THE LAW
OF THE
Straits Settlements
A COMMENTARY
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CHAPTER I.

LEGAL HISTORY.

The Colony of the Straits Settlements, at present, comprises the Island of Singapore, the Town and Province of Malacca, the Territory and Islands of the Dindings, the Island of Penang, Province Wellesley, Christmas Island, the Cocos Islands, and the Island of Labuan, and their dependencies: For Administrative purposes the Colony is divided into four Settlements:

(1) The Settlement of Singapore, which also includes Christmas Island and the Cocos Islands;
(2) The Settlement of Penang, which also includes Province Wellesley and the Territory and Islands of the Dindings;
(3) The Settlement of Malacca; and
(4) The Settlement of Labuan.

It is proposed in this Chapter to trace the history of the acquisition of these Settlements and places, and the history of the Supreme Court and its jurisdiction, from a chronological point of view, as far as may be, with references to the more important Acts and Ordinances in their order of date.

PERIOD I.—FROM THE ACQUISITION OF PENANG TO THE GRANTING OF THE FIRST CHARTER OF JUSTICE.

British connection with (a) Malaya began by individual and trading ventures from 1576 to 1684.

(a) I use the term "Malaya" in the widest sense and for want of a better expression.—R.B.
Sir Francis Drake came to Malaya in 1578 in the course of his famous voyage round the world; Cavendish came in 1588, and Lancaster in 1592 in the course of his first voyage East. From 1594 to 1598 Houtman's Dutch expedition came and traded in the various parts of Malaya. The importance of the early trading voyages is that such big profits accrued from them that the English became convinced of the great value of the Malayan trade with the direct result that in 1600 the East India Company was formed and received a Royal Charter for 15 years. It had for its principal object trading in Malaya; thus, it may be said fairly that the early Malayan trade was the parent from which our Indian Empire sprang, and as will be seen Malaya, so far as it was British, was directly connected with India until 1867. British connection with Malaya was at first entirely non-political and it so continued until 1684, from which date until 1762 it was a mixed political and commercial connection.

In 1684 the East India Company's Government at Madras established a fort and factory at Indrapoer, and on June 25, 1685, Fort York at Bencoolen, from the establishment of which Fort may be dated the dawn of British power in Malaya.

In 1763 the Fort and establishment at Bencoolen were formed into a separate Presidency with a Lieutenant-Governor at its head; but though the British were thus established in Sumatra they had no foothold in the Straits of Malacca, while on the other hand their great rivals, the Dutch, were established at Malacca and had been so for some hundred odd years.

The British accordingly judged it necessary to establish a commercial port in the Straits of Malacca,
and at first, Acheen was considered the proper place; a Mr. Kinloch was sent to the King of Acheen towards the end of 1784 but his efforts at negotiation proved fruitless. Then Captain Light proposed the Island of Penang and in 1786 negotiations were opened with the King of Kedah for the cession of the island; these proved successful (a) and Captain Light with a body of Marines landed at Penang on July 15, 1786, and hoisted the British flag on August 11, 1786, the eve of the birthday of the Prince of Wales in whose honour the Island was re-named “Prince of Wales’s Island,” by which name it was long known; but for the sake of convenience the name “Penang” will be used herein.

The occupation had taken place by virtue of the agreement entered into between the King of Kedah and Captain Light for the cession of the Island, and on May 1, 1791, a Treaty (b) was concluded by Captain Light which provided for the mutual surrender of runaway slaves, debtors, forgers and murderers; for the necessary supply of provisions, duty free, from the mainland to the residents on the Island and shipping in the harbour, and for the annual payment to the King of 6,000 Spanish dollars. The King was also bound not to allow Europeans of other nations to settle in his country. The Treaty was expressed to continue “as long as the Sun and Moon give light,” and it appears to have been negotiated under the impression that the King of Kedah was an independent sovereign, whereas he was in reality a tributary to Siam. The British Government over Penang was, however, expressly acknowledged by the Siamese under the (c) Treaty of Bangkok, June 20, 1826.

(a) Appendix i; Agreement of 1786,
(b) Appendix i;
(c) Hertslet’s Treaties, viii, 707.
When Penang was first occupied, it was practically uninhabited; the Charter of 1807 says "wholly uninhabited," but the better opinion seems to be that adopted by Sir Benson Maxwell, R., in his historic judgment in Regina v. Willans, viz., that it was inhabited by four Malay families.

In his (a) Memoir addressed to the Indian Government on September 1, 1787, Captain Kydd, an engineer officer, says:

"Penang as yet can be said to have no inhabitants of its own or even any but the servants of gentlemen and the followers of the troops that are firmly established. When it was first taken possession of by this Government there were a few Malay families who subsisted by fishing and extracting of Wood, Oil and Dammer and who lived near the Point where the Fort stands but have removed to another part of the Island. One of these people (a very old man) gives an account of there having been about 30 years ago a great many inhabitants on the Island (not less than three thousand) and that at one place it was well cultivated, which is evidenced by the number of burying places that are yet to be seen on a part of the Island which comprehends at least a space of 3 square miles and which from the clearness of wood, and from many fruit trees that are yet to be seen and above all from the appearance of enclosures and furrows, gives a convincing proof that the whole of that span has been recently in cultivation. These people having given themselves up to plunder and piracy which disturbed the commerce of India, the King fitted out an armament and expelled them from the Island."

(a) This most interesting memoir will be found amongst the Straits Settlements Records under date at the India Office.—R.B.
Such being the state of affairs at the time of the acquisition, what was the *lex loci*? Did the settlers bring with them the law of England then in being, on the ground that the Settlement was acquired by occupancy? or was the Malay law of the Kingdom of Kedah to be enforced, on the ground that it was a ceded country and had formed a part of that Kingdom?

The Privy Council has decided that the former is the correct answer.

In *Regina v. Willans* (1858), Sir Benson Maxwell, R., considered that Captain Light and his marines came not as Colonisers but as a garrison to take possession of a ceded territory, and that therefore the law of England could hardly have been made the *lex loci*, but was only the personal law of the garrison and its followers. He held also that the law of Kedah could not apply, because at the time when Penang became a British possession it was without inhabitants to claim the right of being governed by any existing laws, and without tribunals to enforce any. Sir Benson Maxwell held that though four Malay families were found on the Island, yet it could not be said to be inhabited, and he described it as a "desert Island." But whatever the law of the land ought to have been *de jure*, Sir Benson Maxwell considered it clear that for twenty and more years after the founding of the Settlement no known body of laws was in fact recognized as the law of the place. This state of affairs will be dealt with later.

In *Fatimah v. Logan and others* (1871), Sir William Hackett, J., disagreed with Sir Benson Maxwell as to the position of Captain Light and his marines. He held that he was not merely the
Commandant of a garrison but was also an able administrator who obtained the Settlement for the East India Company and so for the Crown of England, and that as the Island was virtually uninhabited the case fell under the general rule that when Englishmen establish themselves in an uninhabited or barbarous country they carry with them the laws and the sovereignty of their own country. He agreed that whatever the law ought to have been *de jure* the fact was that for twenty years no body of known law was recognized as the law of the place.

In *Ong Cheng Neo vs. Yap Cheah Neo and others* (1872), the matter was finally settled by the Privy Council as follows:

"With reference to this history" [i.e. the history of the Settlement in Penang], "it is really im-
material to consider whether Prince of Wales's "Island or, as it is called, Penang should be "regarded as ceded or newly settled territory, for "there is no trace of any laws having been estab-
lished there before it was acquired by the East "India Company. In either view the law of "England must be taken to be the governing law, "so far as it is applicable to the circumstances of "the place, and modified in its application by these "circumstances."

The success of the settlement was immediate and startling, so that within three years from its acquisition Captain Light was able to report that there was a population of 10,000 on the Island, which was continually being increased. The bulk of the first settlers were Chinese, Malays and Chulias. There was no regular form of Government, Captain Light was styled the Superintendent and had to administer affairs as best he
could with such assistance as he could get by letter from India. As has been said, no known body of law was administered. Captain Light, recognizing the rapid growth of the settlement and the consequent urgent need of Courts and Police, addressed the Governor-General of India in that behalf, but in a letter dated the 26th January, 1788, the Governor-General in Council replied that he did not think himself at liberty to make any such permanent regulations until express authority had arrived from Europe and that until then Captain Light was to preserve good order as well as he could by imprisonment or other common punishments so far as the inhabitants not British Subjects were concerned, and excepting in cases of murder.

Captain Light and his immediate successors seem to have administered justice according to the dictates of their consciences. Thus, Mr. George Caunter, a Magistrate, in 1797 punished a Chinese man and woman for adultery by ordering them to have their heads shaved and to stand twice in the pillory from four to six in the evening and the man to be imprisoned until he could be sent off the island.

The native inhabitants expressed a desire that they should be tried and governed under their own laws with the result that in 1792 Captain Light decided upon and carried into effect the committing of the administration of justice in each class to a headman.

In 1793, a serious charge of murder was brought against a European named James Sudds, which called the attention of the Indian authorities very forcibly to the state of affairs on the Island. As there was no power to deal with Sudds under the instructions of 1788, since he was a British subject,