in his place in  
 October 1806.<sup>13</sup> In November 1805, the Court of Native  
 Elders was abolished, and the duties previously performed  
 by that Court were transferred to the Police Magistrate  
 under the orders of Council.<sup>14</sup> This completed the process  
 begun by R.T. Farquhar, the former Lieutenant-Governor,  
 who had considerably lessened the powers and jurisdiction  
 of the native Capitans by transferring them to the hands  
 of the Provost.<sup>15</sup>

## II

In November 1805 measures were taken to improve the  
 Police establishment. Farquhar in his report had complained  
 of the "lax and inefficient" state of the Police, which  
 he considered was due to "the same want of power which  
 cramps the judicial authority".<sup>16</sup> Phillip Dundas, the

12. London to Penang 21 April 1809, para. 53, SSR (IOL), XXVI, 81 (in answer to Penang to London 11 November 1806). Kellner was charged with "extracting unlicensed duties from the retailers of provisions in the bazaar and receiving bribes to a large amount from natives for indulgences, remissions of punishments etc."
13. Penang Consultations 22 November 1805, SSR (IOL), XII, 479; Tan Soo Chye (1950), 105.
14. Tan Soo Chye (1950), 104.
15. Penang Consultations 8 October 1805, SSR (IOL), XI, 151 (Orders of Lieutenant-Governor 25 April 1804); and Farquhar's Report 1805, (Police), SSR (IOL) IX.
16. Farquhar's Report 1805 (Police), SSR (IOL) IX; Kyshe (1885), xxii.

new Governor, held the same opinion about the inadequacy of the Police establishment, and he was in a position to remedy the situation. In November 1805, he put forward a series of proposals for the creation of a new and enlarged Police establishment which was duly implemented.<sup>17</sup> By contemporary standards these proposals looked "imposing and efficient."

First, Georgetown was to be patrolled by a head constable [who was also the Provost], and two deputy constables. The town was to be divided into four wards or districts, each under a jemadar and ten peons and watchmen, half Malay and half Chinese, who were to be supervised by the constables. Second, the rural districts outside Georgetown were divided into three districts, Jamestown, Kampong Penang and Tanjong Tikus, each to be under the authority of a constable, a clerk and six peons. Their duties were "to keep the peace" in their districts, to keep a register of the number of houses and inhabitants<sup>18</sup> and a list of local marriages, births and deaths.

Within Georgetown the houses in all streets were to be numbered in both English and Malay characters, and recorded in the register. There were various regulations for the

17. Penang Consultations 22 November 1805, SSR (IOL), XII, 461-76.

18. Penang Consultations 22 November 1805, Regulations-Section 1-2, SSR (IOL) XII, 465-6.

arrest of persons charged with "any crime or misdemeanour" and further instructions to the constables and police officers concerning the arrest of robbers and "all descriptions of rogues - vagabonds, vagrants and sturdy beggars" for suspected persons found "lurking about".<sup>19</sup>

The duties of the Police Magistrate [who was first Paul Kellner and later Thomas McQuoid] were also clearly stated. Under his control were all the constables, jemadars and peons and the Provost of Georgetown. He had power to deal with breaches of the peace by unlawful assemblies, riots and assaults, disputes concerning wages of labourers and mechanics, the prices of articles sold by retail in the market and bazaars, and the borrowing and lending of sums of money under \$50. He was able to punish such offenses by imprisonment up to seven days and by fines up to \$20. Since the Court of Native Elders was abolished, all cases of marriage, death, and complaints concerning native women, were to be determined in the presence of the Police Magistrate by priests or other competent persons from the community concerned. One person from each community was to be appointed by the Police Magistrate to assist him and to keep a register of the inhabitants and slaves belonging to his community. Another of his duties was to hear and determine disputes

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19. Ibid., section 3-6, 466-8.

concerning the payment of tax and assessment on houses on the island and he was to be guided in his decisions by the law and orders of the Committee of Assessors, appointed by the Governor and Council. Under their orders also he was to take charge of all streets and bridges, "to pull down and remove all intrusions and on the streets and nuisances within the boundaries of Georgetown", and to prevent "monopoly and forestalling" of the market. He was in charge of the jail, the two fire engines, and the covered wells maintained in each street in case of fire. <sup>20</sup>

At the same time Governor Dundas presented to Council an estimate of the strength of the Police establishment and the expenses involved. The general Police office at Georgetown was to consist of an European head clerk and four native clerks in addition to the Police Magistrate. This was quite separate from the Georgetown Police establishment which comprised a head constable and Provost, two deputy constables and an overseer of the market, four jemadars and thirty peons. In the three country districts of the island the establishment was much smaller, each having one constable, one clerk and six peons. The Police jurisdiction also extended to Province Wellesley, and the establishment at Prai consisted of a constable, a clerk and four peons, together with a deputy constable at Puloh.

20. Ibid., section 11-17, 471-5.



Jerajah. A small "establishment of the row boat",  
 probably plying between Penang and the mainland, completed  
 the Police establishment.<sup>21</sup> After three months operation  
 the new Police arrangements were viewed with satisfaction  
 by the Governor and Council. In February 1806 they noted  
 that "the Regulations<sup>for</sup>... that office... appear fully  
 calculated to obtain the substantial ends of Justice as  
 far as the Jurisdiction of Police extends and in securing  
 the prompt decision in securing debts not exceeding the  
 sum of Spanish Dollars fifty".<sup>22</sup>

### III.

One of the main problems at this time and one which  
 had been prominent from the earliest years, was the attitude  
 of some of the European inhabitants towards any sort of  
 authority, governmental or judicial. Charles Fenwick,  
 for instance, who was later asked to leave Penang because  
 of his "libellous writings" against the Judge and Magis-  
 trate, was critical of the existing arrangements. He  
 described Mr. Dickens as "a single man in a private room  
 in a private house without any assistance, not even of  
 one or two merchants versed in the usage of trade, ...

21. See Ibid., 480-1 for list of these establishments.

22. Penang Consultations 20 February 1806, Remarks on Farquhar's Report, SSR (IOL) XII, 146; also SSR (IOL) IX.

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"required an explanation ... of him" in regard to a case tried by him on the previous day in which Douglas appeared as defendant. Dickens expressed regret to Raffles at the state of his jurisdiction, which compelled him to examine complaints against British subjects, but over whom he had no authority, and who resented his work as a "private personal injury".<sup>24</sup>

In January 1807 the members of Council concurred with Dickens in his concern over the lack of judicial authority and reminded the Directors of the "dangerous evils arising out of the want of regularly established law authority on the Island with jurisdiction over Europeans and Natives."<sup>25</sup> In the light of such incidents, and in the absence of a properly constituted framework of laws, the arrival of the Charter of Justice definitely improved the situation and brought to an end the period of lawlessness and legal chaos in Penang.<sup>26</sup>

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23. Fenwick to Governor and Council 22 October 1806. Quoted in C.C. Rajarao, Public Administration in Penang 1786-1832 (Academic Exercise, University of Malaya 1958), 35.

24. Kyshe (1885), xxxv-xxxvii.

25. Tan Soo Ohye (1950), 105.

26. Braddell (1916), 11; Kyshe (1885), xxxviii.

On 28 May 1808 HMS. Phaeton arrived at the Presidency with Sir Edmond Stanley, the Recorder, on board. He brought with him the Letters Patent dated 25 March 1807, establishing the Court of Judicature on Prince of Wales Island.<sup>27</sup>

All public duties previously performed by the Judge and Magistrate were to cease on the promulgation of the Letters Patent, and Dickens was to deliver to the new Court all judicial records, registers and other documents.<sup>28</sup> The sudden change of status was apparently not well received by him, and he perhaps felt that he should have received a more appreciative recognition of his services than a mere order to resume his functions as a Barrister at Port William. Dickens vented his sense of injury in correspondence with both the Penang and Port William governments, which was deemed both "disrespectful and improper". He also addressed the Court of Directors about the matter.<sup>29</sup>

At a special Council meeting on 31 May 1808, Sir Edmond Stanley was received and the members proceeded to the Court House in order to read the Letters Patent establishing the Court of Judicature. These were duly

27. Penang Consultations 30 May 1808, SSR (IOL) XIX, 604; also SSR (IOL) VIII, 57. See Davies (1956), 19, Cullin and Zehnder (1905), 26. For account of Stanley's career see Kyshe (1885), liv.
28. Penang Consultations 30 May 1808, SSR (IOL) XIX, 605-6; also SSR (IOL) VIII, 57-8.
29. Bengal to Penang 5 August 1808, Penang Consultations 8 September 1808, SSR (IOL) XI, 977-9.

read, and the Governor and other Judges took the oaths prescribed by the Charter. James Carnegy was elected the first Sheriff until 29 September.<sup>30</sup> The Letters Patent authorized the establishment on Penang of such Courts as were necessary for "the due Administration of Justice, and the Security of the Persons, Rights and Property of the Inhabitants, and the public Revenue of, and the Trial and Punishment of capital and other Offenses committed, and the Repression of Vice."<sup>31</sup> They also laid down the respective powers and functions of the various Courts and their officials.

First, the Charter provided for a Court of Record, to be called "The Court of Judicature at Prince of Wales Island". The Court was to consist of the Governor, three Councillors and one other Judge to be called the Recorder, who was to be appointed by Letters Patent and who was to be a Barrister of England or Ireland, of not less than five years standing. While the Recorder was to receive a salary of £3,000 per annum (or \$12,000), the Governor and Councillors were to receive no fees in addition to their prescribed salaries.<sup>32</sup> The Court was to appoint a Registrar to enter up its records and register its proceedings. The Court was also to appoint annually on

30. Penang Consultations 31 May 1808, SSR (IOL) XIX, 607-8.

31. SSR (IOL) VIII, Letters Patent, page 3.

32. Ibid., 4, 7-9.

29 September a Sheriff of Penang. He and his deputies were to execute all the writs summonses, rules, orders, warrants, commands of the Court, and to detain in prison all persons placed in the custody of the Sheriff by the Court.<sup>33</sup> The jurisdiction and powers of the Court were similar to those of the superior Courts in England, in all civil and criminal actions and suits, in all revenue matters, and in the control of all inferior Courts. It also had jurisdiction as an ecclesiastical Court, "so far as the several religions, manners and customs of the inhabitants would admit". It was to try all suits concerning trespasses or injuries, debts or demands, rights, titles, claims or demands, of, in, or to any houses lands etc. in Penang. It had authority over the persons and estates of infants and lunatics, and under its ecclesiastical jurisdiction it had power to grant probates of the last wills and testaments of any inhabitants, and to commit letters of administration of the goods, chattels, and credits of persons dying intestate or without an executor.<sup>34</sup> Next followed a description of the standard procedures to be followed by the Court.<sup>35</sup> Its financial affairs were to be handled by an Accountant General of the Court, who was to be the Company's Treasurer.<sup>36</sup>

33. Ibid., 9-12.

34. Ibid., 14-21.

35. Ibid., 21-35.

36. Ibid., 31-3.

Another function of the Court of Judicature was to act as a "Court of Oyer and Terminer and Goal Delivery", to inquire into all treasons, murders and other felonies, forgeries, perjuries, trespasses and other crimes and misdemeanours committed in Penang. The Court was to examine and give judgement in all these cases, and to administer criminal justice following the same procedure as similar Courts in England, with provisions for modification according to "the several religions, manners and usages of the native inhabitants". The Sheriff was to summon a number of the principal inhabitants to serve as a grand jury, consisting of between thirteen and twenty three persons. The majority of the grand jury not less than seven would be sufficient to authorize any statement to be made.<sup>37</sup>

Next, the Court of Judicature was from time to time to act as a Court of Quarter Sessions, to give orders concerning the making, repairing and cleansing of roads, streets, bridges and ferries, the appointment of Police officers, and the trial and punishment of misdemeanours and other duties usually done by English J.P.s at their Quarter Sessions. It was to nominate and appoint suitable persons as constables, to carry out the duties usually done

37. Ibid., 35-7.

by constables in England, as far as the different religions, customs and manners of the different inhabitants would allow, and it was to delegate their authority over certain districts and classes as was required. The Court at its Quarter Sessions was to have full power and authority, without any inquest or jury, "to enquire of, hear and determine all Breaches of the Peace, Quarrels, Controversies, and other Crimes and Misdemeanours, except Treason and Felony", and to pass judgement on all offenders. All J.P.s, constables and other magistrates were to be subordinate to the Court of Judicature.

Finally, the Court of Judicature was authorized to establish a Court of Requests, for the recovery of small debts and duties or matters in dispute not exceeding \$32 in value. It could appoint any of the inhabitants to be Judges of the Court, it was to decide the extent of jurisdiction over the various groups of inhabitants, and to frame rules for its administration. Like the other Courts, the Court of Requests was subject to the orders and control of the Court of Judicature.

The last few paragraphs of the Letters Patent concerned the proclamation of the Charter and the consequent termination of power of all previous Courts and their officers.

38. Ibid., 38-40.

39. Ibid., 43-5.



the transferring of impending suits to the new Court, and the swearing in of the Governor, Councillors and the Recorder.<sup>40</sup> The most important point, however, about the Court of Judicature as established by the Charter, was that the powers of the Executive and the Judiciary were not clearly separated. According to Braddell, this was "a cause of endless friction" until they were separated in<sup>41</sup> 1868.

## V

The Court sat for the first time on 3 June 1808,<sup>42</sup> and the appointment of officers, the passing of rules and orders, and other necessary business was completed in subsequent sittings. Initially, the efficient operation of the Court must have been affected by the lack of trained personnel. In the absence of any qualified person, Raffles was appointed Acting Registrar on 10 June 1808, to help carry on the business of Court. He did not hold the post for long, because on 25 July he went on leave to<sup>43</sup> Malacca, and William Young was appointed in his place. On 21 July William Robinson was appointed Accountant

40. Ibid., 45-9.

41. Braddell = (1918), 14.

42. The Governor and the Recorder took the bench, and the first case heard was an ecclesiastical one, where letters of administration were asked for "in the Goods of Andrew Cartwright, deceased". Kyshe (1885), xl.

43. Braddell (1918), 19-20; Kyshe (1885), xl-xli.

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General of the Court, and in August the post of Acting Registrar was again changed, and two sworn clerks, William Young and William Rolls, were appointed. In September, a new Sheriff, Thomas McQuoid, was nominated. The first Law Agent of the Court, the English solicitor John Hewitt, was admitted an Attorney of the Court on 4 November 1808.<sup>44</sup> Then in January 1809 he was appointed Registrar of the Court, but did not remain long in that office.

In January 1809 the establishment of the Court was decided upon. Besides the usual clerks and a number of peons, ~~recognition~~ of the needs of the multi-racial society was shown by the inclusion on the establishment of a number of interpreters for the Malays, Indians and Chinese, who could act as writers as well. At the same time it was decided that the Sheriff's establishment should include a clerk to assist the Under-Sheriff <sup>[a</sup> European judging by his higher salary<sup>45</sup>, a goaler, bailiffs and peons. The Court also ordered that the various tables of fees be translated into the different native languages and circulated among the heads of each racial group, for the information of the "lower and inferior classes of people". It appears that the business of Court at this

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44. Penang Consultations 21 July 1808, SSR (IOL) XX, 806; and see Kyshe (1885), xli (list of establishment, Penang Consultations SSR (IOL) VIII, 113, List of Establishment of Court of Judicature (undated) probably March 1810.

45. Penang Consultations 5 January 1809, SSR (IOL) XXII, 19-20.

time was not very heavy, as only a few cases were tried, with long intervals in between, and for much of the time<sup>46</sup> the Recorder sat alone.

The Court in its capacity as Court of Quarter Sessions sat for the first time on 11 June 1808. The Recorder presided, and with him sat W.E. Phillips, one of the Councillors. At its Quarter Sessions, the Judges of the Court were termed "Magistrates". According to Kyshe, the cases tried at this Court were very trivial, but it still sat frequently, possibly due to the small number of civil cases in the Court of Judicature. Later in 1813, when the business of the Court of Judicature had increased, the Recorder issued an order for the Court<sup>47</sup> of Quarter Sessions to sit only four times a year.

~~The Court of Assizes, or Session of Oyer and Terminer,~~ held its opening session on 5 September 1808, and the Governor, the Recorder and the three Councillors were present. There was a long list of cases to be heard, showing the arrears into which the previous Court had fallen in conducting its business. Among these were six cases of murder, all of which were found guilty and sentenced to death. At this session a petition was presented to Court by a number of prisoners who had been

46. Kyshe (1885), xliii.

47. Ibid., xliii.

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serving sentence since 1806, requesting that their cases  
and sentences be reconsidered. Their petition was granted;  
some were allowed to leave the island, and others were  
discharged and the rest of their sentences annulled. 48

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After some months of planning, a Court of Requests  
was established from 1 July 1809, and its powers and  
functions followed the provisions laid down in the Charter.  
It was to consist of three Commissioners. The Head  
Commissioner was to be George Caunter, the Superintendent  
of Police (with an additional monthly salary of \$200), and  
two covenanted civil servants, J.C. Lawrence and Thomas  
Raffles, acting in an unpaid capacity, were to assist him.  
They were to be aided by a European clerk, Julius Cesar,  
and an establishment of the usual jemadar and peons, an  
interpreter and native writers, and six bailiffs, two in 50  
Georgetown and four resident in the country districts.  
This showed that the interests and jurisdiction of that  
Court were to extend well beyond the limits of Georgetown.

## VI

In January 1809 the Governor pointed out that in  
consequence of the establishment of the Court of Judicature,  
alterations were needed in the Police establishment. Since

48. Ibid., xliii-xliv.

49. See Penang Consultations 16 March, 6 April 1809,  
SSR (IOL) XXII, 218-23, 251-4.

50. Kyshe (1885), xliv; Penang Consultations 18 May  
1809, SSR (IOL) XXII, 406-24, 427-33.

the Police department prior to the establishment of the Court was responsible for all the criminal and most of the civil judicature of the island, including the duties of Sheriff and Coroner, he felt that a substantial reduction should take place, equal to the additional expense incurred by the separate establishments of the Sheriff and Coroner, the Police Magistrate<sup>51</sup> in his capacity as Commissioner of the Court of Requests, and the peons required by the Recorder's Court.<sup>52</sup> All sections of the revised Police establishment were therefore reduced, but extensive use was still made of the Asian inhabitants, partly perhaps because of their lower rate of pay and because few suitable Europeans were available. The general Police office at Georgetown was to consist of a European clerk and interpreter, two European constables, two native clerks, and four jemadars to supervise 34 peons or day and night watchmen. The establishments for the country districts, of Jamestown, Kampeng Penang and Tanjong Tikus were also reduced from a constable, a clerk and six peons, to a constable and four peons. Prai or Point Wellesley on the mainland retained its constable, clerk and ten peons, to which it had been increased since

51. The new Police Magistrate was George Caunter, an uncovenanted member of the pre-1805 establishment, who had returned to Penang, and on the Court's orders had taken over the office from Thomas McQuoid in August 1808. See Penang Consultations 2 June, 21 July 1808, SSR (IOL) XIX, XX, 680, 817-18.
52. Penang Consultations 5 January 1809, SSR (IOL) XXII, 14-16.

1805. Puloh Jerajah retained its deputy constable, while the establishment of the row boat, operating between Penang, Province Wellesley and Puloh Jerajah, was abolished altogether.<sup>53</sup>

The inadequacies of this new establishment soon became apparent, and were pointed out in May 1809. Because there were no regulations for the registry of the different racial communities on the island, the native constables, aided by people from each community, were required to make a register of all people residing in their district, both in the country and in Georgetown. It was also felt that a more general distribution of the police establishment and a "respectable European authority" resident within each district was necessary. Since several European inhabitants with large properties in these districts had<sup>54</sup> offered to act as high constables, their offer was accepted. The new measures introduced in May 1809 did not materially affect the General Police Office at Georgetown. The only changes were the addition of interpreters and swearers, and four clerks for registering tribes, showing the necessity of employing non-Europeans for the necessary communication with the numerous racial groups. The area outside Georgetown was henceforward divided into four

53. See Ibid., 17, for list of establishment.

54. Penang Consultations 18 May 1809, SSR (IOL) XXII, 434-5.

districts instead of three, namely, Jamestown, Glugor, Jelutong and Telok Ayer Rajah. Each was to be controlled by the voluntary Police officers chosen from the leading European landowners residing there. That Thomas McGee and John Dunbar were to control the establishment in two districts, and David Brown in three, showed the extent of their properties on the island. Other men who were to control the Police establishment in their districts were Nathaniel Bacon and J. Van Dockern in Jelutong, and Jeremiah McCarthy and Johannes Narces in Teluk Ayer Rajah. The establishments beneath them in the four districts varied slightly, with extra peons in the more populated districts, particularly Jamestown. This time the peons were to reside at specified places within the main districts, showing a more definite distribution within the establishments. The deputy constable on Pulau Jerajah and the native constable and ten peons in Province Wellesley remained unchanged.

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Shortly afterwards, in December 1809, the Police establishments in the country districts were found to be insufficient and a request was made by the J.P.s, Pearson, Phillips and Erskine, that they be increased. This was therefore carried out. For example, at Jamestown there

55. See Ibid., 438-442, for list of the police establishments.

was to be a Chinese head constable, a Chinese assistant and writer, two jemadars, and two Chinese and three Malay or Chulia peons. A Chinese head constable and a Chinese writer and assistant were allotted to the Glugor district and the number of jemadars and peons was increased in both Glugor and Telok Ayer Rajah.<sup>56</sup> The Police establishment settled at the end of 1809 was generally found adequate for the needs of both Penang and Province Wellesley for some years to come.

## VII

Like his predecessor, Stanley found himself at loggerheads from time to time both with the Government and with some of the more recalcitrant European settlers. Examples of both types of friction appeared in the next few years, and sometimes it is to be suspected that the somewhat pompous attitude of the Recorder himself was partly to blame. A few months after his arrival, a misunderstanding arose between the Government and the Recorder over his refusal to have anything to do with the appointment of Police officers in the different districts, on the ground that it was a local matter, best judged by local magistrates. He did not wish to interfere in the nomination

56. Penang Consultations 7 December 1809, SSR (IOL) XXIII, 1049-53, 1055.



of these persons or in the expenses incurred; he only wished to point out their legal duties.<sup>57</sup> The constables were duly appointed, and it appears that Stanley's contention was later supported by the Court of Directors, who strongly recommended that the efforts of the Recorder should be concentrated on the business of the Court rather than taken up by the ordinary duties of a Justice of the Peace.<sup>58</sup>

Shortly after his arrival, Stanley also had his first taste of the attitude of some of the Europeans, and he acted firmly. The first case came before him at Quarter Sessions in December 1808, when Cuthbert Fenwick was accused of having challenged Thomas McQuoid to fight a duel when in the execution of his duty as High Sheriff. Fenwick was fined \$40, and ordered to give security for his good behaviour for one year.<sup>59</sup> Fenwick's name appeared again in May 1810 when he was accused of contempt of Court, for "composing and publishing under color of a petition for certain native prisoners, a false, contemptuous and scandalous libel, reflecting upon the administration of Justice and the public conduct of the Grand Jury and Magistrates and read in Court on 14 May". For this he

57. Kyshe (1885), xlv.

58. London to Penang, draft answer to Penang to London 2 August 1809, (para. 33, 37), SSR (IOL) VIII, 467-9.

59. Kyshe (1885), xlv.

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was sent to goal for a month, but after petitioning the Court on the grounds of ill-health and the crowded state of the jail, he was, surprisingly enough, released. 60

In July 1810 the attitude of some of the better class of Europeans was demonstrated when an uproar and disorderly scene was created in the Court room by four of the voluntary constables who wished to resign their posts. Requests to that effect had been submitted to Council on 6 July by David Brown, John Dunbar, Thomas McGee and Jeremiah McCarthy, all constables and prominent landowners. 61 According to the Court records, these men appeared in Court on 10 July and interrupted the proceedings, a serious occurrence since all were Police constables, supposed to uphold the law, and David Brown was, in addition, the Sheriff. According to John Dunbar, ~~the reason they refused~~ to act as constables was that the Court was prepared to consider suits and actions brought against him and others, 62 and that the law could not appoint and compel constables to act against their own will. The Recorder, referring to their attitude as insulting, contemptuous and highly disrespectful, considered that the real object of their behaviour was to "insult the Recorder and the Court, and to degrade it in the eyes of the native subjects and others;

60. Ibid., xlvii.

61. Penang Consultations 6 July 1810, SSR (IOL) XXVII, 882-5.

62. This referred to a case of a native against John Deans for an assault by beating and kicking him, which had been tried that day in Court. Kyshe (1885), xlviii.

and... to intimidate the Recorder by parties and by threats, in the face of the Court, from doing his public duty, and administering law to the natives...." <sup>63</sup>

The Court met again on 17 July 1810 to enquire into the disorder created by the four gentlemen, and the sentence passed on them included a fine and the reading of a public apology in Court. It

was pointed out that since Penang had long been without a proper system of law, it was possible that the parties may not have realised the dangerous consequences of such offenses, and that lenient punishment would prevent the repetition of such outrages in future. <sup>64</sup>

In the opinion of Kyshe, the records in the next few years disclosed nothing special apart from local dissensions between the Recorder and some of the European inhabitants. For example, certain letters were written by Europeans complaining about Stanley's conduct of cases in Court. The first letter was in June 1811, in connection with the case, John Baird vs Barette. Two Penang merchants accused Stanley of making insinuations about the conduct of the individuals involved in the case, Stanley considered this a threat, if not a challenge, and a "heavy censure upon him for doing nothing more than his public duty", and he complained of the frequent attacks made on the

63. See *ibid.*, xlvi-lxix for complete account of the events in the Court Room, taken from the Court Records.

64. For report of the Court's proceedings see Penang Consultations 19 July 1810, S3R (IOL) XXVII, 914-38; and Kyshe (1885), lxix-l.

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 Court from different quarters. Then in August 1812 the Recorder received a letter containing "scandalous and malicious libel", "defamation and slander" (in reference to an action brought by the creditors of the late James Scott against his executor, William Scott) from Robert Scott, who had managed Scott's estate, and whose "splendid equipage" and the style he lived in had been questioned by the Recorder. Scott subsequently wrote a letter of apology for his "violent and daring 66 contempt" in sending such a letter.

### VIII

Two other problems concerning the Judiciary were very much apparent at this time. First there was the continuing one of obtaining sufficiently trained persons to occupy certain positions, particularly that of Registrar of the Court; and second, because of the same shortage of suitable people, the functioning of the Court of Requests was considered somewhat inefficient. In the voluminous correspondence carried on between the Recorder and the Government on these subjects, undertones of disagreement were from time to time apparent. One cannot help but sympathise with Stanley, however, when he pointed out that when he accepted the office, he had no idea of

65. Kyshe (1885), 11.

66. Ibid., 11-111.

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the size of the task he had undertaken, and that he had endeavoured to put the Charter into operation with very little qualified aid.

It was therefore necessary to procure quickly a competent man of character and firmness to act as Registrar. The difficulty arose from the unwillingness of any legal men of ability to leave a more profitable position at the other Presidencies for the small salary offered at

Penang. After the resignation of Hewitt in August 1810, the post of Registrar was occupied by a Mr. Jones from Calcutta between February and May 1811. Thomas Kekewick was appointed Acting Registrar when Jones died, and served in that capacity until the appointment of William Benge in October 1812. Benge, too, died in November 1813, so again Penang had to make a hurried request to Bengal for a suitable person to act as Registrar.

When in 1811 Council raised the salary of Jones, the Registrar, the Recorder voiced his disapproval to Council that such action had been taken without his knowledge. He argued that the salary of the Registrar was derived from the monthly fees of the Court, the allocation of which fell within his jurisdiction. Council, however, strongly upheld its

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67. Stanley to Bruce 2 August 1810, Penang Consultations 9 August 1810, SSR (IOL) XXVII, 1003-5; also SSR (IOL) VIII, 349-51.

68. Ibid.; Penang Consultations 30 August 1810, SSR (IOL) XXVII, 1112; also SSR (IOL) VIII, 273-4, 366.

69. SSR (IOL) VIII, 273; Penang Consultations SSR (IOL) 7 February, 16 May 1811, SSR (IOL) XXX, 123, 520; 15 October 1812, XXXV, 1537; 4 November 1813, XL, 1869-70.

decision to increase the Registrar's salary, on the grounds that great difficulty had been experienced in obtaining a person of good character and legal competence.<sup>70</sup> In 1813, in the absence of a Registrar, somewhat heated correspondence again took place between the government and the Recorder when the latter pointed out the difficulties he had in carrying out his duties in these circumstances.<sup>71</sup> His difficulties arising from the absence of a Registrar were alleviated in 1814 by the arrival of Archibald Duff, <sup>also</sup> who became the Company's Law Officer in the same year.<sup>72</sup>

In May 1812 Governor Seton drew attention to the need for improvements in the working of the Court of Requests, if Penang was to secure a cheap and simple mode of adjusting small monetary claims, particularly among the lower classes of inhabitants. In the absence of effective machinery for this purpose the public were inclined to take the law into their own hands. The inefficiency of the Court arose from its fluctuating membership. Of the original three Commissioners, Raffles and Lawrence were absent in Java, and the Head Commissioner,

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70. Penang Consultations 14 February 1811, SSR (IOL) XXI, 198-213.
71. Penang Consultations 13 November 1813, SSR (IOL) XL, 1891-1908.
72. Penang Consultations 24 February 1814, SSR (IOL) XLIII, 346-9; Penang Consultations 16 July 1814, SSR (IOL) XLIV, 1510-12.

George Caunter, had recently died.<sup>73</sup> Of those appointed in their place, Cousens, who was officiating as Acting Secretary, was unable to attend because of his heavy duties in that capacity, and the attendance of Phipps, the Acting Accountant was infrequent for the same reason.

As a solution, Governor Seton suggested that the number of the Commissioners might be increased to ensure a regular attendance on three days a week, without interfering with their official duties. But since the office

<sup>74</sup> was an unpaid one, no private persons could be expected to accept it, and it could therefore consist only of covenanted servants. He stressed that regular sittings of the Court were necessary, but this was extremely

difficult while the Commissioners continued to officiate

<sup>75</sup> as heads of Departments.

These comments initiated a prolonged discussion between the Governor and the Recorder. The Recorder stated that no complaint had been made to him of any difficulties or delays in the procedure of the Court of Requests, or of <sup>any</sup> irregularity in its sittings. Richard Caunter, he

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73. Penang Consultations 18 April 1812, SSR (IOL) XXXIV, 456

74. Even the head Commissioner's original salary of \$200 per month was abolished on the orders of the Directors in 1811. See London to Penang, draft answer to Penang to London 2 August 1809, SSR (IOL) VIII, 479-81; Penang Consultations 8 August 1811, SSR (IOL) XXI, 944-5.

75. Penang Consultations 9 May 1812, Minute by Governor, SSR (IOL) XXXIV, 907-912.

pointed out, had succeeded his uncle as Police Magistrate, but not as Head Commissioner of the Court of Requests, because he preferred to retain his post of clerk to the other Commissioners, which had a separate salary attached. In consequence, the duties of the Head Commissioner had devolved upon the Company's covenanted servants. The Recorder disagreed that the Commissioners should be selected from among the covenanted servants, especially if the shortage of suitable personnel continued. Furthermore, according to the Charter any inhabitants, whether British or not, could be appointed to serve as Commissioners. In reply to the protestations of the Recorder, the Governor suggested that on the death of George Gaunter his successor should have been appointed in his two-fold capacity of Police Magistrate and Head Commissioner of the Court of Requests, so that the attendance of at least one Commissioner would take place every Court day. Richard Gaunter however had been unwilling to assume the post. From the nature of the Recorder's letter, the Governor took it to mean that natives might be appointed Commissioners. This he felt would be impossible in Penang, because a Court composed of such judges would neither command respect nor inspire confidence. The only hope of acquiring a well qualified person for the position of Head



Commissioner was to offer a more attractive salary. 77<sup>156</sup>

The Recorder agreed that Richard Caunter, the Police Magistrate, would be as competent to do the duty of Commissioner as that of Clerk in the Court. 78 Subsequent appointments showed that covenanted servants, presumably those with less burdensome civil duties, continued to be appointed Commissioners, and from the lack of evidence to the contrary, it seems that this system functioned satisfactorily. The covenanted servants who acted as Commissioners from 1812 to 1817 included J.L. Phipps, R. Ibbetson and W. Bennett, who were then replaced by 79 F. Sartorius, K. Murchison and J. Anderson.

Prior to 1812 the annually appointed position of Sheriff of Penang was chosen from among the private European landowners. But from 1812, perhaps because of the behaviour of David Brown in 1810, the Sheriffs were 80 chosen from among the covenanted civil servants. The

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77. Penang Consultations 18 July 1812, Minute by Governor, SSR (IOL) XXXV, 975-92.

78. Penang Consultations 24 July 1812, Recorder to Council SSR (IOL) XXXV, 1053-4. Richard Caunter had been Clerk of the Court of Requests since February 1811. See Penang Consultations 28 February 1811, SSR (IOL) XXX, 257-8. He then became Police Magistrate in November 1811 after the departure to Bengal of his uncle, George Caunter, who died shortly afterwards. See Penang Consultations 28 November 1811, 18 April 1812, SSR (IOL) XXXI, XXXIV, 1524-5, 456. Richard Caunter became a Junior Commissioner of the Court of Requests and vacated his position as Clerk of the Court in 1817. See Penang Consultations 25 September 1817, SSR (IOL) LXII, 360.

79. See Appendix III B.

80. See Appendix III A.

The wisdom of this change may be questioned in the light of the Recorder's comment on Ibbetson, the Sheriff of that year, in November 1816. He entered in the Court Book that "Mr. Robert Ibbetson, the High-Sheriff of Prince of Wales Island and the Paymaster of Government, has never, since his appointment to the office of High-Sheriff, honored his Majesty's Court with his presence... nor has he even been present on any occasion at any part of the proceedings of the Court, nor has the Recorder... ever seen him in Court or elsewhere since his appointment to that office of High-Sheriff."<sup>81</sup> This was a reflection on the character of both Ibbetson, but his reputation was not apparently marred by this stricture, because two years later he was again appointed Sheriff, <sup>and</sup> after the passing of another decade, he became Governor of the Straits Settlements. On the other hand, the somewhat pompous attitude of the Recorder recalled an incident in the previous year, when Stanley pointed out that in two letters addressed to him by the government, the words "The Honorable" were omitted. Council explained that the omission was accidental, and expressed "regret and surprise" that such a complaint should have been made at all.<sup>82</sup>

81. Kyshe (1885), Iiv.

82. Recorder to Petrie 2 June 1815, Minute by Governor 4 June 1815, Council to Recorder 5 June 1815, Penang Consultations 10 June 1815, SSR (10L)XLIX, 1038-1045.

## IX

The 1810 reductions of the Penang establishment had left the Judicial Department, both its Courts and its Police, untouched.<sup>83</sup> But in 1816 the Directors considered certain reductions necessary ~~as further economies~~ in the island's administration. The office of Recorder was to remain unchanged, but reductions were to take place in the Court establishments. The allowance of the under-sheriff or clerk was to be reduced from \$150 to \$100, and that of the clerk of the Court of Requests was similarly reduced from \$100 to \$50. Reductions in the Police Department were also expected to be carried out.<sup>84</sup> The Penang Council commented that though the expenses of the Court of Judicature was \$1863 monthly, the fees of the Court made a considerable contribution to the salaries of the registrar and his clerks. Nevertheless, reductions were made from the salaries of the various interpreters, and one assurburdar and three peons were considered unnecessary. A reduction of \$53 was therefore made. The latter, however, would not take effect until Sir Edward Stanley relinquished his office. The cost of the remaining

83. See Appendix II F.

84. London to Penang 7 February 1816, para. 28-32, SSR (SNL) 02, 368-70.

establishment of \$1810 was offset by the Court fees to the extent of \$1350, hence the expense to <sup>the</sup> government was only about \$460. With the \$50 reduction from the salary of the under-sheriff, the removal of two peons, and a reduction of the writers and turnkey's salary, the Sheriff's establishment was reduced by \$70, from \$325 to \$225. The Coroner's office, the smallest establishment, was reduced by only \$5 for one peon to \$55. The \$50 taken from the salary of the clerk was the only reduction made in the establishment of the Court of Requests, and since the fees of this Court exceeded the cost of its establishment by over \$400 monthly, the members of Council expressed the hope that the Directors would restore the salary of \$100 to the clerk, Richard Caunter, whose "useful and meritorious services" had already been drawn to the attention of the Directors.

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Some reductions were similarly made in the Police establishment. From the general Police office at Georgetown, reductions in the number of watchmen and peons totalled \$68, the remaining establishment totalling \$394. The establishment in the various districts remained much as before. The one in Jamestown was the largest, with a Chinese constable, and an assistant and writer, two jemadars,

85. Penang Consultations 21 August 1816, Minute by Governor, SSR (IOL) LVI. See Appendix II M and II N.

two Chinese peons, two Malay or Chuliah peons, and a constable at Pulo Jerajah. In the other districts at Glugor, Telok Ayer Rajah, Jelutong, Telok Bahang and Prai in Province Wellesley, the establishments usually consisted of a constable, a writer and a few peons. It is interesting to note that the Prai establishment had increased considerably, and that also in the Police establishment was a "house of correction" and a "Kazee",<sup>86</sup> presumably for putting out fire. By 1816, it appears that the Police establishment had grown in the districts where the increased population required it, and at the same time retained as much efficiency as could be expected at the time.

# X

Sir Edmund Stanley resigned his position as Recorder on 14 November 1816, on being appointed a Judge of the Supreme Court at Madras.<sup>87</sup> He was succeeded by Sir George Andrew Cooper, who remained in Penang only a few months, from February to November 1817, when he was promoted to Chief Justice at Bombay.<sup>88</sup> His successor, Sir Ralph Rice, continued in that post until he too was transferred to Bombay

86. *Ibid.*; See Appendix II M and II N.

87. Kyshe (1885), cxi; Penang Consultations 14 November 1816, SSR (IOL) LXII. See Appendix III C.

88. Kyshe (1885). cxi, liv. See Appendix III C.

in 1824, as Puisne Judge.<sup>89</sup> Since the Recorders were appointed by the Crown, the junior Presidency of Penang no doubt was last in the precedence of appointments, and primary consideration was given to the three Indian Presidencies, where the services of highly qualified legal men were more urgently required. Following the addition of Singapore and Malacca to the Penang Presidency in 1826, a second Charter was granted, extending the jurisdiction of the Court over Singapore and Malacca.<sup>90</sup> But some of the problems inherited from the period of the first Charter, such as the conflict between Government and Recorder, still remained unresolved.

89. Ibid., cxi, lv. See Appendix III C.

90. Ibid., lxi-lxii.